

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

**International Labour Office
Geneva**

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ACRONYMS

BELARUS WORKERS' ORGANIZATIONS

AAMWU	Belarus Automobile & Agricultural Machinery Workers' Union
ASWU	Agricultural Sector Workers' Union
CDTU	Belarussian Congress of Democratic Trade Unions (referred to in other documents as BCDTU)
BFTU	Belarussian Free Trade Union
BITU	Belarussian Independent Trade Union
BIWU	Belarussian Industry Workers' Union
BTUATC	Belarussian Trade Union of Air Traffic Controllers (referred to in other documents as BPAD)
DUTW	Democratic Union of Transport Workers
FMWU	Free Metal Workers' Union
FPB	Federation of Trade Unions of Belarus (Russian abbreviation; referred to in other documents as FTUB)
IAAMWU	Independent Belarus Automobile and Agricultural Machinery Workers' Union
MRTUECS	Minsk Regional Trade Union Organization of Employees in the Cultural Sphere
REAAMWU	Radio and Electronics, Automobile and Agricultural Machinery Workers' Union (amalgamation of the AAMWU and the REWU)
REWU	Radio and Electronics Workers' Union

BELARUS EMPLOYERS' ORGANIZATIONS

BCIE	Belarussian Confederation of Industrialists and Entrepreneurs (Employers)
BUEE	Belarussian Union of Employers and Entrepreneurs named after Professor M.S. Kunyavsky

NATIONAL CONSULTATIVE BODY

NCLSI National Council for Labour and Social Issues

INTERNATIONAL WORKERS' AND EMPLOYERS' ORGANIZATIONS

ICFTU International Confederation of Free Trade Unions

IOE International Organisation of Employers

IUF International Union of Food, Agricultural, Hotel, Restaurant, Catering,
Tobacco and Allied Workers' Associations

WCL World Confederation of Labour

WFTU World Federation of Trade Unions

INTERNATIONAL LABOUR OFFICE

CAS Committee on the Application of Standards

CEACR Committee of Experts on the Application of Conventions and
Recommendations

CFA Committee on Freedom of Association

ILC International Labour Conference

INTERNATIONAL ORGANIZATION

OSCE Organization for Security and Co-Operation in Europe

PART I

INTRODUCTION AND BACKGROUND TO THE CASE

Chapter 1

Filing of the Complaint and Appointment of the Commission

I. Filing of the complaint

1. By a letter dated 18 June 2003 addressed to the Director-General of the International Labour Office (ILO), 14 Workers' delegates¹ filed a complaint under article 26 of the Constitution of the International Labour Organization (ILO) against the Government of the Republic 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), both of which it ratified on 6 November 1956. The complaint is worded as follows:

Dear Mr. Somavia

Re.: Complaint under article 26 of the ILO Constitution against the Government of Belarus for non-observance of Conventions Nos. 87 and 98

In my own name and on behalf of the Workers' Delegates to the 91st Session of the International Labour Conference (Geneva, June 2003), whose names are included hereunder, I hereby lodge a complaint under article 26 of the ILO Constitution against the Government of the Republic of Belarus for violations of the Convention on Freedom of Association and Protection of the Right to Organise, 1948 (ILO Convention No. 87) and of the Convention on the Right to Organise and Collective Bargaining, 1949 (ILO Convention No. 98), both ratified by Belarus on 6 November 1956.

The present complaint rests on numerous instances of gross violations of these fundamental ILO Conventions, committed in recent years by the Belarus authorities and many employers against the country's trade union movement, including:

1. *government interference in the unions' internal affairs, including in such matters as trade union elections and the holding of congresses, conferences*

¹ Sir Roy Trotman (Barbados), Mr. Khurshid Ahmed (Pakistan), Ms. Hilda Anderson Navarez (Mexico), Mr. William Brett (United Kingdom), Ms. Barbara Byers (Canada), Ms. Mia De Vits (Belgium), Mr. Ulf Edström (Sweden), Ms. Ursula Engelen-Kefer (Germany), Mr. Adams A. Oshiomhole (Nigeria), Mr. Ebrahim Patel (Republic of South Africa), Mr. Zainal Rampak (Malaysia), Mr. M.V. Shmakov (Russian Federation), Ms. Halimah Yacob (Republic of Singapore) and Mr. Jerry Zellhoefer (United States of America). All of these complainants were, at the time when they filed their complaint, Workers' delegates of their countries to the 91st Session (2003) of the International Labour Conference (ILC) and, as such, empowered, under Art. 26, para. 4, of the Constitution of the ILO, to file a complaint.

Filing of the complaint and appointment of the Commission

and other statutory meetings of unions' decision-making bodies at national, regional and local levels;

2. *adoption and promulgation of anti-union legislation and executive decrees;*
3. *refusal of registration of union organizations;*
4. *harassment and threats, including threats of physical abuse;*
5. *arbitrary transfers of union leaders, members and/or activists;*
6. *demotion, dismissal or forced resignation of elected trade union leaders from their elective or executive union positions;*
7. *forced resignation by workers from their union membership;*
8. *refusal by governmental authorities and employers to provide union organisations with the necessary means to carry out their legitimate activities, including material means such as a legal address, office space and commodities such as electricity and telecommunication facilities;*
9. *cancelling of check-off facilities for the collection of union membership fees;*
10. *interference in the unions' free disposal of collected union dues and membership fees;*
11. *freezing of unions' bank accounts;*
12. *denial of national workers organizations' rights to take part in statutory meetings of national tripartite labour institutions;*
13. *lack of consultation of representative national organization of workers concerning the selection of the Workers' representative in the national Delegation to the International Labour Conference; and*
14. *other gross violations of trade union rights.*

Details of these violations have already been presented to the Committee on Freedom of Association on numerous occasions, including in complaints lodged before the Committee on 6 June 2000 by the International Confederation of Free Trade Unions, the Congress of Democratic Trade Unions of Belarus, the Belarus

Filing of the complaint and appointment of the Commission

Automobile and Agricultural Machinery Workers' Unions, the Agricultural Sector Workers' Union and the Radio and Electronics Workers' Union. The Federation of Trade Unions of Belarus associated itself with this complaint on 6 July 2000 and submitted additional information in a communication dated 28 September 2000. The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations associated itself with the complaint in communications dated 29 June and 18 July 2000, respectively. The case has been registered by the CFA under the number 2090 of the Committee.

Further violations of trade unions were reported by the ICFTU to the Committee on Freedom of Association in the course of 2001, 2002 and 2003. This case has become an important case before the Committee. Nevertheless, the government has consistently refused to implement the recommendations of the Committee. Violations of Convention 87 have also been examined by the Conference Committee on the Application of Standards (CAS) in 2001 and 2003, leading in each case to the inclusion of the CAS' conclusions in a Special Paragraph of its Report. The CAS has also found the Government of Belarus to have consistently failed in its implementation of Convention 87. The Government has refused to appear before the CAS during the 90th Session of the ILO (Geneva, June 2002).

Under these circumstances, I and the Workers' Delegates to the 91st Session of the International Labour Conference whose names are attached hereto feel compelled to lodge the present complaint under article 26 of the Constitution against the Government of Belarus for non-observance of ILO Conventions 87 and 98. In doing so, they call on the Governing Body to appoint a Commissioner of Inquiry charged with the examination of the present complaint. The complainants reserve the right to submit additional information hereto at the appropriate time.

2. The procedure under which the Workers' delegates filed their complaint against the Government of Belarus is set out in articles 26 to 29 and 31 to 34 of the ILO Constitution. These articles provide for the procedure by which a Commission of Inquiry may be established and set out its terms of reference and functions to be fulfilled. These provisions are reproduced in Annex 1.
3. Provisions 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) are reproduced in Annex 2.

II. Summary of measures taken by the Governing Body of the ILO following the filing of the complaint

4. At its 288th session (November 2003), the Governing Body of the ILO had before it a report by its Officers concerning the subject of the complaint. This report included the following passages:²

It is now for the Governing Body to adopt the necessary decisions as to procedure regarding the complaint submitted under article 26 of the Constitution.

It will be recalled, in this connection, that the Committee on Freedom of Association has been examining complaints submitted by workers' organizations alleging violation of trade union rights in Belarus. The Governing Body has approved the provisional conclusions drawn up by the Committee.³ The Government has invited a mission to discuss matters relating to this case, which took place in September 2003.

It will also be remembered that the Committee of Experts on the Application of Conventions and Recommendations has made observations to the Government of Belarus regarding the observance of the Conventions referred to in the complaint submitted under article 26 of the Constitution and that in 2001 and 2003 the Committee on the Application of Standards of the Conference discussed some matters relating to the observance, in practice and under law, of Convention No. 87.⁴

In the present case, the complaint filed by a number of delegates to the Conference, under article 26 of the Constitution, largely concerns matters which are already before the Committee in the context of the special freedom of association procedure. The Committee has proceeded with the examination of the case pending under this procedure, which is once again before the Governing Body for approval in the 332nd Report of the Committee on Freedom of Association. In accordance with established practice, when a commission of inquiry is appointed, the relevant matters before the various ILO supervisory bodies are referred to this commission.

² International Labour Office, *Report of the Officers of the Governing Body: Complaint concerning the non-observance by 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), made by delegates to the 91st Session (2003) of the International Labour Conference under article 26 of the ILO Constitution, 288th Session (Geneva, November 2003)* paras. 6-9.

³ See 324th Report of the Committee on Freedom of Association, Case No. 2090, ILO, *Official Bulletin*, Vol. LXXXIV, 2001, Series B, No. 1, paras. 133-218; 325th Report of the Committee on Freedom of Association, Case No. 2090, ILO, *Official Bulletin*, Vol. LXXXIV, 2001, Series B, No. 2, paras. 111-244; 326th Report of the Committee on Freedom of Association, Case No. 2090, ILO, *Official Bulletin*, Vol. LXXXIV, 2001, Series B, No. 3, paras. 210-244; 329th Report of the Committee on Freedom of Association, Case No. 2090, ILO, *Official Bulletin*, Vol. LXXXV, 2002, Series B, No. 3, paras. 217-281; 330th Report of the Committee on Freedom of Association, Case No. 2090, ILO, *Official Bulletin*, Vol. LXXXVI, 2003, Series B, No. 1, paras. 207-238; 331st Report of the Committee on Freedom of Association, Case No. 2090, ILO, *Official Bulletin*, Vol. LXXXVI, 2003, Series B, No. 2, paras. 122-168; and 332nd Report of the Committee on Freedom of Association, Case No. 2090, ILO, *Official Bulletin*, Vol. LXXXVI, 2003, Series B, No. 3, paras. 301-362.

⁴ International Labour Conference, 89th Session, *Record of Proceedings*, Provisional Record 19, (Geneva 2001); International Labour Conference, 91st Session, *Record of Proceedings*, Provisional Record 24, (Geneva 2003).

III. Appointment of the Commission

5. The Governing Body decided to refer the whole matter to a Commission of Inquiry, in accordance with article 26, paragraph 4, of the Constitution of the ILO. During the same session, the Governing Body decided that the Commission of Inquiry would have the following composition:

Chair: Mr. Budislav Vukas – Professor of Public International Law at the University of Zagreb, Faculty of Law; Vice-President of the International Tribunal for the Law of the Sea; member of the Permanent Court of Arbitration; member of the ILO Committee of Experts on the Application of Conventions and Recommendations.

Members: Mr. Niklas Bruun - Professor of Business Law and of EU Labour Law at the Swedish School of Economics and Business Administration in Helsinki.

Ms. Mary Gaudron – former Justice of the High Court of Australia (1987-2003); former Deputy President of the Australian Conciliation and Arbitration Commission; Judge on the ILO Administrative Tribunal.

Chapter 2

Synopsis of the Dialogue and Relations Between the ILO and Belarus Concerning Freedom of Association

6. Following the break-up of the Union of Soviet Socialist Republics (USSR), in its 1991 observation, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) had noted with satisfaction that Article 6 of the Constitution of the Belarussian Republic, which had set out the leading role of the Communist Party in economic and social life, had been amended. As amended, it laid down the principle of pluralism for political parties and public organizations. The CEACR requested the Government to supply information on the further measures taken in order to eliminate any ambiguity persisting in the trade union legislation as regards the possibility of a genuine system of trade union pluralism.
7. In 1993, the CEACR noted with satisfaction that the Law on Trade Unions of 22 April 1992 provided for independent trade unions, voluntary membership and freedom to organize and carry out actions in defence of workers' rights including the right to strike.

I. The first complaints against the Government of Belarus (Cases Nos. 1849 and 1885)

8. In 1995, the International Confederation of Free Trade Unions (ICFTU), the World Confederation of Labour (WCL), the Belarussian Free Trade Union (BFTU) and the Belarussian Congress of Democratic Trade Unions (CDTU) presented a complaint alleging the imposition of severe restrictions on the right to strike, the suspension of unions by Presidential Ordinance, grave acts of anti-union discrimination and the arrest and detention of trade unionists in connection with the strikes carried out in Minsk and Gomel in August 1995 (Case No. 1849).
9. In March 1996, the Committee on Freedom of Association (CFA) concluded that Ordinance No. 336 of 21 August 1995, which suspended the activities of the BFTU and of the local organization of Minsk metro, was in violation of freedom of association standards and principles. While noting with satisfaction that the Constitutional Court had declared this Ordinance unconstitutional on 8 October 1995, the CFA observed that measures had already been taken to implement the Ordinance and no information had shown that these measures had been subsequently withdrawn, in accordance with Court judgement. The CFA recalled that the administrative suspension of trade union organizations constituted a serious violation of freedom of association principles contrary to Article 4 of Convention No. 87. Similarly, suspension by the executive branch of the

Government acting in the exercise of legislative functions, as was done in this case, did not ensure the guarantees that the CFA considered essential.

10. The CFA requested the Government to modify Ministerial Edict No. 158, which restricted the right to strike in a large number of sectors and enterprises, and offered the technical assistance of the ILO in this regard. It further urged the Government to implement fully the decision of the Constitutional Court in respect of Ordinance No. 336. Finally, the CFA emphasized that the dismissal of workers for taking part in legitimate strike action constituted anti-union discrimination in employment and requested the Government to take the necessary measures to ensure the reinstatement of all workers dismissed in connection with the strikes in Minsk and Gomel.
11. The CEACR noted with concern the conclusions of the CFA in its 1996 observation, particularly as regards the legislative restrictions on the right to strike and the Presidential Ordinance suspending the activities of the BFTU and recalled that the technical assistance of the ILO was available to the Government.
12. A second complaint was presented by the ICFTU in 1996 concerning the expulsion of NSZZ Solidarnosc officers visiting the BFTU, the serving of a court summons on trade union leaders for the participation in a union gathering, and the continued threat of implementation of a ban on the activity of the BFTU and its dissolution (Case No. 1885). The Government did not reply to these allegations, despite an urgent appeal, and the CFA was thus obliged to examine the case in the absence of any information from the Government.
13. In March 1997, recalling the importance it attaches to the principle that the respect for civil liberties, such as freedom of assembly, is essential for the normal exercise of trade union rights, the CFA requested the Government to immediately withdraw any charges made against the President and Vice-President of the BFTU, Mr. Bykov and Mr. Moyseyevich, for their participation in the union meeting of 14 May 1996. It further requested that respect be ensured for the principle that the formalities to which trade unionists and trade union leaders are subject in seeking entry to the territory of a State, or in attending to trade union business there, should be based on objective criteria and be free of anti-union discrimination. Regretting that the Government has apparently not taken any steps to implement its previous recommendation in Case No. 1849 concerning Presidential Ordinance No. 336, the CFA urged the Government to take immediate steps to revoke the provisions that interfere with the free exercise of trade union rights.

II. The International Labour Conference Committee on the Application of Standards

14. At the 85th session of the International Labour Conference (ILC) in June 1997, the Government was called before the Committee on the Application of Standards (CAS) concerning the application of Convention No. 87. At that time, the Minister of Labour stressed that his country was resolutely pursuing the course of

democratic reform and emphasized that it was only through collective efforts based on the relationship of true social partnership that the country could solve its problems of the transitional period. He acknowledged, however, that the solutions to these acute problems were not always achieved in the manner corresponding to the letter and the spirit of international law, as the present case showed. He considered his task not to defend the necessity of the action that had taken place nearly two years ago, but to show that the ILO's comments on the matter had given rise to appropriate action being taken by those directly responsible for the application of international law. The best proof of this was that no such incidents had occurred subsequently. At present, there were 38 trade unions registered and exercising activities at the central level as well as many other trade unions that were registered and acted at the enterprise level, all of which considered themselves free, independent and democratic. He stressed that tripartism in Belarus was still very young and prone to conflicts; however, the importance of social partnership was fully recognized. He asked the ILO to consider providing consultative and technical assistance on a number of questions in this respect. He pointed out that the present case was the first one ever considered by the CAS with respect to Belarus and this procedure would be a good lesson to his Government to ensure that no such situation arose in the future.⁵

15. Following an ILO advisory mission in October 1997, both the CEACR and the CFA were able to note with satisfaction the repeal of the paragraph in the Presidential Ordinance No. 336 which suspended the operation of the BFTU by Presidential Ordinance No. 657 of 29 December 1997. It was further noted with interest that the BFTU was registered and operating and that a representative of the Democratic Trade Union of Transport Workers (DUTW) had been appointed to the National Council for Labour and Social Issues (NCLSI).

III. Case No. 2090

16. In June 2000, the Agricultural Sector Workers' Union (ASWU), the Automobile and Agricultural Machinery Workers' Union (AAMWU), the Radio and Electronic Workers' Union (REWU) and the Belarussian Congress of Democratic Trade Unions (CDTU) submitted a complaint for violations of trade union rights against the Government of Belarus. The Federation of Trade Unions of Belarus (FPB) joined the complaint in July 2000 and the International Confederation of Free Trade Unions (ICFTU) and International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) also associated themselves with the complaint. At the request of the chairperson of the CFA, a preliminary on-the-spot mission by a representative of the Director-General of the ILO was carried out in October 2000. The report of this mission and the complaint were examined by the CFA at its March 2001 meeting. The case was subsequently examined by the CFA on seven occasions with the last examination in November 2003. An ILO mission at the Government's request was also carried out within the framework of the case in September 2003. Full details on the

⁵ International Labour Conference, 85th Session, *Record of Proceedings*, Report of the Committee on the Application of Standards, (Geneva 1997), p. 19/78-19/79.

examination made by the CFA and the information provided are set forth in chapter 9.

IV. Continuing dialogue with the CEACR and the CAS

17. The CEACR continued its comments concerning the application of Convention No. 87, in 2000, 2001 and 2002. When examining in 2000, the conformity of Presidential Decree No. 2 on some measures on the regulation of activity of political parties, trade unions and other public associations with the provisions of the Convention, the CEACR found important discrepancies between the new registration procedure and the right to organize, particularly as concerns the legal address⁶ and ten per cent minimum membership requirement. It requested the Government to amend the Decree so as to exclude trade unions from the scope of its application and, if necessary, to institute a simplified registration process. In the alternative, it requested the Government to amend the Decree so that the last two subsections of section 3 concerning the banning of activities of non-registered associations and their liquidation did not apply to trade unions, to amend the ten per cent minimum membership requirement at the enterprise level so as to ensure that the right to organize was effectively guaranteed, particularly in large enterprises, and to give the necessary instructions to ensure that the notion of legal address was not construed restrictively so that the right of workers to establish organizations of their own choosing would not be hindered.⁷
18. At the 89th session of the ILC, during an examination of the application of Convention No. 87 in 2001 before the CAS, the Deputy Minister of Labour of Belarus explained that the Law on Trade Unions provided for the registration of trade unions, and the allocation to them of the rights of the legal entity. In connection with the adoption of a new Civil Code and Housing Code the necessity had emerged to put in order the activities of all legal entities, including trade unions. This resulted in the adoption of Presidential Decree No. 2 of 26 January 1999 on certain measures for regulating the activities of political parties, trade unions, and other social associations.⁸
19. The Decree had approved the regulations on the state registration (re-registration) of political parties, trade unions and other social associations. These instruments prescribed precise requirements to be fulfilled by trade unions in order to obtain the rights for registration. In respect of the comments by the CEACR concerning the length and difficulty of the procedure of registration, the Government representative indicated that all trade unions had been registered in Belarus. The fact of non-registration related to first-level trade union organizations in enterprises, which were subordinated organizational structures of the all-republic

⁶ All trade unions are required to furnish a legal address where the union has its base and where it carries out its activity in order to be registered. This concept will be addressed in chapter 11.

⁷ International Labour Conference, 88th Session, Report III (Part 1A), *Report of the Committee of Experts*, (Geneva, 2000).

⁸ International Labour Conference, 89th Session, *Record of Proceedings*, Report of the Committee on the Application of Standards, (Geneva, 2001), p. 19 Part 2/19.

trade unions. The major reason for non-registration was the question of the legal address. The compliance with other provisions of the prescribed registration procedure did not cause any practical difficulties.⁹

20. The provisions of the Decree concerning the prohibition of the activities of non-registered social associations and those which had not been re-registered established an administrative liability for conducting activity on behalf of such associations. This decision could however be appealed and in the representative's opinion was not contrary to Convention No. 87. Nevertheless, the Government had proposed to repeal provisions requiring the confirmation of legal address in the course of registration of primary level organizations that have no legal personality. It also proposed to enlarge the possibilities of acquiring legal address by organizations that have legal personality. Thus, if necessary, the organizational units of one trade union situated in the same city could all share the same premises and have the same legal address. An organizational unit in the same city could also have the same legal address as its parent organization or trade union. Moreover, in drafting the modifications to Decree No. 2, the Government took account of the CEACR comments on provisions concerning creation of independent trade unions at the enterprise level and thus proposed to delete the provision requiring a minimum number of trade union members to reach at least ten per cent of all employees of the undertaking. These amendments had already been submitted to the Presidential Administration. Consequently, the Government representative affirmed, these modifications would allow the creation of trade unions in undertakings once there were ten members.¹⁰
21. The Deputy Minister of Labour also referred to a meeting of the NCLSI on 24 May 2001, where the question concerning the proposed steps of the Government for complying with the CFA recommendations from March 2001 were considered. Alongside other matters, the question of non-interference of state bodies in the activities of trade unions was discussed. The Government representative recalled that the Minister of Justice of Belarus had pointed out that the instruction referred to by the ILO supervisory bodies¹¹ was not a normative act, did not have legal force and did not have any practical influence on the results of the trade union elections. The matters of independence of trade unions were covered in the current legislation (section 3 of the law on trade unions). In its conclusions, the CAS urged the Government to supply detailed information to the CEACR for its next session and expressed the firm hope that it would be able to note in the following year that concrete progress had been made in this case. The CAS decided that its conclusions would be placed in a special paragraph of its report.¹²
22. In 2001, the CEACR took note of the indications relating to proposed amendments to Decree No. 2, which had been reiterated in the Government's report. The

⁹ *Id.*

¹⁰ *Id.*, pp. 19 Part 2/19-20 and p. 19 Part 2/23.

¹¹ Instructions from the Head of the Presidential Administration, 11 February 2000. These instructions, among others, call upon various Ministries and bodies to submit to the Presidential Administration proposals for candidates to be supported for election as leaders of branch and regional trade unions. This matter will be dealt with in more detail in chapter 12.

¹² International Labour Conference, 2001, *op. cit.*, note 8.

CEACR requested to be kept informed of developments in this respect. The CEACR further noted with satisfaction that Ministerial Edict No. 158 (which established a vast list of essential services in which strikes were prohibited) had effectively been repealed by the entry into force in January 2000 of the new Labour Code, but observed nevertheless that section 388 of the Labour Code maintained a broadly permissive clause allowing legislative limitations on the right to strike.

23. As for Presidential Decree No. 8 of 12 March 2001 regarding certain measures aimed at improving the arrangement of receiving and using foreign gratuitous aid, the CEACR, recalling that the Government had not replied to its previous comment concerning section 388 of the Labour Code that prohibits strikers from receiving financial assistance from foreign persons, emphasized that the aspects of the Decree which prohibit trade unions, and employers' organizations, from using foreign aid, financial or otherwise, from international organizations of workers or employers, are incompatible with Articles 5 and 6 of Convention No. 87. The Government was asked to take the necessary measures to amend both the Decree and section 388 of the Labour Code. The CEACR also raised concerns in respect of Presidential Decree No. 11 of 7 May 2001 on several measures to improve the procedures for holding assemblies, rallies, street marches and other mass events and picketing actions and recalled that restrictions on pickets should be limited to cases where the picketing ceases to be peaceful and any sanctions imposed should be proportionate to the violation.¹³

V. ILC Credentials Committee and CAS - 2002

24. At the 90th session of the ILC in 2002, an objection was submitted by the ICFTU against the credentials of the Workers' delegation of Belarus on the grounds that no consultation had been held with the two main representative trade union confederations in Belarus: the Federation of Trade Unions of Belarus (FPB) and the Belarussian Congress of Democratic Trade Unions (CDTU). The objecting organization viewed the actions of the Government as one step further in the process of continued deterioration of social dialogue in the country, which was evidenced by the failure of the NCLSI to meet since September 2001, as well as by the increased obstacles to the registration, the activities and the functioning of both the FPB and the CDTU. In its reply, the Government had indicated that, as the structures of the trade unions in the country were in the process of reorganization, the Government was not in the possession of precise information with reference to representativeness of the FPB or the CDTU and therefore took the decision to include in the Workers' delegation representatives from the unions from the most important and widely known enterprises in the country. Upon request for clarification, the chairpersons of the FPB and the CDTU provided figures demonstrating that their organizations represented 4,000,000 and 20,000 workers respectively, whereas the two company unions (Minsk Automobile Plant and Minsk Refrigerator Plant), without intersectoral or territorial representativeness, chosen by the Government to represent workers, counted 10,000 and 8,000

¹³ International Labour Conference, 90th Session, Report III (Part 1A), *Report of the Committee of Experts*, (Geneva, 2002).

members, respectively. The Government did not reply to the Credentials Committee's invitation to appear before it to provide further information and clarifications, despite the notifications made to the Permanent Mission in Geneva.¹⁴

25. The Credentials Committee noted that the figures provided tended to demonstrate that the FPB and the CDTU were amongst the most representative organizations in the country, as confirmed by the fact that their representatives had been appointed as Workers' delegates to the ILC in recent years without any objection. The Credentials Committee stated that all the elements taken together with the CFA's deep concern over allegations of Government interference in trade union activities cast serious doubts as to the actual purpose of the nomination. The Credentials Committee thus considered that the nomination of the Workers' delegation to the ILC had been in clear violation of article 3, paragraph 5, of the ILO Constitution, thus warranting the invalidation of the credentials of the Workers' delegation. Since this recommendation would be without any practical purpose, in the absence of the Workers' delegation to the ILC, the Credentials Committee decided not to propose it at that time.¹⁵
26. In June 2002, the Government was called once again to appear before the CAS in respect of the application of Convention No. 87. In the absence of an official Government delegation, however, the case could not be discussed. In the introduction to its report, the CAS regretted that the Government had not participated in the discussion, despite its accreditation to the ILC.
27. In its report to the CEACR for 2002, the Government indicated that the issue of registration would be further examined and that the NCLSI had decided to establish a tripartite group of experts on the application of ILO standards to examine the recommendations of the CEACR during one of its first meetings. The CEACR reiterated its previous concerns with respect to Decree No. 2 and requested the Government once again to keep it informed of the measures taken to amend the Decree to ensure that the right to organize is fully respected.¹⁶
28. The CEACR further noted with concern the conclusions of the CFA in November 2002 that there had been interference by the public authorities in recent trade union elections. Recalling that workers' organizations have the right to elect their representatives in full freedom and that the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof, the CEACR requested the Government to indicate any measures taken or envisaged, including the adoption of explicit legislative provisions prohibiting and sanctioning any such interference, aimed at ensuring the full application of article 3 of the ILO Constitution both in law and in practice.¹⁷

¹⁴ International Labour Conference, 90th Session, *Record of Proceedings*, Provisional Record 5 (Rev.), Third Report of the Credentials Committee, (Geneva, 2002).

¹⁵ *Id.*

¹⁶ International Labour Conference, 91st Session, Report III (Part 1A), *Report of the Committee of Experts*, (Geneva, 2003).

¹⁷ *Id.*

VI. 91st Session of the ILC, 2003

29. The application of Convention No. 87 in Belarus was once again discussed in the CAS. In reply to the concerns raised by the CEACR and the CFA in respect of Government interference in trade union elections, the Deputy Minister of Labour of Belarus declared that the Government had studied carefully the recent elections in the FPB and had concluded that the elections had been conducted in full conformity with the legislation and the statutes of the Federation. The election of Mr. Kozik as chairperson¹⁸ had been conducted in an open and transparent manner and had been confirmed by the Fourth Congress of the FPB in September 2002, the delegates to which had been elected under the previous administration of the Federation. The Deputy Minister of Labour was aware that the change in the balance of power inside the trade union, resulting in the promotion of a number of trade union officials and the removal of others, had objectively created dissatisfaction in certain quarters. In her view, this was the primary cause of the complaints submitted to the ILO after the elections.¹⁹
30. The Deputy Minister emphasized that the Government did not interfere in the internal administration of trade unions. These matters were governed by the Act on Trade Unions and by the statutes of the trade unions. The legal system of Belarus provided all the necessary safeguards for the ordinary members of trade unions and their officials to protect their rights, including the right to recourse to the respective judicial or other competent bodies. The legislation of Belarus established criminal liability for interference in the activities of social associations, including trade unions. In accordance with section 194 of the Criminal Code of Belarus, impeding the legitimate activities of social associations or interference in their legitimate activities, was punishable by fines, the deprivation of the right to occupy certain positions, or corrective labour for a period of up to two years.²⁰
31. As regards Decree No. 2, the Deputy Minister stated that the main problem relating to the provision of the legal address related to primary trade union organizations, which tended to indicate as their legal address the premises located at an enterprise, which could be provided by an employer, along with means of communication and transport facilities. However, the legislation did not oblige the employers to provide premises to trade unions and this matter had to be resolved through negotiations between the employer and the trade union. In practice, cases of the refusal by employers to provide premises were rare. Decree No. 2 also provided that ten per cent of the workers of an enterprise were necessary to create a trade union. The inclusion of this provision in Decree No. 2 was due to the necessity to resolve the issue of the representativeness of trade unions. The Deputy Minister of Labour believed that, in the case of Belarus, where over 90 per cent of workers were trade union members, this provision was not excessive. She further explained

¹⁸ Mr. Kozik, Former Deputy Head of the Presidential Administration, was the subject of the complaints of Government interference in trade union elections and internal affairs. This matter is addressed in more detail in chapter 9 on the CFA's examination of Case No. 2090 and in chapter 12 of the Commission's findings.

¹⁹ International Labour Conference, 91st Session, *Record of Proceedings*, Provisional Record 24, (Geneva, 2003).

²⁰ *Id.*

the provisions of Decrees Nos. 8 and 11 and stated that these had never actually resulted in the dissolution of a trade union.²¹

32. Finally, the Deputy Minister of Labour emphasized that the questions raised in the comments of the CEACR had been the object of constant attention by the Government of Belarus. She understood the need to improve the national legislation in the area of freedom of association and to take further measures in this direction. In May 2003, the Government had extended an invitation to Mr. Tapiola, Executive Director of the ILO, to visit Minsk and to discuss the outstanding issues in the area of freedom of association with all the interested parties. She was confident that, despite all the difficulties, the Government would be able to find an optimal solution.²²
33. The CAS, while noting the Government's statement that it was paying particular attention to the comments of the CEACR and that it had invited a high-level official from the ILO to visit the country, regretted to recall that the Government had been referring for several years to the need for changes in the legislation and that up to now it had not been able to note real progress in this regard. It therefore expressed the firm hope that all the necessary measures would be taken in the very near future to guarantee in full the rights afforded by the Convention to all workers and employers, particularly with regard to the right of their respective organizations to organize freely their internal affairs and to elect their leaders without interference by the public authorities. The CAS decided to include its conclusions in a special paragraph of its report and to mention this as a case of continued failure to implement the Convention.²³
34. The Credentials Committee had another communication from the ICFTU concerning the appointment of Mr. Kozik as Workers' delegate of Belarus to the ILC. The ICFTU submitted that serious doubts existed as to the independence, credibility and autonomy of his person, as well as of the procedure followed to appoint him chairperson of the FPB. The Minister of Labour replied that Mr. Kozik represents the most representative workers' organization in the country and added that he had been duly elected. The Credentials Committee had noted that the ICFTU's communication was not formulated as an objection against the credentials of the Workers' delegate and that it reckoned that the main grievance was not within its purview. It did note however that, in contrast to last year, the Workers' delegate to the ILC was from the FPB, the most representative workers' organization as conceded by the Government. It further noted the information provided that the election of the FPB chairperson took place in accordance with the organization's by-laws. Notwithstanding, in light of the CFA's conclusions that there had been undue interference by the public authorities in recent trade union elections in Belarus, the Credentials Committee remained concerned of the serious doubts surrounding the independence, credibility and autonomy of the Workers'

²¹ *Id.*

²² *Id.*

²³ *Id.*

Synopsis of the dialogue and relations between the ILO and Belarus concerning freedom of association

delegate, which are a prerequisite for the true participation of Workers' representatives at the ILC.²⁴

35. On 18 June 2003, Sir Roy Trotman and thirteen other Workers' delegates to the 91st Session of the International Labour Conference filed a complaint under article 26 of the ILO Constitution against the Government of Belarus for non-observance of Conventions Nos. 87 and 98.
36. The direct contacts mission referred to by the Government above took place in September 2003. The report of that mission was submitted to the CFA for examination with the case pending before it.
37. The article 26 complaint was placed before the Governing Body for decision in November 2003, along with a recommendation from the Committee on Freedom of Association (CFA) that the pending allegations in Case No. 2090, along with the complaint submitted in June, be referred to a Commission of Inquiry. The Governing Body thus decided at its 288th Session to constitute a Commission of Inquiry.²⁵

²⁴ International Labour Conference, 91st Session, *Record of Proceedings*, Provisional Record 5 (Rev.), Second Report of the Credentials Committee, (Geneva, 2003).

²⁵ See chapter 1.

PART II

PROCEDURE FOLLOWED BY THE COMMISSION

Chapter 3

First Session of the Commission

I. Solemn declaration made by the members of the Commission

38. The First Session of the Commission was held on 28, 29 and 30 January 2004 in Geneva, during which the Commission decided on the procedure it was to follow for the rest of its work. At the beginning of this session, each member of the Commission made a solemn declaration in the presence of Mr. Juan Somavia, Director-General of the International Labour Office. Inviting the members of the Commission to make this declaration, the Director-General recalled the circumstances in which the Commission was set up and stressed that the Commission's task was to "establish the facts without fear or favour and in full independence and impartiality". The members of the Commission then each made the following declaration:

I solemnly declare that I will honourably, faithfully, impartially and conscientiously perform my duties and exercise my powers as a member of the Commission of Inquiry set up by the Governing Body of the International Labour Office at its 288th Session, November 2003, in pursuance of article 26 of the Constitution of the International Labour Organization, to examine the observance by the Republic of Belarus of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

II. Adoption of the procedure to be followed by the Commission

39. The ILO Constitution does not lay down rules of procedure to be followed by a Commission of Inquiry appointed under article 26. When the Governing Body decided in November 2003 to refer the complaint to a Commission of Inquiry, it also specified that the Commission was to determine its own procedure in accordance with the provisions of the Constitution and the practice followed by previous commissions of inquiry.
40. In determining its procedure, the Commission recalled certain elements which characterized the nature of its work. As earlier commissions of inquiry had stressed, the procedure provided for in articles 26 to 29 and 31 to 34 of the Constitution was of a judicial nature. Thus, the rules of procedure had to safeguard the right of the parties to a fair procedure as recognized in international law.
41. Bearing these considerations in mind, the Commission adopted the rules of procedure that it intended to follow during its Second Session which included a

mission to Minsk and a formal hearing in Geneva. These rules were brought to the attention of the Government of Belarus and the complainants.²⁶

III. Communication of additional information

42. The Commission invited the Government of the Republic of Belarus and the complainants to communicate to it before 8 March 2004, any new information they considered relevant as well as information on particular points raised by the Commission. It was decided that any new documentation relevant to the complaint received from either party would be transmitted to the other party for possible comment.
43. The opportunity of presenting, before 8 March 2004, any communication they might wish to make on the matters raised in the complaint was offered to those workers' and employers' organizations having consultative status with the ILO and which are universal in scope, namely the International Confederation of Free Trade Unions (ICFTU), the World Confederation of Labour (WCL), the World Federation of Trade Unions (WFTU) and the International Organisation of Employers (IOE). Furthermore, the opportunity of presenting such communications was offered to the complainant organizations to Case No. 2090 which has been transmitted to the Commission for consideration, namely the Belarus Radio and Electronic Industry Workers' Union (REWU), the Belarus Congress of Democratic Trade Unions (CDTU), the Belarus Automobile and Agricultural Machinery Workers' Union (AAMWU), the Belarussian Free Trade Union (BFTU), the Belarussian Trade Union of Air Traffic Controllers (BTUATC), the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), and the Federation of Trade Unions of Belarus (FPB). The opportunity to present such communications was also offered to other workers' and employers' organizations in Belarus, namely the Agricultural Sector Workers' Union (ASWU), the Minsk Regional Trade Union Organisation of Employees of the Cultural Sphere (MRTUECS), the Belarussian Confederation of Industrialists and Entrepreneurs (Employers) (BCIE), and the Belarussian Union of Employers and Entrepreneurs named after Professor M. S. Kunyavsky (BUEE).
44. The Commission also informed the Economic and Social Council of the United Nations (ECOSOC), the European Commission (EC), and the Organization for Security and Co-operation in Europe (OSCE) of the decision to constitute a Commission of Inquiry to examine the complaint concerning the observance by 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), and offered these organizations the opportunity to present any information they may consider relevant.
45. The Commission notified the organizations concerned that any information submitted by them would be transmitted to the Government of the Republic of Belarus and the complainants for possible comment.

²⁶ The rules of procedure can be found in Annex 3.

46. The Commission informed the Government of the Republic of Belarus and the complainants that it intended to perform its task with complete objectivity, impartiality and independence. It made clear that it did not consider its role to be confined to an examination of the information furnished by the parties themselves or in support of their contentions, and that it would take all suitable measures to obtain information as full and objective as possible on the matters at issue.

IV. Measures adopted with a view to the Second Session and the subsequent work of the Commission

47. The Commission decided that its Second Session would be held from 14 April 2004 until 29 April 2004 and would include both a mission to Minsk and a hearing in Geneva.
48. The Commission decided to undertake individual meetings in Minsk from 15–23 April 2004. It was decided that the mission to Minsk would commence with a public information session upon the Commission's arrival in the Republic of Belarus on 15 April 2004, about which the Government of Belarus and the complainants were invited to advise interested people.
49. The Commission drew up a list of individuals with whom it wished to meet while on its mission in Minsk. It informed the Government of the Republic of Belarus that it wished to meet with the President of the Republic of Belarus, the Head of the Presidential Administration, the Prime Minister of Belarus, the Minister of Labour and Social Protection, the Minister of Industry, the Minister of Justice, the Minister of Foreign Affairs, the Chairperson of the State Committee on Aviation of Belarus, and the Prosecutor-General of the Republic of Belarus.
50. The Commission invited the Government of the Republic of Belarus and the complainants to communicate, before 8 March 2004, the names and personal particulars of any other individuals with whom they believe that the Commission should meet while on mission in Belarus.
51. The Commission decided that, following its mission to Minsk, a more formal hearing of witnesses would be conducted in Geneva from 27-28 April 2004.
52. The Commission invited the Government of the Republic of Belarus and the complainants to each nominate representatives and any possible substitutes to appear before the formal hearing of the Commission in Geneva.
53. The Commission invited the Government of the Republic of Belarus and the complainants to provide, by 8 March 2004, the names and personal particulars of any other persons they may wish to have heard as witnesses before the hearing, as well as a brief indication of the points on which they would give evidence.

54. The Commission advised the Government of the Republic of Belarus that it expected the Government would ensure that all the persons whom the Commission would hear as witnesses in individual meetings in Belarus or as a part of the formal hearing in Geneva, would enjoy full protection against any kind of measure that might be taken against them by reason of either their involvement in the Commission's proceedings, or their statements before the Commission.
55. The Commission authorized its chairperson to deal with any questions of procedure that might arise between sessions, in consultation with the other members if he considered this necessary.

Chapter 4

Communications Received by the Commission after its First Session

56. After the Commission had given the Government of the Republic of Belarus, the complainants, Belarussian workers' and employers' organizations, and various international workers' and employers' organizations the opportunity of submitting communications to it, the Commission received the following information, which will be analysed in greater detail in a later part of the report.

I. Communication from the complainants

57. The Commission received a communication from Sir Roy Trotman, on behalf of the complainants and dated 5 February 2004, by which the General Secretary of the International Confederation of Free Trade Unions (ICFTU), Mr. Ryder, was designated as the representative of the complainants in relation to all matters before the Commission.
58. The General Secretary of the ICFTU submitted a communication dated 12 March 2004, authorizing various individuals to act on his behalf in this matter. The communication included a report containing additional information on the alleged violations of trade union rights in Belarus and, in particular, responding to the Commission's invitation to provide details concerning the decline in membership of some trade unions and an increase in others, union officials and activists who allegedly were demoted or dismissed, and the registration process.
59. Referring to details provided previously in respect of Case No. 2090, the communication of 12 March 2004 described the systematic nature of the attacks on the independence of the trade union movement in Belarus, explaining the use of Presidential Decrees and Ordinances to gain greater control over unions and their activities and detailing specific instances of governmental interference in the transfer and disaffiliation of primary trade union organizations. The communication also referred to the detention and arrest of trade union leaders, new Instructions issued by the Federation of Trade Unions of Belarus (FPB) relating to the transfer of primary trade unions, and the removal of the chairperson of the Automobile and Agricultural Machinery Workers' Union (AAMWU).
60. The communication further included a list of individuals with whom it suggested the Commission should meet in Belarus.

II. Communication from the Government

61. The First Deputy Minister for Labour and Social Protection of the Republic of Belarus sent a letter to the Commission dated 15 March 2004, on behalf of the Government of Belarus, confirming the dates of the proposed mission to Minsk and undertaking to organize the meetings with officials as requested by the Commission.
62. A set of observations was annexed to the letter, including replies to the Commission's specific questions concerning the registration process and procedure and the detention and arrest of trade union leaders. In reply to the Commission's query on the steps taken by the Government to implement the recommendations of the Committee on Freedom of Association (CFA) in relation to Case No. 2090, the Government indicated that it was taking targeted steps to improve legislation and practice in the area of freedom of association. However, it considered that the main difficulties raised fell exclusively within the purview of the trade unions and it would not interfere in these matters. Moreover, the Government considered that the examination by the ILO supervisory bodies of its law and practice was carried out in isolation from the historical traditions and socio-economic realities that characterized the country and therefore set out the historical and socio-economic context to the matter, including the nature of the trade union movement in Belarus. In the Government's opinion, the supervisory bodies had used the point of view of only a few trade union activists opposed to the Government as the source for forming their opinions, while, in effect, the opinion of the Government had not been taken into account.

III. Communication from the CFA Case No. 2090 complainants

63. The Belarussian Free Trade Union (BFTU) wrote a letter to the Commission dated 5 March 2004, detailing a list of individuals with whom it suggested the Commission should meet during its mission to Minsk. In a letter dated 24 March 2004, the BFTU referred to the threat of further retaliatory measures against the officers and members of a local BFTU union through the non-renewal of their fixed-term contracts and listed a number of local unions that were still refused registration.
64. The FPB sent a communication to the Commission dated 11 March 2004 providing specific information on the Belarussian trade union movement, including relative membership numbers, the FPB's Programme of Action, and consideration of the motivations behind Case No. 2090. In particular, the FPB stated that the real reason behind the growing campaign against its Federation was the fact that certain figures in the Belarussian trade union movement had political ambitions that they were attempting to achieve using the trade unions as their platform. These were the same individuals who signed the complaints that formed the basis of Case No. 2090. The FPB considered that exaggerated levels of attention have been given to the personal opinions of these "independent" union activists, thanks also to the particular bias of the ICFTU, which has been trying to split the Belarussian trade union movement

and push international public opinion into accepting a distorted picture of the state of this movement. The FPB appended various documents to its communication, including an earlier letter apparently withdrawing as complainant in Case No. 2090, and a list of individuals for the Commission to meet in Belarus.

65. In a letter received on 23 February 2004, the chairperson of the Radio and Electronic Workers' Union (REWU) provided information concerning increased pressure put to bear on the union. REWU referred in particular to specific plants in which directors placed pressure on local unions to withdraw their affiliation to the REWU.
66. The former chairperson of the AAMWU sent a communication dated 12 March 2004 detailing the efforts made to remove him from office, including a demand to this effect on 27 March 2003 from the President of the Republic to the Minister of Industry, the creation under the auspices of the Ministry of Industry of a Belarus industrial trade union in May 2003 and finally culminating in an extraordinary congress on 23 December 2003 where the chairperson was relieved from his duties.

IV. Communications from other workers' and employers' organizations in Belarus

67. The chairperson of the Agricultural Sector Workers' Union (ASWU) sent a letter to the Commission dated 10 March 2004, providing information on the social partnership the union has sought to establish and the relationship between authorities and unions since the time when the complaint had been submitted.
68. The Belarussian Union of Employers and Entrepreneurs named after Professor M. S. Kunyavsky (BUEE) sent a letter to the Commission dated 5 March 2004, indicating its willingness to meet with the Commission during its mission to Minsk.
69. The former chairperson of the Minsk Regional Trade Union Organization of Employees in the Cultural Sphere (MRTUECS) sent a letter to the Commission dated 17 February 2004 detailing his removal from union office.

* * *

70. The Commission had offered the opportunity to present information on the matters raised in the complaint to the World Confederation of Labour (WCL), the World Federation of Trade Unions (WFTU), and the International Organisation of Employers (IOE), as international organizations with consultative status before the ILO; the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF) due to its status as complainant in Case No. 2090; and the Economic and Social Council of the United Nations (ECOSOC), the European Commission (EC), and the Organization for Security and Cooperation in Europe (OSCE). In a letter dated 11 March 2004, the Head of the OSCE Office in Minsk indicated his willingness to meet with the Commission. The other organizations did not provide information to the Commission.

* * *

71. In accordance with the procedure established by the Commission at its first session, copies of all information received were transmitted to both the Government of the Republic of Belarus and the complainants for their information.

V. Communications concerning witnesses to be heard by the Commission at the formal hearing stage of its Second Session

72. On 14 April 2004, the complainants provided a list of witnesses to be heard during the formal hearings of the Commission in Geneva.
73. The Government of Belarus submitted to the Commission upon its arrival in Minsk on 15 April 2004, a list of its representatives for the formal hearing and one witness. Further representatives were named in communications dated 24 and 26 April 2004.

Chapter 5

Second Session of the Commission

74. The Second Session of the Commission took place from 14 to 28 April 2004. This Session was divided into two parts: the first, a mission to Belarus to interview the numerous trade union officials and members listed by the complainants to give testimony on the issues raised in the complaint and members and officials of other workers' and employers' organizations in Belarus, as well as to meet with various Government officials; the second phase consisted of hearings in Geneva for the presentation of evidence and arguments by the Government representatives, the complainants' representatives and witnesses.

I. The Commission's visit to Belarus

75. The Commission carried out its visit to Belarus from 15 to 24 April 2004. During the visit an intensive programme of interviews was organized with the trade union officials and members listed by the complainants in its communication of 12 March 2004, as well as with the other workers' and employers' organizations in the country. The Commission also met with a number of government officials but not all those identified in its letter to the Government. Upon its arrival in Minsk, the Commission held a public information session, widely attended, to explain the nature of its work, its methods of procedure and its overall objectives.
76. The Commission had interviews with the officials, members and witnesses on behalf of the complainants from the following workers' organizations: the Congress of Democratic Trade Unions (CDTU), the Free Metal Workers' Union (FMWU), the Belarus Independent Trade Union (BITU), the Belarussian Trade Union of Air Traffic Controllers (BTUATC) and its primary level organization, the Belarussian Free Trade Unions (BFTU), the Radio and Electronic Workers' Union (REWU), the Independent Automobile and Agricultural Machinery Workers' Union (IAAMWU), former officials from the Minsk Regional Trade Union of Employees in the Cultural Sphere (MRTUECS) and a number of primary level organizations affiliated to the above unions.
77. The Commission also had interviews with officials and members of the Federation of Trade Unions of Belarus (FPB) and a number of its branch unions, including the Agricultural Sector Workers' Unions (ASWU), the Automobile and Agricultural Machinery Workers' Union (AAMWU), the Brest Provincial Association of Trade Unions, the Belarussian Trade Union of Employees in the Cultural Sphere, the Belarussian Industry Workers' Union (BIWU) and a number of its primary level organizations.

78. Representing employers' organizations, the Commission met with officials from the Belarussian Confederation of Industrialists and Entrepreneurs (BCIE) and the chairperson and legal adviser of the Belarussian Union of Employers and Entrepreneurs named after Professor M. S. Kunyavsky (BUEE).
79. The Commission interviewed the following government officials during its visit: Mr. Kobyakov, Deputy Prime Minister; Ms. Morova, Minister of Labour, Ms. Kolos, Deputy Minister, and Mr. Starovoytov, Director, External Relations and Partnership Policy Department; Mr. Golovanov, Minister of Justice, Mr. Kravtsov, Deputy Minister, Mr. Sukhinin, Head of the Department Responsible for Registration, Ms. Bodak, Director, Central Department of Standards Setting Activities in the Sphere of State Development, Ms. Podrezenok, Head, Department of National and Social Construction; Mr. Martynov, Minister of Foreign Affairs and Mr. Pavlovich, Head, Department of International Organizations; Mr. Proleskovsky, Deputy Head of the Presidential Administration, Mr. Holod, Manager of Department of Work with Public Associations, and Mr. Zaharchuk, Chief Advisor on Foreign Policy; Mr. Kuprianov, Deputy Prosecutor-General, Mr. Shustok, Department of Implementation of Legislation and Social and Public Affairs, Mr. Leonov, Chief, Department in Charge of Civil Suits, and Mr. Radionov, Prosecutor.
80. In the meeting with the Ministry of Industry, the following persons were present: Mr. Zolotorevich, Deputy Ministry of Industry, Mr. Bartsevich, Director, Department of Economy, Labour and Salary, Activities of Personnel and Social Partnership, Mr. Chemanskiy; and the directors of the following enterprises, 'Gomselmash', 'Avtogydrousilitel', 'Raton', 'Zenit', 'Kalibr', and Vitebsk Television Production Plant. In the meeting with the State Committee on Aviation, the following persons were present: Mr. Ivanov, Chairperson, Mr. Melnik, First Deputy Chairperson, Mr. Parhamovich, Deputy Chairperson, Mr. Gherlovskiy, Deputy Chairperson, Mr. Shimanets, General Director, 'Belaeronavigatsia', lawyer, 'Belaeronavigatsia', Mr. Gulsarov, General Director, 'Belavia', Mr. Ryjnikov, General Director, 'Aviacompania Transaviaexport', Mr. Chkura, General Director, National Minsk Airport, Mr. Riazanov, General Director, Minsk Airplane Repair Plant, Mr. Ershov, Chairperson, Republican Committee, Aviation Workers Trade Union, and Mr. Muhin, Chairperson Public Association of Belarussian Pilots.
81. The Commission also interviewed the Chairperson of the Supreme Court, Mr. Sukalo, the Chairperson of the Constitutional Court, Mr. Vasilevich, and a judge of that Court, Ms. Filipchik, as well as the public relations officer, Ms. Murashko.
82. Finally, the Commission met with the Head of the Organization for Security and Cooperation in Europe (OSCE) Office in Minsk, Mr. Heyken.

II. Hearings

83. On 27 and 28 April 2004, the Commission held its formal hearings in Geneva. This Session comprised four private sittings. The complainants were represented by

Mr. Ryder, General Secretary of the ICFTU (directly empowered to act on behalf of the complainants in Sir Roy Trotman's letter of 5 February 2004), Mr. Kuczkiewicz, Director of the ICFTU Trade Union Rights Department, Mr. Borisov, Director, ICFTU Office for the Newly Independent States, Ms. Tuch, ILO Declaration ICFTU programme officer and Ms. Yeskova, lawyer for the IAAMWU.

84. The Government was represented by Ms. Kolos, First Deputy Minister of Labour and Social Protection, Mr. Starovoytov, Director, External Relations and Partnership Policy Department, Mr. Kravtsov, Deputy Minister of Justice, Ms. Bodak, Director, Central Department of Standard Setting Activities in the Sphere of State Development, Mr. Aleinik, Permanent Representative of the Republic of Belarus at the UN Office and other International Organizations in Geneva, Mr. Malevich, Deputy Permanent Representative, Mr. Molchan, Counsellor and Ms. Vasilevskaya, First Secretary of the Permanent Mission.
85. The Commission heard the following witnesses proposed by the complainants: Mr. Bukhvostov, chairperson of the IAAMWU, Mr. Fedynich, chairperson of the REWU, Mr. Starykevich, former editor, 'Belorusski chas' and editor of 'Solidarnost', Mr. Yaroshuk, chairperson of the CDTU, Mr. Migutskiy, chairperson of the BTUATC, Mr. Mallentacchi, General Secretary of the International Metalworkers' Federation, and Mr. Buketov, representative of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) in the Commonwealth of Independent States.
86. The Government presented one witness: Mr. Yemelyanov, General Director of 'Integral' Scientific and Production Association.
87. Both the Government and the complainant representatives made general introductory statements on the matters before the Commission. Prior to the witnesses' depositions, the Chairperson of the Commission recalled the rules of the applicable procedure and invited the witnesses to make a solemn declaration analogous to that of the International Court of Justice, in which they were to declare solemnly that they would honourably and conscientiously tell the truth, the whole truth and nothing but the truth.
88. All of the witnesses, after making this solemn declaration, took advantage of the opportunity accorded to them by the Commission of making a general statement. The Commission and the representatives of the complainants and of the Government then questioned the witnesses. The witnesses handed some additional documents in support of their declarations. These documents were provided to the Government.
89. At the end of the hearings, representatives of the complainants and then representatives of the Government made their final statements on the evidence offered and presented their conclusions.
90. The information obtained during the hearings is analysed in this report. The record of the hearings was deposited in the library of the ILO.

Chapter 6

Third Session of the Commission

I. Communications received by the Commission after the Second Session

91. In communications dated 26 and 30 April 2004, the Belarussian Congress of Democratic Trade Unions (CDTU) presented additional information concerning attempts made to cancel the registration of one of its affiliates, the Belarussian Independent Trade Union (BITU), and concerning government preparations for May Day celebrations. The International Confederation of Free Trade Unions (ICFTU) also transmitted additional information in a communication dated 21 May 2004 on the fate of several Belarussian Free Trade Union (BFTU) activists at the Novopolotsk Heat and Power Generation Plant, including their receipt of notifications that their contracts would not be renewed upon expiry, as well as an order to dismiss the chairperson of the BFTU primary organization at the Polotsk Heat and Power and Generation Plant.
92. Another communication dated 24 May 2004, was received from the Radio and Electronics Agricultural and Automobile Machinery Workers' Union (REAAMWU), an amalgamation of the REWU and the AAMWU, concerning the continuous harassment by management of the trade unions affiliated to the Radio and Electronics Workers' Union (REWU). In particular, details were provided of pressure exerted by management of the KBTEM OMO enterprise on trade union members that resulted in the transfer of the primary level trade union's affiliation from REWU to the Belarussian Industry Workers' Union (BIWU).
93. A further communication was received from the First Deputy Minister for Labour and Social Protection dated 31 May 2004, enclosing information responding to the complainants' earlier lists of cases in which there had been a refusal to register or record named primary level trade unions.

II. Adoption of the report

94. The Commission held its Third Session in Geneva from 19 to 23 July 2004 to prepare and adopt its report.

PART III

HISTORICAL AND LEGAL CONTEXT

- 95.** It is to be recalled that, for several years prior to the presentation of the complaint under article 26 of the ILO Constitution, questions concerning the trade union situation in the Republic of Belarus had been under examination by the Committee on Freedom of Association (CFA). Furthermore, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) had examined the reports furnished by the Government, under article 22 of the Constitution of the ILO, on the application of Conventions Nos. 87 and 98 and the International Labour Conference (ILC) Committee on the Application of Standards (CAS) had also discussed the application of these Conventions by the Republic of Belarus. On the basis of the complaint and the recommendations made by the CFA, the Governing Body decided to refer the examination of the case as a whole to the present Commission of Inquiry.
- 96.** Accordingly, the following chapters take into account all information which had been previously presented to the CFA, including information gathered during various missions carried out by representatives of the ILO between 2000 and 2003. The Commission has also taken account of the reports submitted by the Government on the application of Conventions Nos. 87 and 98 presented pursuant to article 22 of the ILO Constitution.
- 97.** Before starting the analysis of the case itself, the Commission has, therefore, thought it necessary to describe the historical developments in the trade union movement in the Republic of Belarus, to survey the trade union legislation in the Republic of Belarus, and to detail the matters that have already been reviewed by the CFA on the information that had been made available to it.

Chapter 7

Industrial Relations in Belarus

I. Historical background

98. Two of the defining events of modern Byelorussian history before independence were the Second World War, when Byelorussia lost 80 per cent of its infrastructure and 25 per cent of its population, and post-war industrialisation, which brought rapid urbanisation and a sharp rise in living standards. For geographical and historical reasons, Byelorussia's relationship with Russia remained particularly close. Moreover, compared to other Soviet republics, the use of the national language was small.²⁷
99. The membership of the Republic in the UN²⁸ in 1945 allowed for its participation (as a member separate from the Union of Soviet Socialist Republics (USSR) but under its political domination) in the international community. Following this, the Byelorussian Soviet Socialist Republic (BSSR) became a member of a number of specialized institutions and organizations, including the International Labour Organization in 1954.
100. Byelorussia enjoyed one of the highest living standards among the Soviet republics until the mid-1980s, when it felt the effects of the rapid deterioration of the Soviet economy. Environmental degradation emerged as a major problem when more than 70 per cent of the radioactive fallout from the explosion at the Chernobyl nuclear power plant in neighbouring Ukraine in April 1986 affected Byelorussian territory.²⁹ The consequences of this nuclear disaster became a focus for political dissent, which led, two years later, to the formation of Byelorussia's first independent movement, the Byelorussian Popular Front (BPF). In 1985, Mikhail Gorbachev became the General Secretary of the Communist Party of the Soviet Union (CPSU), gradually opening the country for political debate during the "perestroika" period.

²⁷ Due to intensive russification pursued by Stalin and Khrushchev.

²⁸ At the Crimean Conference, in February 1945, the Heads of Governments of Great Britain, the USA and the USSR agreed that the USSR would be represented in the international security organization by two more of its fifteen Republics: Byelorussia and the Ukraine. The Resolution of the Constituent Conference in San Francisco in April-June 1945 about the inclusion of the Ukrainian SSR and the BSSR in the number of founders of the United Nations Organization became a decisive factor for the Republic to enter the international scene as a subject of international law. The basis for the BSSR and the Ukrainian SSR to be received to the UN was the formally sovereign nature of these Republics as well as international recognition of the contribution of the peoples of Byelorussia and the Ukraine to the defeat of Nazi Germany and their great sacrifices in the struggle against fascism. On 26 June 1945, the BSSR signed the Charter of the United Nations, which was then ratified by the Presidium of the Supreme Soviet of the BSSR in July of the same year.

²⁹ See EIU, *Country Profile 2003: Belarus*.

- 101.** In December 1986, a petition was sent by twenty eight intellectuals to Mr. Gorbachev expressing the Byelorussian people's grievances in the field of culture (which they called 'a cultural Chernobyl'). Whereas the full impact of the physical effects of Chernobyl was kept secret for more than three years, 'cultural Chernobyl' became a subject of hot discussion and an inspiration for considerable political activity. The petition pleaded with Mr. Gorbachev to prevent a 'spiritual extinction' of the Byelorussian nation and laid out measures for the introduction of Byelorussian as a working language in Party, State, and local government bodies and at all levels of education, publishing, mass media and other fields. The document embodied the aspirations of a considerable part of the national intelligentsia, who, having received no positive answer from the CPSU leadership either in Moscow or in Minsk, took to the streets. In 1988, mass graves, allegedly with up to 250,000 of Stalin's victims, were found in Minsk. This sensational discovery fuelled denunciations of the communist regime and encouraged demands for reforms. An October demonstration, attended by about 10,000 people and dispersed by riot police, commemorated these victims as well as expressed support for the BPF.
- 102.** However, the BPF group of activists who called for reform was relatively small. Most people remained both attached to Soviet ways and politically apathetic, believing that such public activities would make no difference in the long run. Indeed, during the turbulent years of perestroika, Byelorussia was regarded as the most stable Soviet Republic with a limited independence movement and controlled by the Communist Party. The elections to the Republic's Supreme Soviet (Parliament) illustrated the lack of national sentiment and ideological inertia. The BPF candidates won only about ten per cent of the available seats in the legislature, with 86 per cent going to the Communist Party of Byelorussia.
- 103.** On 27 July 1990, following the Baltic States, Ukraine and then Russia, the BSSR declared its sovereignty. However, the Communist Party remained in power, supporting the coup against the reformist Soviet leader, Mr. Gorbachev, in August 1991. Immediately after the coup's failure, in an attempt to prevent the Byelorussian Party from being banned like the CPSU, the party leader, proposed that Byelorussia declare its political and economic independence from the Soviet Union. The Supreme Soviet in Minsk consequently declared the independence of Byelorussia on 25 August 1991 by giving its Declaration of State Sovereignty the status of a constitutional document. In September 1991, the country was renamed the Republic of Belarus. The independence of Belarus became effective with the collapse of the Soviet Union in December 1991.
- 104.** In 2002, Belarus ranked 62nd on the Human Development Index.³⁰ In the same year, the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) noted from the Government's report on the application of the Employment Policy Convention No. 122 for the period ending June 2003, that the period in question was characterized by declining employment growth and a reduction in the number of the economically active population. The

³⁰ United Nations Development Programme, *Human Development Report 2004*, available at <http://www.undp.org>. Belarus' GDP per capita (PPP US\$) rank is 86.

Government explained that despite adverse economic conditions in 2001, unemployment remained low at an estimated two per cent; this situation was partially explained by the simultaneous decrease in labour force participation. Since 1992, employment had shrunk by approximately 550,000 jobs. In 2001 approximately 770,000 persons, or 12.8 per cent of the working age population, was classified as inactive. Additionally, underemployment grew considerably: 238,000 persons were working on a part-time basis, a 58.3 per cent increase over the year 2000. Redistribution of the labour force continued: in 2000 the manufacturing sector employed 70 per cent of the labour force and the service sector 30 per cent; in 2001 the corresponding figures were 68 and 32 per cent respectively.

II. Trade unions and employers' organizations in Belarus

105. In order to understand the situation of trade unions in Belarus today it is important to consider the structure and functions of the Soviet trade unions. They cannot be properly appreciated unless the political, economic and social structure is taken into account. In today's Belarus, the understanding of this background is particularly important as the majority of the working population is still employed by state-owned enterprises, representing largely all of the manufacturing sector and present in a good part of the service sector.

A. Trade unions during the time of the USSR

The role and functions of trade unions

106. The role of trade unions since the 1920s was inextricably bound to the Soviet Union's economic and political system. The economic foundation of the USSR was based on a system whereby private ownership of the means of production was abolished and property existed either in the form of state property or in the form of co-operatives and collective-farm property. Politically, the Soviet Union was a State in which all power derived from the Communist Party. Organizations independent from the Communist Party were not permitted.

107. It was considered that there could be no tangible conflicts between the State and the union, as both were subservient to the leading Party and any distinction between their goals and objectives was blurred.³¹ Articles 6 and 7 of the 1977 USSR Constitution stipulated that under the leading and guiding force of the Communist Party, trade unions should take part in the management of State and public affairs and political, economic, social and cultural decision making. As a consequence of this, trade union pluralism was not possible.

³¹ See International Labour Conference, 43rd Session, *Record of Proceedings*, Report of the Committee on Application of Standards, (Geneva, 1959), p. 690, where the Government indicated: "It should be recalled that the Government of the Soviet Union is a government of workers, and that the Communist Party is the vanguard of the workers' movement. Given such a structure there could be no conflict of interest between the trade unions and the Party. Trade Unions were immensely powerful; they already carried out a number of functions, and would, together with other social organizations, eventually replace the State".

- 108.** As the relationship between the State and employees was deemed to be harmonious, no special protection through independent unions was required. The State took on responsibilities in its capacity as employer well beyond what would commonly be considered the responsibility of an employer in a market economy. State enterprises provided social security benefits, housing, education, day care, health facilities, summer camps and other facilities, including material advantages such as subsidized food and other products. These social benefits and the purported harmony between the interests of the State and the employees were used to justify the lack of independent trade unions. State-sponsored trade unions were closely connected to the administration of State-owned enterprises, and therefore, to the State itself. Manifestations of independent trade unionism were suppressed.³²
- 109.** Trade unions played an assigned quasi-governmental role of control and surveillance in carrying out Party-governmental policy at the factory level and were one of the principal organizations through which the Government maintained direct contact with individual citizens.³³ The management of enterprises was essentially carried out in cooperation between the Communist Party committee, the enterprise manager, the representative of the trade union organization, as well as the Communist Youth Organization. Because of the socialist concept of production, management regarded the union as an associate, the more so in that certain functions which in other countries were regarded as a management responsibility, such as labour discipline, were largely within the scope of trade union activity. Trade unions were assumed to have as much interest in the organization of production as the management, and, conversely, management was assumed to have as much interest in trade union affairs as workers. Within every enterprise, the trade union chairperson had to work closely with both the Communist Party and management counterparts in order to meet the union's legal obligation to their members and to their superiors. Trade union chairpersons shared responsibility with enterprise directors for the management of the labour force. In negotiating a collective agreement, enterprise directors had to take into account the framework of economic planning in the Soviet Union, which involved the alignment of several bureaucratic structures.³⁴

³² See 190th and 197th Reports of the Committee on Freedom of Association, Case No. 905, ILO, *Official Bulletin*, Vol. LXII, 1979, Series B, Nos. 1 and 3, paras. 361-388 and 592-640 and 201st Report of the Committee on Freedom of Association, Case No. 905, ILO, *Official Bulletin*, Vol. LXIV, 1981, Series B, No. 1, paras. 100-130.

³³ In 1960, the CEACR made the following comment in its direct request to the Government: "The Central Council of Trade Unions of the USSR would appear to have a dual character: firstly, that of a superior federal organization of all the trade unions, and secondly, that of an organ invested with the exercise of a part of the powers of the State, because it has the function of 'drawing up' the rules for the application of labour legislation. In these circumstances it does not always seem possible to ascertain in which capacity this organ is acting on each occasion that it performs a function, especially where it is affecting the registration of a trade union."

³⁴ For more details see B. Ruble, *Soviet trade unions: their development in the 1970s*, Cambridge, Cambridge University Press, 1981, pp. 53-54, where the economic planning in the Soviet Union was described as follows: "At the outset of each planning period (traditionally five years), the national State Planning Committee (Gosplan) prepares a schedule of long-term goals and recommendations, which are distributed in turn to every industrial enterprise throughout the Soviet Union. Each enterprise reviews the proposals and prepares its own draft plan, which it sends back up the administrative ladder to the next highest level. At that level, officials review and coordinate the proposed plans of each enterprise under their supervision, consolidating them into a new united plan that is forwarded upward through the republic and national ministries to the national planning agency in Moscow. Gosplan then prepares a final aggregate five-year plan, which is presented to a Communist Party

110. Party, trade union and management officials shared responsibility for the fulfilment of the enterprise's annual production plan. Although union officials would participate in these decisions, contrary to managers, they were not held formally accountable for enterprise production.
111. To sum up the relationship between trade unions, management and the Party: trade unions sought to improve enterprise social services; enterprise management sought to increase production; and the Party sought both. Each member of the "troika" had to cooperate with the others to the necessary degree in order to satisfy their constituencies and to comply with the political instructions and economic targets set at a higher level.
112. In these conditions, trade unions had two roles. On the one hand, a trade union's duty was to help to raise productivity and to discipline workers. On the other, Soviet unions had the duty to defend the workers' interests against bureaucratic malpractice and any attempt by managers to strip workers of their legal rights.³⁵ To fulfil their role of protector of workers' legitimate rights, trade unions were invested with powers to conduct state supervision over the observance of labour legislation. This was mainly exercised by trade union technical and legal inspectors.
113. Within this duality of obligations to the State on the one hand and to the workers on the other, trade unions had to achieve the following targets: raising productivity through advancing socialist emulation and incentive programmes at the enterprise level; enforcing safety legislation and representing individual workers in dispute resolution; and administering cultural, educational, recreational and house building programmes.
114. During Soviet times, membership of trade unions was generalized, although not formally compulsory. The percentage of membership was often quoted as 99 per cent and, at local level, sometimes at 100 per cent.³⁶ Trade union membership gave access to privileges and benefits. Closely related to the trade union's role in administering State social insurance benefits were its health, educational and recreational activities, designed to influence both the working and the living conditions of the enterprise work force. Union members were eligible for preferential social and even material benefits such as priority of accommodation in rest homes and sanatoria, as well as the allocation of new apartments. Furthermore, the enterprise trade union committee administered diverse sport, recreational and cultural programmes.

congress for approval and the USSR Supreme Soviet for ratification into law; annual and quarter-annual plans merely form constituent parts of the overall national plan. Once ratified by the Supreme Soviet, the economic plan becomes law, placing managers who fail to meet its goals in violation of national statutes."

³⁵ AUCCTU, *The Soviet Trade Unions*, A Collection of Background Materials by PROFIZDAT Publishers, Moscow, 1985, p. 20.

³⁶ *Id.*, p.5. See also M. Taylor, *Perestroika and the local industries and public services union of the USSR. Case Study of a Soviet Trade Union*, NUPC, London, 1988, p. 24.

Trade union structure

- 115.** Soviet unions were organized according to the so-called production principle whereby each trade union in the USSR encompassed a branch of the national economy.³⁷ In other words, all wage and salary earners employed in a particular factory, office or institution, were eligible for membership of the same union, regardless of profession and position. Thus, the factory manager and the union chairperson would be members of the same trade union, as would be the minister in charge of the sector concerned.
- 116.** The basic unit of the trade union structure was the local, or primary, trade union made up of the trade union members in the given factory, establishment or organization. Each union at the enterprise or organization level was headed by a committee, which directed the trade union activities in the periods between general meetings³⁸. Trade union members working in the same branch of the national economy and located in the same city, district, region or Republic elected at their conference,³⁹ their city, district, regional or republican trade union committee for the branch. The congress, which elected the central committee of the trade union, was the highest body of every trade union in a branch of industry. Inter-union organizations at the municipal, district, regional and Republic⁴⁰ levels were responsible for transmitting to the plant unions those policies which were determined at the national level. At the top of the trade union structure was the All-Union Congress of Trade Unions, which was held, according to its own statute, once every five years.⁴¹ Day-to-day operations were handled by the All-Union Central Council of Trade Unions (AUCCTU), elected by the Congress. The AUCCTU was therefore the controlling organ in the Soviet trade union movement, and it determined the policy of the whole trade union structure.
- 117.** Relations between different levels of the trade union structure were governed by the Rules of the Trade Unions of the USSR and the principle of “democratic centralism”, referring to the following:⁴²
1. all trade union bodies from the bottom up are elected by the membership and are accountable to them;
 2. trade union organizations decide all matters of union activity in conformity with the Rules of the Trade Unions of the USSR and the decisions of higher union bodies;

³⁷ In relation to the organizational structure of trade unions see rules 14 - 17 of the Rules of the Trade Unions of the USSR, endorsed by the 13th Congress of the Trade Unions of the USSR on 1 November 1963, partially amended by the 14th Congress the Trade Unions of the USSR on 4 March 1968, the 15th Congress the Trade Unions of the USSR on 24 March 1972, the 16th Congress the Trade Unions of the USSR on 25 March 1977, and the 17th Congress the Trade Unions of the USSR on 20 March 1982.

³⁸ The general meeting was the highest body of a primary trade union organization. See rule 16 of the Rules of the Trade Unions of the USSR 1977, *id.*

³⁹ The Conference was the highest body of a trade union organization at the district, town, regional, territorial and republican levels. See rule 16 of the Rules of the Trade Unions of the USSR 1977, *id.*

⁴⁰ In the BSSR, it was the Republican Council of Trade Unions of Byelorussia that united all the branch unions. It should be noted that Republican structures existed in all Soviet republics except Russia.

⁴¹ See, for example, rule 25 of the Rules of the Trade Unions of the USSR 1977, *op.cit.*, note 37.

⁴² Rule 13 of the Rules of the Trade Unions of the USSR, *op. cit.*, note 37.

3. trade union organizations pass their decisions by a majority vote of the membership;
 4. lower trade union bodies are subordinate to higher ones.
- 118.** In that rigid structure, lower bodies, namely enterprise trade union committees at the base of the structural pyramid and other intermediate bodies, were subordinate to the higher ones; all the decisions taken by the higher bodies were binding on those lower down the scale. The primary level unions transmitted the membership dues to the higher structures, which decided how much and for what purposes the primary union could spend a part of these funds.
- 119.** At each level, the trade union bodies were subordinate to the Communist Party. Decisions on who would be elected as workers' representatives at each level were made by the Party committee. The decisions on leadership of Republican structures and the AUCCTU would be made at the respective Party level, and the Politburo of the CPSU would decide on who presided over the AUCCTU. Elections were thus a formality.
- 120.** No trade union could exist outside the structure directed by the AUCCTU. This situation of trade union monopoly was a focus of ILO concern from 1956 up until the end of the 1980s. The position of the Government and Workers' members delegates of the USSR was to say that the existence of a single central trade union federation was caused by the historical evolution of the trade union movement and was a result of workers' wishes.⁴³
- 121.** The political changes that took place at the end of the 1980s and early 1990s paved the way to a gradual change in the trade union movement, laws and actions regarding it. The requirement of a single-union system was removed from the USSR Constitution just before the break-up of the Soviet Union.⁴⁴

The role of managers in trade unions

- 122.** A major difference between the capitalist and Soviet systems was that in the USSR, the social needs of directors of undertakings and workers were perceived as being the same. The relationship between trade unions and management, as described above, led to another feature of union membership in the USSR: all persons usually associated with management, including the directors of an enterprise, belonged to the same trade union as the rest of the workers in the enterprise. Indeed, this was clearly linked to the lack of distinction between the State, the employer, management and the worker.⁴⁵ Furthermore, the management members enjoyed

⁴³ See International Labour Conference, 43rd Session, *Record of Proceedings*, Report of the Committee on Application of Standards, (Geneva, 1959) and International Labour Conference, 58th Session, *Record of Proceedings*, Report of the Committee on Application of Standards, (Geneva, 1973).

⁴⁴ The Law of the USSR on Public Associations, 16 October 1990 and the Law of the USSR on Trade Unions, Their Rights and the Guarantees of Their Activities, 10 December 1990 recognized the possibility of trade union pluralism.

⁴⁵ See International Labour Conference, 43rd Session, *Provisional Record*, Report of the Committee on Application of Standards, (Geneva, 1959) where the Government member delegate of the USSR stated that "directors were workers themselves in whom the Government had confidence and to whom it allotted functions in

their social and other benefits through the fact of being trade union members, and they had no other benefit system for themselves. On several occasions, the CEACR raised the issue that directors of socialist undertakings can, and, in fact, do adhere to the same trade unions, as do the workers employed in the undertakings, which they direct.⁴⁶ Generally, the Government of the USSR responded to the CEACR in the following terms: “Soviet legislation does not in any way restrict the right of managers of undertakings to set up social organizations, including trade unions. With the abolition of capitalist ownership of the means of production in the USSR, however there ceased to be any owners of undertakings, and consequently any basis for setting up special organizations to defend their particular economic interests, in contradiction to the interests of the workers. In the context of the Socialist State, the manager of an undertaking or organization is just as much a member of the community of workers as the other wage and salary earners and has similar interests and objectives. He consequently belongs to a trade union in the same way as other workers employed in the undertaking or organizations”.⁴⁷

Collective bargaining

- 123.** The content of collective agreements in the USSR was affected by the fact that the interests of workers and management were subordinate to the welfare of the State. According to the practised policy, neither labour nor management could advance its own position at the expense of the national interest. Thus, wage rates, output standards, hours and labour discipline were not subject to negotiation. Wages, for example, were fixed nationally by the Government for each economic sector, after discussions between the AUCCTU, the central committees of the relevant trade unions and the relevant Government agencies. Collective agreements did however contain detailed provisions on matters such as the increase of production, enforcement of labour discipline, improvements of production facilities, workers’ training, housing, recreational and cultural facilities. While collective agreements (or contracts) were drawn up for individual enterprises, the AUCCTU played a prominent role in the conclusion of all collective agreements, and thus there was a high degree of uniformity in collective agreements throughout the USSR.
- 124.** Obligations arising out of collective agreements were of either a moral or a legal character. The responsibilities of the enterprise trade unions were entirely moral as they related to such matters as labour discipline, welfare and education. Trade unions could not be held liable for the fulfilment of collective agreements. The responsibilities of the management were, on the other hand, legal in character. In the case of violation of statutory or contractual provisions, managers were subject to fines imposed by trade union officials acting as labour inspectors. The trade union committee could also exert some pressure, either directly on management, on

the direction of an undertaking. As workers, they worked under a contract of employment. They could belong to the trade unions but were not bound to do so. Directors did not form a special social category and from the social point of view, there existed no distinction between workers and directors”.

⁴⁶ See the CEACR’s direct request to the Government, 1960.

⁴⁷ International Labour Conference, 58th Session, Report III (Part 4A) Report of the Committee of Experts (Geneva, 1973). See also the statement of the Government in International Labour Conference, 43rd Session, *Record of Proceedings*, Report of the Committee on Application of Standards, (Geneva, 1959).

higher trade union bodies, on economic bodies, or on the minister concerned, to obtain the adoption of measures against the responsible person in management.

Industrial action

125. Although Soviet law did not expressly prohibit strikes,⁴⁸ in practice, strikes did not occur with the rare exception of wildcat strikes.⁴⁹ Collective protests – in the form of work stoppages, walkouts and strikes – were not a means of expressing worker dissatisfaction in the Soviet Union. Workers did not resort to strike action, as there was nobody for them to strike against, since the means of production belonged to all.⁵⁰
126. The only recourse open to the trade union when, for example, it disagreed with management over a clause to be inserted in the collective contract, was to appeal to the higher-level trade union and administrative authorities. Dissatisfaction with working conditions could be expressed by trade union inspectors whose duty was to check compliance with health and safety regulations, or by individual workers in letters to the press or to high-level Party, Government, or trade union authorities. According to the AUCCTU, if the manager violated labour laws or failed to carry out obligations under the collective agreement, the trade union could demand an annulment of this manager's contract.⁵¹
127. The right of workers, in certain circumstances, to resort to strikes to defend their occupational interests was recognized for the first time by the USSR Law on the Settlement of Collective Disputes of 9 October 1990.

B. Trade unions in the Republic of Belarus

128. From the late 1980s, alongside rapid deterioration of Byelorussia's social and economic situation and people's living standards, restructuring started to take place in the traditional trade union movement. The 16th Congress of the Byelorussian

⁴⁸ However, according to Art. 60 of the USSR Constitution, "it is the duty of, and a matter of honour for, every able-bodied citizen of the USSR to work conscientiously in his chosen, socially useful occupation, and strictly to observe labour discipline". A similar provision is contained in Art. 105 of the BSSR Constitution. The general rules of unions, included among the duties of a trade union member "To strictly maintain state, production and labour discipline". A union member failing to fulfil such duties could therefore be subjected within the union to penalties, including in extreme cases expulsion from the union. It was possible that a member going on strike could be subject to disciplinary action by the employer and the union.

⁴⁹ In a May 1992 interview with Professor David Mandel, Mr. Belanovskiy, deputy chairperson of the Belarus Automobile and Agricultural Machinery Workers' Union (AAMWU), said the following: "As early as 1970, there was a strike in our steel foundry over wages. But that was an exceptional event that the whole republic and Moscow learned about. The system at the time didn't allow for much open conflict. And it wasn't just a matter of repression; it was also people's mentality. We had no information about the outside world, no real contacts, and, unfortunately, the majority of people felt that things couldn't be otherwise", see Report "Canadians look at Soviet Auto Workers' Union" by Dan Benedict, Sam Gindin and Leo Panitch, CAW TCA, North York, 1992, p.2.

⁵⁰ *Trade union situation in the USSR*, Report of a mission from the International Labour Office, 1960, p. 66. See also Report of the Conference Committee, 1959 where the Government indicated that as the USSR Constitution guaranteed freedom of assembly, workers could strike if they wanted to do so but they did not use this right because they could get satisfaction of all their claims by other means. For example, under the labour legislation, workers could ask for the dismissal of their director and this right had frequently been used.

⁵¹ AUCCTU, *op. cit.*, note 35.

Trade Unions, which was held in January 1987, adopted a decision on the transition of trade unions towards protecting working people's interests. The 17th Congress of the Byelorussian Trade Unions (October 1990) concluded that trade unions had to advocate the interests of broad categories of the population, irrespective of their political, ethnic or religious orientation. At that time, such a statement was particularly radical, especially as it included the words "irrespective of political orientation". Under total dominance of the single Party, whose public role was stipulated in the Constitution as "managing and guiding", it could be interpreted as dissidence. The 17th Congress determined new principles of trade union organization in Byelorussia and the Byelorussian Trade Union Federation (FPB) was established.⁵² It incorporated sectoral organizations and six regional trade union associations. The Rules of the FPB, adopted by this Congress on 5 October 1990, provided, in the Preamble, that the Federation was independent from political parties and State bodies. Nevertheless, the monopolistic party-controlled structure was deeply rooted in the social structure of the economy where transition was slow. The leader of the FPB, Mr. Goncharik,⁵³ remained in close cooperation with the state structures and by and large maintained the traditional functions of the trade unions.

- 129.** Nonetheless, following the political changes, new independent trade unions were created. The Byelorussian Free Trade Union (BFTU) was established on the basis of the strike committees that headed workers' strikes in April and May 1991. Its founding Congress took place on 16-17 November 1991 and the trade union was registered in July 1992. The BFTU had members among workers from metal processing, energy, transport, petroleum, chemical and other sectors, as well as teachers and doctors. Following the mass strikes in April 1991, other new leaders and new trade unions emerged. Some of the strike leaders were mine workers who formed the Independent Trade Union of Miners around the potash mining in Soligorsk. Local leaders of the Chemical Workers Union (potash mining was part of the chemical industry) joined them and they formed the strongest new industrial union in Belarus, the Belarussian Independent Trade Union (BITU). These unions affiliated to the Belarussian Congress of Democratic Trade Unions (CDTU) in 1993, which was created as an umbrella organization for independent trade unions.
- 130.** In September 1990, the Byelorussian Automobile and Agricultural Machinery Workers' Union (AAMWU) was created within the FPB. Mr. Bukhvostov became its chairperson. Along with the chairperson, the conference elected a commission responsible to draft a constitution. However, the biggest problem involved breaking the old mentality. Due to the previous experience where decisions were taken at the higher level, the mistrust of higher structures was deeply rooted. Thus, one of the basic aims in writing the union's constitution was to make it democratic and to get rid of its hierarchical structure. The plant organizations were to become the foundation of the union, and all the other structures should serve their interests,

⁵² The 17th Congress of the Republican Council of Trade Unions of Byelorussia decided that the FPB would become its successor. See rule 47 of the Rules of the Federation of Trade Unions of Byelorussia, adopted by the First Congress of the Federation, 5 October 1990.

⁵³ Mr. Goncharik had been a trade union leader since 1986: at first, as chairperson of the Republican Council of Trade Unions of Byelorussia and then, as chairperson of the FPB.

contrary to previous functioning, where the union committees in the undertakings were used to receiving instructions from above.

131. Also in 1990, based on the Minsk and Vitebsk Regional Trade Union Organizations of the USSR Radio and Electronic Industry Workers' Union, the Byelorussian Radio and Electronic Workers' Union (REWU) was created. Mr. Fedynich became its first chairperson.⁵⁴
132. With time, the strategy and tactics of a number of trade unions which were part of the FPB underwent changes. The AAMWU and the REWU were especially active in criticizing the economic and social policy carried out in Belarus. The leaders of these trade unions, Mr. Bukhvostov and Mr. Fedynich, frequently blamed the FPB leadership for passiveness and called for a more active position toward protection of workers' interests through strikes, pickets and political actions.⁵⁵ Later, the Agricultural Sector Workers' Union (ASWU) – the largest trade union in the FPB – chaired by Mr. Yaroshuk, joined them.⁵⁶
133. At this stage, one of the complex problems was to clarify the relationships between the REWU, the AAMWU, the ASWU, and the FPB.⁵⁷ The latter was supposed to be a coordinating centre that dealt with issues that could not be resolved by the branch unions. However, the Federation was accustomed to issue orders to branch unions. When the AAMWU and the REWU adopted their new constitutions, the two unions were able to break the traditional relationship pattern and the Federation recognized that it was the branch unions that created and financed the latter. These two republican unions were the two biggest industrial trade unions within the FPB and of the 23 unions in the Republic. For the AAMWU and the REWU, the FPB was a conservative organization, which carried out a policy of compromise. The leaders of the AAMWU and the REWU demanded an open discussion of all issues as well as regular collective negotiations. This was the subject of constant dispute between the AAMWU and the REWU trade union leaders and the FPB chairperson. Mr. Fedynich and Mr. Bukhvostov became trade union leaders through promotion from lower level, whereas practically all leaders of the FPB branch unions used to be Communist Party leaders or their appointees. Thus, Mr. Fedynich and Mr. Bukhvostov had a different perspective on the development of the trade union movement in the Republic of Belarus.
134. The relations between the two trade union centres, the FPB and the CDTU, were tense and sometimes even hostile. In the early 1990s, these trade union centres followed different courses - the FPB followed the policy of holding long, and seldom successful, negotiations with authorities, whereas the new unions resorted to tactics of strikes and actions of protest. In some cases the FPB did not support the actions conducted by the new unions, which then failed to achieve results.

⁵⁴ Later, Mr. Fedynich was elected to be chairperson of the REWU on two occasions at the Trade Union Convention, first in 1995 and then again in 2000.

⁵⁵ A. Bukhvostov, *O profsoyuznom i rabochem dvizhenii 1989-2000*, Minsk, 2001, pp. 23 and 31 reproduced in D. Mandel, *Labour After Soviet Socialism: Autoworkers and Their Unions in Russia, Ukraine, and Belarus*, Black Rose Press, Montreal, 2004, chapter X.

⁵⁶ See Mandel, *id.*

⁵⁷ See interview with Mr. Belanovskiy in Benedict et al, *op.cit.*, note 49.

- 135.** Over time, Mr. Goncharik's policy changed significantly and in many respects, it became similar to the policy pursued by Mr. Bukhvostov and Mr. Fedynich. An important factor in this was growing conflict with the policy of President Lukashenko, who had been elected in 1996 and re-elected in 2001. With Parliamentary opposition to the President subdued, the FPB became an increasingly important forum for dissent and alternative positions. This eventually led Mr. Gontcharik to run for President in 2001, without success after which he stepped aside from his union function in favour of Mr. Vitko. Following the chairperson's policy change, the position of the FPB changed as well. In 2000, the FPB supported the complaint about violations of trade union rights in the Republic of Belarus submitted to the ILO by the AAMWU, the ASWU, the REWU and the CDTU.
- 136.** Within the legislative framework, the notion of trade union pluralism is recognized in the Constitution and the legislation of Belarus, and the rights of independence and freedom from interference are formally guaranteed. Already in 1991, the CEACR noted with satisfaction that Article 6 of the Constitution of the Belarussian Republic, which had set out the leading role of the Communist Party in economic and social life, had been amended, laying down the principle of pluralism for political parties and public organizations. In 1993, the CEACR noted with satisfaction that the Law on Trade Unions of 22 April 1992 expressly provided for independence of trade unions.

The role and functions of trade unions

- 137.** Trade unions have retained the right to implement social control over observance by employers of labour legislation through technical and legal inspections.⁵⁸ Social control is also exercised through legal assistance and medical services, established by trade unions, the powers of which are defined by the Council of Ministers. Technical and legal inspectors have the following rights in relation to social control over the observance of labour legislation: the right to unhindered visits of enterprises and individual entrepreneurs for the inspection purposes; the right to request and receive from the employer and the State bodies relevant information; the right to inspect work places and to participate in investigation of industrial accidents and professional diseases; the right to demand employers to stop work in cases of immediate threats to the life and health of employees, the right to address the relevant bodies of State supervision and control of observance of labour legislation and courts, to participate in the development of national programmes and legislation on labour protection, etc..⁵⁹
- 138.** Trade unions enjoy similar privileges and benefits as those which they enjoyed during Soviet times. These include involvement in the distribution of housing, the management of recreational institutions, and participation in the development of mass physical culture, sport and tourism.

⁵⁸ Law on Trade Unions 2000, s. 19 and Labour Code 2000, s. 463.

⁵⁹ Ministerial Edict No. 1630.

Trade union structure

- 139.** Trade unions can establish and join republican or other level trade unions. This kind of structure could be seen as “bottom to top”. Furthermore, republican level trade unions can establish regional, city, district or other organizational structures (which includes primary trade unions, i.e. trade unions established at the enterprise level). The current legislation therefore maintains the possibility of a Soviet type, or “top to bottom”, structure. All trade unions are required to register with the relevant authorities.⁶⁰

The role of managers in trade unions

- 140.** Today, it is still common for managers to be members of trade unions and, therefore, to receive the same benefits and privileges as workers. This question, although often raised, met a lot of resistance from the newly created independent unions. The problem appeared to be in defining ‘employer’. The AAMWU constitution was drafted to stipulate the following: “Membership in the union is suspended when a member moves into [...] a management position [...] or becomes an owner employing hired labour [...]”.⁶¹ The wording was ambiguous, since it left open the possibility for those managers who were already union members to retain their membership, but that was the result of a concession made to conservative local trade union leaders who hesitated to expel the management. The decision on that question was therefore left to the local unions.
- 141.** However, over time and as the promotion of trade union independence met with significant resistance from local trade union leaders, pressure from enterprise committees to amend the provision of the AAMWU constitution concerning the union membership of managers became more and more important. That led to the amendment of the provision, so as to provide: “Membership in the union can be suspended on decision of the enterprise trade union organization when a member moves into an employer position”.⁶²
- 142.** On the practical level, as workers’ demands were of an economic and social nature, and as the State assumed direct responsibility for the economic fate of state-owned enterprises, some trade union leaders realized that many things were beyond the control of management, and so relaxed their pressure on management and redirected their demands to the Government.⁶³ It should be noted that this position was not shared by all trade union leaders. Other new trade union organizations, such as the BFTU and the BITU had excluded employers’ membership in their constitutions.

⁶⁰ Trade union registration was previously governed by the Law on Public Associations 1994. Section 13 of this law provided for a simple registration procedure where the public association was required to submit to the registration body the following documents: 1) the application for the registration of the association signed by at least three members of its administrative body; 2) its Statutes; 3) the Protocol of the founding conference; 4) the bank document confirming the payment for the registration; 5) materials confirming that the association complies with the other requirements of legislative acts; 6) other documents, as provided by legislation.

⁶¹ AAMWU, *Sbornik dokumentov soveta profsoyuza*, Minsk, 1991, p. 5.

⁶² AAMWU, *Materialy III-ego s’ezda profsoyuza ASM*, Minsk, 2000, p. 29.

⁶³ *Id.*, p. 27.

143. Belarussian law does not prohibit management and directors of enterprises, or even officials from governmental ministries, from being members of branch unions and participating in union activities, union meetings or even voting for trade union leadership and affiliation.

Collective bargaining

144. Today, workers are covered by two types of agreements: “social and labour accords” and “collective agreements”. Social and labour accords are concluded in respect of labour and socio-economic security rights, definition of the fundamental criteria of living standards, rates of compensation depending on growth of prices, on establishing the minimum subsistence allowance and timely reconsideration of pension, scholarship and aid rates depending on price index.⁶⁴ The parties to the accord at the republican level are republican associations of trade unions, employers and the Government of Belarus. At the branch level, they are the corresponding trade unions (or their associations), employers’ organizations (or their associations) and the corresponding governmental administrative bodies. At the local level, they are the corresponding trade unions (or their associations), employers’ organizations (or their associations) and the corresponding local executive or administrative bodies.
145. Collective agreements, concluded between workers’ representatives and employers at the enterprise/organization level, regulate labour, social and economic relations between the employer and employees.⁶⁵ They provide for similar matters as collective agreements concluded in Soviet times. Indeed, they may contain provisions on labour organizations and rise of efficiency in production; creation of health and safety work conditions, improvement of health protection, guarantees of social insurance for workers and their families, protection of the environment; construction and distribution of housing and objects of social and cultural destination; organizations of sanatoria and resorts for workers and their families; granting of additional guarantees for large families; and creation of the conditions aimed to increase the cultural level and to improve the physical form of the workers, etc..⁶⁶

Industrial action

146. The Belarussian independent trade union movement history goes back to 1989 and is closely related to the exercise of the right to strike. In 1989, the Soligorsk miners went on strike. Their demands were both political and economic: higher salaries, better labour conditions and liquidation of the political monopoly of the Communist Party of the Soviet Union and the Communist Party of the BSSR.
147. In April 1990, “Gomselmash”- the biggest Byelorussian producer of agricultural machinery in the city of Gomel - went on strike. The strikers demanded payment of

⁶⁴ Law on Trade Unions, s. 15.

⁶⁵ Labour Code, s. 361.

⁶⁶ Labour Code, s. 364.

the cash subsidies that they were entitled to as a result of the Chernobyl nuclear disaster in 1986. A strike committee was set up, which in turn established the Coordinating Council for all of Gomel's strike committees.

- 148.** In April 1991, Byelorussia saw a series of large-scale strikes that were set off by the price increases of 2 April 1991.⁶⁷ The growing discontent among the workers was already evident at the plenary session of the FPB in February 1991. At the same time, at the AAMWU's plenary session, it was decided to demand that the Government stop the rise in prices and adopt measures for the social protection of the population. At that stage, however, the AAMWU was only a few months old and the Government did not pay much attention to it, preferring to deal with the Federation. At the meeting of the Presidium of the Federation, a proposal by the AAMWU delegate to set 28 March 1991 as the deadline for a favourable Government's response to the trade unions demands was adopted. However, in the Federation's declaration, published in the newspaper the following day, no reference was made to the deadline for the Government's answer. That failure influenced the further course of events. It has been argued that had there been a strike deadline, the trade unions could have prepared the strike in a more organized manner in order to exert greater pressure.
- 149.** In Minsk, the industrial action proceeded in a chaotic manner. Every day hundreds of thousands of workers and civil servants protested against price increases and demanded the resignation of the Government. Similar protests took place in other cities. The most tense situation was in Orsha, where strikers blocked the railway and interrupted railway traffic at the railway centre. Those protests were prepared and coordinated by the strike committees and some trade union committees.
- 150.** At a certain point, the city strike committee included people from among the leaders of the BPF. This situation resulted in division among the strike committees: while the city strike committee insisted on political demands, many of the enterprise strike committees did not. In the heat of the events many workers voted for these demands, but afterwards, this support disappeared. Since enterprise administrators met the strikers' demands, many workers returned to work, and the strike committee therefore suspended the strike. In general, during the strike, factory administrations adopted a neutral position.
- 151.** This experience provided a foundation upon which a culture of independent collective action was built in the post-Soviet period. It allowed trade unions to enter the post-Soviet period with a leadership committed to independent trade unionism. In fact, after the strike, some of the leaders who had stood by passively or opposed the strikes were voted out of office and replaced by the strike leaders. Some heads of the strike committees became members or leaders of their company trade unions and the others established new professional labour organizations, i.e. the Labour Confederation of Belarus, Belarussian Free Trade Union and Belarussian Independent Trade Union.

⁶⁷ The information on this particular strike action is based on the interview with Mr. Belanovskiy in Benedict et al, *op.cit.*, note 49.

- 152.** Recognizing the central importance of the strike weapon,⁶⁸ the AAMWU's Second Congress in 1995 established a national strike fund. Participation was, however, left to the decision of the local unions.
- 153.** In August 1995, other industrial actions, the central issue of which was the delay in paying wages, were carried out at Minsk metro and in the trolley bus system in the city of Gomel. Those strikes became the subject of Case No. 1849 examined by the Committee on Freedom of Association (CFA).⁶⁹ A summary of events, as described by the Committee follows.
- 154.** The strike of Minsk metro workers began on 17 August 1995, following a vote taken at a meeting of the metro workers' union. On 21 August, whilst 23 metro workers were peacefully walking from their worksite to the headquarters of the BFTU without carrying signs or banners, the special police of the Interior Ministry fired warning shots in the air telling the workers to lie on the ground before taking them into detention. Among the 23 employees were Mr. Makarchuk, Chairperson of the Trade Union Committee of Metro Workers of the BFTU and Mr. Kanakh, Chairperson of the Trade Union Committee of Metro Workers of the FPB. Mr. Bykov, Chairperson of the BFTU, was also taken by police for questioning. The strike was declared illegal and the offices of the BFTU and the CDTU – the umbrella organization which included, inter alia, the BFTU - were searched and sealed. To prevent the escalation of the strike, police officers were placed in each driver's cab to oversee his/her work and metro workers, under threat of being fired, were told to sign a document stating they were no longer supporting the strike. The strike ended on 22 August 1995. On 23 August, Mr. Bykov, accused of speaking to the workers at the BFTU headquarters and Mr. Kanakh, accused of leading the aforementioned group of workers to the BFTU headquarters, were sentenced to ten days' detention. Mr. Makarchuk, charged with the same administrative violations, was sentenced to 15 days in prison. Following the strike, more than 40 trade unionists were dismissed.
- 155.** A strike of trolley bus drivers in Gomel began on 16 August 1995. Approximately 500 drivers appeared at the worksite, but refused to drive buses. The Gomel drivers demanded a wage increase in addition to bringing wage payments up to date. The strike continued for six days, until 21 August. At this point management brought wage payments up to date and granted a 30 per cent rise. However, more than 20 workers were dismissed as a result of the strike. According to the collective agreement covering these workers, their dismissals had to be approved by the trade union committee. The relevant requests for dismissal were forwarded to the trade

⁶⁸ "Negotiations of the first sectoral agreement with the government, which was signed in October 1991, were accompanied by a very real strike threat." See D. Mandel, *op.cit.*, note 55, chapter X.

⁶⁹ See 302nd Report of the Committee on Freedom of Association, Case No. 1849, ILO, *Official Bulletin*, Vol. LXXIX, 1996, Series B, No.1, paras. 161-222, 306th and 308th Reports of the Committee on Freedom of Association, ILO, *Official Bulletin*, Vol. LXXX, 1997, Series B, Nos.1 and 3, paras. 19-25 and 24-27, 311th Report of the Committee on Freedom of Association, ILO, *Official Bulletin*, Vol. LXXXI, 1998, Series B, No.3, paras. 18-20, 320th and 321st Reports of the Committee on Freedom of Association, ILO, *Official Bulletin*, Vol. LXXXIII, 2000, Series B, Nos. 1 and 2, paras. 32-34 and 15-18, and 324th Report of the Committee on Freedom of Association, ILO, *Official Bulletin*, Vol. LXXXIV, 2001, Series B, No.1, paras. 17-20.

union committee affiliated with the FPB, which opposed the strike. The trade union gave its consent and the employees were dismissed.

- 156.** In addition to the above measures taken in respect of the strikes in Minsk and Gomel, Presidential Ordinance No. 336, entitled "Measures to ensure stability and law and order in the Republic of Belarus", had been proclaimed and entered into force on 21 August 1995. In accordance with the Ordinance, the activity of the BFTU was suspended, their offices sealed and their bank accounts frozen.
- 157.** While the Constitutional Court had declared certain paragraphs of Presidential Ordinance No. 336 unconstitutional on 8 November 1995, in particular as concerns the suspension of the BFTU, it was only in December 1997 that the suspension of the activities of the BFTU and primary trade union of Minsk Metro Workers was invalidated by Presidential Ordinance No. 657 and the CDTU was registered by the Ministry of Justice.
- 158.** The threat of repression (especially after the metro workers' strike) made national strikes practically impossible, although they remained technically legal. Strikes that occurred were mostly local, brief wildcats. Local strikes were mostly common in automobile and agricultural machinery sector and were openly encouraged and supported by the AAMWU national office. Although it was unable to organize national strikes, the AAMWU's relations with the government were in fact marked by an almost continuous chain of mass marches, demonstrations, petition drives, picketing and lawsuits. The chairperson of a primary trade union at a plant in Minsk gave the following account of sectoral negotiations with the Government in the late 1990s:

We have our demands and the Ministry has its own. We don't make concessions but immediately organize picketing to exert pressure. But since that has no effect: we convoke an assembly of delegates from out plants and we invite the Minister and the directors. Again no effect. Then we announce that we are organizing a mass demonstration to back our demands. The last negotiations, we did not even have to hold the demonstration, since the President declared it was a threat to national security. He told his Minister: "Either you resolve the conflict or you are fired." And so we negotiated. Since our starting demands were higher than what we realistically hoped for, we finally agreed on a "rather decent" agreement.⁷⁰

- 159.** These mobilizations, undertaken with or without other unions, were organized around concrete, achievable demands, most often with wage increases and almost always led to at least partial concessions on the part of the Government. Where local unions were close to management, workers struck on their own. In September 2001, the workers of the Tractor Factory, whose union leaders were loyal to management, poured on to the street to protest a month's delay in paying their wages. Most of the protests bore fruit which may be attributed to the fact that the

⁷⁰ *Bulleten*, Moskva: Shkola trudovoi demokratii, No. 12, 1999, p. 30, reproduced in D. Mandel, *op.cit.*, note 55, chapter X.

State's economic strategy made it more vulnerable to trade union pressure as the State continued to assume parallel responsibility for both the fate of enterprises and the well being of workers.

C. Employers' organizations in the Republic of Belarus

- 160.** Independent employers' organizations did not exist during the Soviet era. Following independence and the transition to a market economy, two employers' organizations developed in Belarus. The first, the Belarussian Union of Employers and Entrepreneurs named after Professor M.S. Kunyavsky (BUEE), was established in 1990 as the Union of Leaseholders and Entrepreneurs and re-registered under its current name in 1999. Its membership is composed of the heads of "non-state" enterprises. One of its aims is to consult and promote the interests of private business in Belarus and it is involved in tripartite social partnership with the Government and the trade unions. Its coverage is approximately 200 enterprises and 150,000 workers.
- 161.** The second employers' organization is the Belarussian Confederation of Industrialists and Entrepreneurs (Employers) (BCIE) which was established in 1993, registered in 1996, and re-registered in 1999. Its membership encompasses approximately 5,000 enterprises and organizations, of which approximately 30 per cent are state-owned enterprises and associations. Approximately 60 per cent of workers, or 3.5 million people, are employed by members of the BCIE. The Confederation is closely involved in the parliamentary process and in tripartite social partnership with the Government and trade unions. The heads of certain of its enterprise members are also contemporaneously members of the primary level trade union organization operating at their particular enterprise.

* * *

- 162.** This chapter described industrial relations in Belarus up to June 2000 when, in a communication dated 16 June 2000, the AAMWU, the ASWU, the REWU and the CDTU submitted a complaint of violations of freedom of association against the Government of Belarus.⁷¹ The FPB joined the complaint in a communication dated 6 July 2000. The following chapter illustrates the current legislative context for this complaint.

⁷¹ The International Confederation of Free Trade Unions (ICFTU) and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) associated themselves with the complaint in communications dated 29 June and 18 July 2000, respectively.

Chapter 8

Legislative Survey

I. Introduction

163. The Republic of Belarus became a member of the UN in 1945 and of the ILO in 1954 and had ratified various international conventions in its own right, including the International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights. In the trade union context, it ratified the Freedom of Association and Protection of the Right to Organise Convention 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention 1949 (No. 98) in 1956.

A. Governance and legislative arrangements

164. The Constitution of the Republic of Belarus 1994 sets out the governance and legislative arrangements of the country. It establishes a democratic state, governed by law. All national legislative enactments ‘are promulgated on the basis of, and in accordance with, the Constitution’ (Arts. 7 and 137), and the legislature will ensure that legislation complies with universally recognised principles of international law (Art. 8). The Constitution assumes that normative legal acts will be consistent with the general principles of the Constitution as well as the rights and freedoms that it guarantees.

165. In simple terms, Belarus has a President, a two-chamber elected national assembly (Chamber of Representatives and Council of the Republic), and a government (Council of Ministers headed by a Prime Minister). The Constitution invests significant powers in the office of the President of Belarus, including a legislative ability (Section IV, chapter 3). The Constitution grants the President a delegated authority to issue Decrees and Ordinances equivalent to the Laws passed by Parliament. The President is not entitled, however, to issue Decrees on constitutional or budgetary matters, nor that limit the constitutional rights and freedoms of citizens (Art. 101).

166. The Parliament is the primary representative body with legislative functions. To become a Law, a Bill must, after having been considered and approved by the Chamber of Representatives and the Council of the Republic, receive the signature of the President who has the power to ‘reject’ provisions to which he objects so that they are not included in the final law (Art. 100). The Government of Belarus is the executive organ of the Republic and is ‘accountable’ to the President and ‘responsible’ to the Parliament (Art. 106). The Prime Minister and Council of Ministers are appointed and dismissed by the President (Arts. 7 and 84). The Government has the power to issue Edicts (Art. 108).

- 167.** The Belarussian legal system belongs to the Romano-Germanic family of legal systems and, more specifically, is a 'Euroasian' legal system in common with the other CIS countries. As such, normative legal acts make up the binding and authoritative law of Belarus. Normative legal acts are either legislative acts of primary level authority – that is, the Constitution, Codes and Laws passed by Parliament, Presidential Decrees, and Presidential Ordinances – or other normative legal acts of secondary level authority, such as the Edicts of the Council of Ministers.
- 168.** In terms of a hierarchy of legal authority, the Constitution holds an exalted position (Art. 137), and Codes have a greater authority than other Laws (Law on Normative Legal Acts 2000, s. 10(6)). All other legislative acts are equally binding and there is no hierarchical differentiation between them. In other words, there is no difference in the authority of Laws, Presidential Decrees, and Presidential Ordinances. The only difference between them relates to their source and applicability. Laws are adopted by Parliament, which has a relatively unfettered ability to initiate legislation of general application (Art. 99). Presidential Decrees are promulgated by the President, pursuant to a power delegated by the Constitution (Arts. 85, 99 and 101), and are essentially the same as laws of general applicability. Presidential Ordinances, in comparison, while still of legislative authority and promulgated by the President within his right of legislative initiative, will have specific and not general applicability. This means that they will concern matters of limited applicability, rather than creating general legal rules. The other normative legal acts (such as Ministerial Edicts) are of a subordinate authoritative status.
- 169.** In cases of conflict between Laws, Presidential Decrees and Presidential Ordinances, two rules of interpretation are useful in determining which takes priority. The first is that the Constitution provides that where there is a conflict between a Decree or Ordinance and a Law, the Law applies if the Decree or Ordinance was promulgated pursuant to a power granted by that Law.⁷² This rule only applies, therefore, in cases in which the Decree or Ordinance was promulgated under an authority delegated by the particular statute with which they are in conflict. The second rule, set out in s. 10(10) of the Law on Normative Acts, is that a newer act of legislation will have a greater binding force than a previously enacted act of the same authoritative level. Thus, should there be two normative legal acts of the same sort and concerning the same subject matter, but with conflicting effect, the newer one will be assumed to be authoritative on the point in conflict.

B. The Belarussian judicial system

- 170.** The Belarussian judiciary is divided by territoriality and specialization (Art. 109). It consists of a Supreme Court which oversees the activity of the general courts, the economic courts, and the Constitutional Court which is charged with constitutional control (Constitution, Art. 116). The Constitutional Court will provide rulings on the conformity of legislative and international acts, including Presidential Decrees

⁷² Constitution, Art. 137; Law on Normative Legal Acts 2000, s. 10(3).

and Ordinances, Ministerial Edicts, and Orders of the Supreme Court, the Supreme Economic Court, and the Prosecutor-General (Constitution Art. 116). Pursuant to the Constitution, the President appoints six of the twelve Constitutional Court Judges, and other judges of the Republic (Art. 84, para. 10). With the consent of the Council of the Republic, the President also appoints the Judges of the Supreme Court and Economic Court (Art. 84, para. 9), and the Chairpersons of the Constitutional Court, the Supreme Court and the Economic Court (Art. 84, para. 8).

171. Judges must act independently and are subordinate only to the law (Art. 110). Cases will be heard in open court (Art. 114) and on the basis of the adversarial process and equality of the parties (Art. 115). While Court rulings are mandatory for all citizens and officials, parties and other persons participating in the process have the right to appeal rulings, sentences and judicial decisions (Art. 115).
172. The Prosecutor-General and the subordinate prosecutors have the responsibility for supervising the enforcement by Ministers, local organs, enterprises, public associations, officials and citizens of all legislative enactments (Art. 125). The Prosecutor-General supervises the implementation of laws determining the verdict of Courts in civil, criminal and administrative cases, as determined by law, carries out preliminary investigations, and supports State charges in Court (Art. 125). The Prosecutor's Office is headed by the Prosecutor-General who is appointed by the President with the consent of the Council of the Republic, and the Prosecutor-General appoints the subordinate public prosecutors (Art. 126). The Prosecutor-General and subordinate prosecutors are independent in the exercise of their powers and guided by legislation; the Prosecutor-General is 'accountable' to the President (Art. 127).

II. Trade union legislation in Belarus

A. Relevant legislative instruments

173. The Republic of Belarus regulates trade union and employment affairs according to the Constitution of the Republic of Belarus 1994 and, principally, the Labour Code 1999 and the Law on Trade Unions 2000. There are various subordinate and associated legal documents that impact upon trade union matters and provide a further part of the context within which trade unions function in Belarus. The following analysis surveys the law of Belarus in relation to freedom of association insofar as it provides the legislative context for the Commission of Inquiry's consideration of the present complaint. It is limited to a discussion of primary and secondary legal materials – the purely administrative Presidential Instructions, for example, are not considered – and it only discusses law that is either in force or is of direct relevance to the issues raised in the complaint.
174. The **Constitution of Belarus** was first enacted in 1994 and was the subject of a large-scale amendment in 1996 that invested greater powers in the President of the Republic. The Constitution is the country's supreme law. The **Labour Code** was enacted on 26 July 1999 and came into force on 1 January 2000. It regulates

industrial relations, develops social partnership, and establishes and defends the rights and obligations of workers and employers with an employment contract in Belarus. In particular, it regulates trade union activities, collective bargaining, and workplace relations. There are three laws passed by Parliament of relevance here. The **Law on Trade Unions** (14 January 2000) sets out certain general principles concerning trade unions in Belarus, which intend to correlate national law with internationally accepted norms (s. 9). The **Law on Mass Activities** (7 August 2003) introduces amendments to the previous law on gatherings, meetings, street processions, demonstrations and picketing, and is 'directed toward' realising constitutional rights and freedoms, at the same time as ensuring public safety and order. The **Act on the Fundamental Principles of Employment in the Public Service** (23 November 1993) provides specifically for public service employment.

175. There are several relevant Presidential Decrees ('Dekrety') and Ordinances ('Ukazy') issued by the President within his delegated legislative ability and with an authority equal to that of legislation passed by the Belarussian Parliament. **Presidential Ordinance No. 639** (16 December 1997) relates to the practice of social partnership in Belarus. **Presidential Decree No. 252** (5 May 1999) regulates the functioning of the National Council on Labour and Social Affairs. **Presidential Decree No. 2** (26 January 1999) concerns the regulation of the activity of political parties, trade unions, and other public associations.⁷³ Pursuant to this Decree, the President issued a **regulation** specifying the procedures and terms of registration and a set of **rules** setting out the documents to be submitted for registration. These are of subordinate authoritative status and set out the documentation that must be submitted with each application for registration. **Presidential Decree No. 8** (12 March 2001) and **Presidential Decree No. 24** (28 November 2003) concern the provision of international financial assistance to trade unions in Belarus. **Presidential Decree No. 11** (11 May 2001) concerned the procedure for holding mass events and picketing actions.⁷⁴
176. **Ministerial Edict No. 1804** (14 December 2001) and **Ministerial Edict No. 1282** (18 October 2002) are 'Postonovleniya', normative legal acts of secondary authority to the Laws and Decrees. These Edicts concern such matters as the check-off facility for payment of trade union membership dues.
177. Finally, various provisions exist that subject trade unions to the general law of Belarus, including in particular the Civil Code, the Administrative Code and the Housing Code.

B. Legislative survey of freedom of association

178. The legislation of the Republic of Belarus states that freedom of association is provided for in the following manner.

⁷³ The Decree has been amended a number of times between 1999 and 2003, in ways that are not of substantive importance.

⁷⁴ Pursuant to the rule that a newer act of legislation will have a greater binding authority than a previously enacted act concerning the same subject matter, it may be assumed that the Law on Mass Activities (7 August 2003) functionally repealed this Decree.

Civil liberties

- 179.** The Constitution of the Republic is the principal source of civil liberties in Belarus. The state guarantees to its citizens the rights and freedoms contained in the Constitution (Art. 21).⁷⁵ State organs and their agents will be held responsible for violations of the rights and freedoms (Art. 59), and a competent and independent court of law is guaranteed to ensure their protection (Art. 60). These rights include the right to personal liberty and the right to an investigation into the legality of an arrest or detention (Art. 25), right to due legal process in criminal matters (Art. 26), right to free expression and freedom of thought and beliefs (Art. 33), freedom of assembly (Art. 35) and, of particular importance here, freedom of association (Art. 36).
- 180.** In addition to guaranteeing general civil liberties, the Constitution of Belarus includes a worker-specific right to participate in the management of enterprises (Art.13), and provides that labour relations between state management, employers associations and trade unions shall be exercised on the principles of social partnership (Art.14). Measures to improve social partnership and cooperation between the state and trade unions are a ‘priority objective of social and economic policy’ in Belarus pursuant to Presidential Ordinance No. 639 (s. 20). Article 41 guarantees citizens the right to work, ‘to protection of their economic and social interests, including the right to form trade unions and conclude collective labour agreements, and the right to strike’. It also prohibits forced labour (Art. 41).

Social partnership

- 181.** Presidential Ordinance No. 639 gives trade unions the right to participate in the work of joint bodies of the state administration and in managing bodies of enterprises, organizations and institutions (s. 21 (2.1)). In particular, this includes the participation by the Federation of Trade Unions of Belarus in the work of the Council of Ministers and joint ministerial bodies; and the participation by branch, regional and local trade unions in the work of joint bodies of ministries and other republic-level bodies, in sessions of the local executive and administrative bodies, and in the managing bodies of enterprises, organizations and institutions. Trade unions are given powers to defend the labour rights of members when concluding or terminating employment contracts, to participate in the allocation of housing, and to organize measures to improve health care and cultural facilities (s. 21 (2.2-2.4)).
- 182.** Presidential Decree No. 252 and its associated regulations regulate the National Council on Labour and Social Issues (NCLSI), which aims to ensure co-operation between government, employers’ organizations and trade unions in the implementation of social and economic policy and the protection of workers’ rights and citizens’ interests (reg. 1). The NCLSI consists of 11 representatives of each party, including one co-chairperson who shall have a casting vote (reg. 9). Its

⁷⁵ The term “citizens” in Russian includes foreign nationals and stateless persons resident in Belarus; it has a rather wider meaning than its English translation.

membership shall be determined ‘by the parties through negotiations, taking account of the principles of delegation of powers and of rights’ (reg. 10). Representation of republican-level confederations of employers and trade unions shall be determined in proportion to their membership, within the established quotas (reg. 10). The chairperson of the NCLSI, who will preside over the sessions and organize its activities, will be one of the co-chairpersons, as elected by the NCLSI (reg. 11). A secretariat set up by the chairperson will prepare the NCLSI’s sessions and activities, keep appropriate records and registers, and liaise with the social partners and the media (reg. 13). The NCLSI will meet at least once each quarter (reg. 14).

Right to organize

- 183.** The Constitution guarantees to everyone, in Article 36, the right to freedom of association. The Labour Code envisages representation of workers’ interests by trade unions (LC s. 354).⁷⁶ According to s. 11(2) of the Code, workers have the right to “protection of economic and social rights and interests including the right to join trade unions, conclude collective agreements and accords and the right to strike”. Both the Code and the Law on Trade Unions define trade unions as voluntary public organizations which unite citizens enjoying a common interest in professional activities, with the aim of protecting labour and socio-economic interests and rights (LC s. 1; LTU s. 1). Trade unions are considered to have legal personality (LTU s. 2).
- 184.** The Labour Code defines employers’ associations as ‘voluntary associations of legal and physical persons entitled by the legislation to conclude and terminate employment contracts with workers, which have the aim of representing and defending their rights and interests’ (s. 1). Section 12 (3) of the Labour Code provides each employer with the right to ‘establish and join employers’ associations’. Section 355 of the Labour Code provides that ‘the representatives of employers’ interests shall be the director of the enterprise or a person authorized by the enterprise’s constitutive document’. At the republican, branch, and territorial level, representation of employers’ interests shall be by the corresponding associations of employers (LC s. 355).

Right to join organizations

- 185.** Section 2 of the Law on Trade Unions grants citizens the right to voluntarily establish and join unions of their own choice. The Law applies to all enterprises, institutions, and entities within Belarus, although other legislation may concern the specificities of trade union matters in relation to state security bodies and the military (s. 8). Section 11 of the Act on the Fundamental Principles of Employment in the Public Service specifically entitles public servants to join trade unions. Section 41 of the Law on Militia states that ‘officers and other ranks of the militia may be members of trade union associations’. Section 11 of the Labour Code

⁷⁶ Article 14 of the Constitution seems equally to envisage that trade unions shall be the representatives of workers in tripartite labour and social relations with the state and associations of employers.

likewise states that workers have the right to join trade unions; it further states that each employer has the right to establish and join employers' associations.

Establishment of organizations

- 186.** The Law on Trade Unions provides that trade unions, their symbolism, amendments and additions to their Charters are subject to state registration in accordance with relevant legislation (s. 3).⁷⁷ Presidential Decree No. 2 set up the re-registration of trade unions and their symbols, to take place between 1 February and 4 July 1999 (s. 1). A Republican Commission on the Registration and Re-registration of Public Associations, the composition of which is to be approved by the President, determines each case of registration or re-registration (s. 2). The Ministry or Departments of Justice perform the registration and re-registration of each union at that stage (s. 3).
- 187.** The Decree requires, for a republican trade union, at least 500 founders from the majority of the regions and the City of Minsk; for a territorial trade union, at least 500 founders from the majority of territorial administrative and territorial units of the respective territory; and, for a trade union at the enterprise level, at least ten per cent of the total workforce, but not less than ten persons (s. 3). The Decree establishes that, in the case of alteration to the legal address of a union, associations must, within one month, submit to the registration body all required documents for amending their foundation documents (s. 3). Section 50 of the Civil Code states that "the location (whereabouts) of a legal person is the place of its state registration if, in accordance with legislation, the by-laws of a legal person do not provide otherwise".
- 188.** The associated regulations and rules set out the documents to be submitted. In relation to consideration of a registration, these include confirmation of the legal address and number of founders of the union, its organizational chart, documents from its structural units, a description of the symbols of the union, and the receipt for an advertisement of the registration (reg. 3). For a re-registration, in addition to those documents it is further necessary to submit a duly signed application form, the original Charter and certificates of the union's registration and symbols, personal details of the elected members of the union, a resolution giving representative functions to three members, and tax number (reg. 4).
- 189.** Registering bodies are authorized to verify the materials submitted by trade unions (reg. 6) and, upon consideration, refer the documentation to the Republican Commission on Registration. The Republican Commission must, within five days, provide a conclusion in relation to registration and refer the matter back to the registry (reg. 7). The registering body will then decide whether to register the union, postpone its registration, or deny it (reg. 9). Decisions to deny registration are on the basis of irregularities in the association's establishment or non-submission of all the relevant documentation as set out in the regulation and rules (reg. 11). Should the founders consider that a decision is taken on irrelevant

⁷⁷ This is in accordance with the Civil Code, s. 47 of which states that all legal persons must be registered.

grounds, a judicial appeal may be made within one month of receipt of the decision (reg. 16).

- 190.** The Decree states that the activity of non-registered associations and of associations that have not been re-registered shall be banned and such associations shall terminate their activity and be liquidated according to the established procedure as of 1 July 1999 (s. 3).⁷⁸ The Administrative Code allows for the imposition of a warning, fine, or administrative detention in cases of trade unions which continue activities despite not being registered or in which trade unions have not submitted required documentation following a change of legal address (s. 167 (10-11)). The Ministry was to publish, by 15 July 1999, a list of unions that were not re-registered (s. 5). The Council of Ministers was required to submit proposals as to how to ascribe liability to unions that continued their activities despite not being re-registered, or that did not submit the required material concerning legal address (s. 6).
- 191.** There is a parallel procedure allowing enterprise level trade unions existing as sub-organizational units of trade unions to be recorded, rather than registered (reg. 17). Such trade unions will not have legal personality. An application to be recorded as a structural unit will be made to the appropriate justice department in the region in which the organizational unit is located. The required documentation differs from that for registration, in that there is no minimum membership requirement.

Drafting of constitutions and election of officers

- 192.** Section 3 of the Law on Trade Unions provides that trade unions independently determine and ratify their Charters, define their structure and elect their representatives.
- 193.** Full-time trade union officers enjoy the same social and labour rights and privileges as other workers of the enterprise (LTU s. 24). Upon being elected to a trade union position, a worker will be relieved of work and, at the end of his or her term as an official will be 'provided with his or her previous position or another equal in value' (LTU s. 24).

Internal administration, activities, and programmes

- 194.** The Law on Trade Unions states that trade unions independently organize their activities, and conduct their meetings, conferences and congresses (s. 3).
- 195.** Pursuant to the Law, trade unions enjoy certain responsibilities and rights in the social and labour policy spheres of the country. For example, trade unions take part in the development and implementation of socio-economic policy of the Republic (s. 6), and carry out 'social control' of social, economic and labour policy (ss. 12, 13 and 19). Unions have the right to ensure that labour and trade union rights are being respected in Belarus (s. 19) and have a right to seek information (s. 20) and to participate in training and education (s. 21).

⁷⁸ Section 57 of the Civil Code is to the same effect.

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- 196.** The Law on Trade Unions states that trade unions ‘own, make use of and manage trade union property and financial means in accordance with the civil legislation’ (s. 27). Trade union Charters define budgetary details, and trade unions shall be subject to the usual taxation legislation (LTU s. 27).

Right to strike

- 197.** Pursuant to s. 388 of the Labour Code, a strike is a temporary free-will refusal of workers to execute their labour duties (completely or partially) aimed at resolving a collective labour dispute.⁷⁹ The Code provides that unions may take a decision to strike within three months of the end of the particular procedure with the aim of ‘resolving collective labour disputes’. The right to strike can be limited by law insofar as it is necessary for the interests of national security, public order or health, and the rights and freedoms of other people (LC s. 388). Strikers may not receive financial assistance from foreign sources or political associations (LC s. 388).
- 198.** Unions must notify the employer of the intention to strike not later than two weeks before its commencement (LC s. 390), including proposals for minimal necessary services (LC ss. 390 and 392). In cases of a ‘real threat’ to national security, public order, the health, rights and freedoms of other individuals, or other cases set out in legislation, the President has the right to postpone or stop the strike for up to three months (LC s. 393). Should a regional court decide that a strike is illegal because it violates the requirements of the Code (LC s. 395), participants may be subject to disciplinary and other procedures (LC s. 397).
- 199.** Trade unions have a right to strike in accordance with the relevant legislation, although trade union-initiated strikes do not ‘have the right to lay down political requirements’ (LTU s. 22). Further, trade unions have the right to organize and carry out mass events with the aim of protecting members’ interests (LTU s. 25).
- 200.** In its introductory comments, the Law on Mass Activities provides a guarantee by the State of freedom of mass activities not violating the legal order and rights of other citizens. A mass activity is defined as a ‘gathering, meeting, street rally, demonstration, picketing, and other mass activity’ (s. 2). A ‘gathering’ is the joint presence of citizens in the open air or inside buildings, for collective discussion and solution of questions affecting their interests. A ‘meeting’ is the mass presence of citizens in the open air for public discussion and expression of attitudes towards actions or inactions and public or political events, and for solving problems affecting their interests. ‘Street rallies’ and ‘demonstrations’ are organized mass movements of groups of citizens on pedestrian or traffic areas for the purposes of drawing attention to problems, to publicly express public and political opinions, or to protest with the use of posters or other means. ‘Picketing’ is the public expression by a citizen or by a group of citizens of public, political, group, or

⁷⁹ A collective labour dispute is unsettled discord between the parties to collective labour relations in relation to the establishment, change of social and economic conditions of workers, change, execution, or cessation of collective agreements or accords: Labour Code, s. 377.

individual interests, or of protest, including hunger strikes, in relation to any problems.

- 201.** The statute does not apply to employee and union gatherings that are held both inside premises and in accordance with other legislation and the relevant union charters (LMA s. 3). Trade unions are given the right to be the organizers of mass events (LMA s. 4), which equally makes them responsible for the gathering (LMA s. 10). An application to hold the event must be made to the local executive and administrative body at least 15 days in advance and specifying certain matters concerning its organization, purpose, and efforts to ensure public order (LMA s. 5). Five days before the date of the event, the local body will inform the organizer whether the activity will be banned or allowed (LMA s. 6). This decision may be appealed to a court (LMA s. 7).
- 202.** Mass events may not be held closer than 200 metres from the President's residence, the National Assembly, the Council of Ministers, the Television and Radio Centre, pedestrian subways and metro stations (LMA s. 9). Equally, mass events are prohibited if their purpose is to change constitutional order by force or propaganda of war, social, national, religious, or race hostility (LMA s. 10). The local executive and administrative body is entitled to change the date, place and time of a mass event to safeguard the rights and freedoms of citizens, public safety, and the normal functioning of transport and organizations, with the event organizer's agreement (LMA s.6). Publicity may not be made before official permission is given to hold the mass event (LMA s. 8).
- 203.** While the local authority may terminate a mass event if it does not conform to the procedure set out in the statute or if there is the appearance of a threat to life and health (LMA s. 12), all interference by anyone is prohibited in the case of properly constituted events (LMA s. 13). A trade union that violates the procedure for organizing and holding mass events may, in the case of serious damage or substantial harm to the rights and legal interests of other citizens and organizations, be liquidated for a single violation (LMA s. 15). In this context, 'violation' includes a temporary cessation of organizational activity or the disruption of traffic, death or physical injury to one or more individuals, or damage exceeding 10,000 times a value to be established on the date in question (LMA s. 2).
- 204.** The Law on Mass Activities replaces, for all intents and purposes, Presidential Decree No. 11 which also concerned trade unions right to organize mass events (s. 1.1).⁸⁰ Presidential Decree No. 11 stated that in the case of mass events that have not been organized in accordance with the Decree or resulted in substantial damage or harm, the organizing trade union risked dissolution for repeated violation (s. 1.5). Its substantive provisions were otherwise fundamentally similar to those in the Law.
- 205.** Public service employees, who include those occupying posts in parliamentary, national and local governmental, judicial and prosecutorial-type organizations, as well as the National Bank and customs authorities (AFPEPS s. 8) are, pursuant to s.

⁸⁰ At the time of the writing of the report, Presidential Decree No. 11 had not been officially revoked.

12 of the Act on the Fundamental Principles of Employment in the Public Service, not entitled to take part in strikes.

Receipt of foreign aid

- 206.** Presidential Decree No. 8 (12 March 2001) aimed to ‘improve the arrangement of receiving and using foreign gratuitous aid’. The Decree established that foreign gratuitous aid must be registered at the Presidential Administration, which would issue a certificate affirming the registration; ‘the use of foreign gratuitous aid prior to the receipt of the certificate was forbidden’ (s. 1.2). Such aid had to be deposited into accounts in any Belarussian bank within five days of receipt (s. 2). Foreign gratuitous aid could only be used for specific purposes and, specifically, could not be used ‘for carrying out public meetings, rallies, street processions, demonstrations, pickets, strikes, designing and disseminating campaigning materials, as well as running seminars and other forms of mass campaigning among the population’ (s. 4). Failure to comply with the requirement to register foreign aid would result in substantial fines and confiscation of the aid, as well as possible termination of the trade union’s activities, ‘including for a single incident of such violations’ (s. 5).
- 207.** Presidential Decree No. 24 (28 November 2003) replaced Decree No. 8. The only substantial difference is that it provides a more detailed description of tax and customs matters (s. 3).

Check-off facility

- 208.** Ministerial Edict No. 1804 (14 December 2001) concerned ‘measures to protect the rights of trade union members (by preventing) violations that occurred from employers withholding trade union membership fees’. Paragraph 1 required employers to return to employees any money that had been withheld from salaries to pay trade union membership fees, but had not yet been transferred to the union. Paragraph 2 stated that ‘the payment of trade union membership dues will be undertaken by trade union members personally without deducting the fees from their salaries’. Paragraph 3 provided that violations by leaders of organizations or individual enterprises would incur the same responsibility as violations of labour legislation.
- 209.** Ministerial Edict No. 1282 restored the check-off facility on 18 October 2002. This Edict replaced paragraph 2 of Edict No. 1804, so that ‘the payment of trade union membership dues shall be carried out personally by the workers or, at their written request, by deduction of such dues by the employer from the workers’ pay, in order to be transferred through the non-cash method’.

Dissolution of existing organizations

- 210.** Section 5 of the Law on Trade Unions states that termination of trade union activities will be at the decision of its members, taken in accordance with the Charter of the individual union. The Supreme Court, on a motion submitted by the Prosecutor-General or a regional prosecutor, may take a decision to suspend for six

months or terminate the activities of a republican or regional trade union, when the activities of the trade union conflict with the Constitution or other legislative acts (LTU s. 5).

- 211.** A non-registered trade union will be liquidated on that basis pursuant to Presidential Decree No. 2 (s. 3) and the Civil Code (s. 57). A trade union can also be liquidated for using foreign aid without a licence granted under the Presidential Decree No. 8 (s. 5) and for violating the Law on Mass Activities (LMA s. 15).

Establishment of higher-level organizations and affiliation with international organizations

- 212.** Section 2 of the Law on Trade Unions states that ‘trade unions can establish as well as join, on a voluntary basis, republican and other associations having similar to trade unions’ rights’. Republican trade unions, in turn, can establish regional and other organizational structures having the rights of trade unions in accordance with the Charter. Section 3 provides that, in accordance with their determined goals and tasks, trade unions have ‘the right to cooperate with trade unions of other countries and join international and other trade union associations and entities of their choice’.

Protection against anti-union discrimination

- 213.** Discrimination on the grounds of trade union participation is prohibited pursuant to s. 14 of the Labour Code. Section 4 of the Law on Trade Unions provides that the fact of membership of a trade union will not affect the rights and freedoms of a citizen.

Right to collective bargaining

- 214.** Pursuant to s. 356 of the Labour Code, the representative bodies of workers and employers as parties in collective labour relations, have the right to participate in collective bargaining. Further, if there is more than one trade union at branch, territorial or organizational level, then ‘every one of them’ has the right to undertake collective bargaining; and persons representing employers do not have the right to undertake collective bargaining or to conclude collective agreements on behalf of workers (LC s. 356). The Law on Trade Unions reiterates the right of trade unions to participate in collective bargaining and to conclude collective treaties and agreements (s. 14). It also states that each employer has the right to ‘participate in collective bargaining and conclude collective agreements and accords’ (LTU s. 12(2)).
- 215.** Chapter 36 of the Code defines the parties to collective labour disputes as the employer (or association of employers) and the trade union on behalf of the workers. The procedure for settlement of collective disputes is set out in sections 377-386 and involves conciliation, mediation and labour arbitration.

Chapter 9

Complaints Submitted to the Committee on Freedom of Association

- 216.** Since the Committee on Freedom of Association (CFA) was set up by the Governing Body at its 117th Session (November 1951), three cases have been brought against the Government of Belarus concerning violations of trade union rights (Cases Nos. 1849, 1885 and 2090), the first in 1995. Cases Nos. 1849 and 1885 are set out briefly as background information in chapter 2.
- 217.** Case No. 2090, first presented in June 2000, has been examined by the CFA on seven occasions.⁸¹ This case initially raised two main allegations: 1) Government attempts to interfere in trade union elections and internal trade union affairs on the basis of written instructions issued in 2000 by the Presidential Administration (hereinafter, “Presidential Instructions”) and; 2) the enactment of a decree in 1999 on registration, applicable to all workers’ and employers’ organizations, which required previous authorization for the exercise of trade union activity and resulted in a serious obstacle to the full guarantee of freedom of association in the country. The subsequent allegations in the case stem from these two main themes. Firstly, the further allegations of interference in union affairs by either the public authorities or enterprise management have been linked to the calls in the Presidential Instructions of 2000 for greater control over the trade union movement. Secondly, over the years during which the case was examined by the CFA, the complainants have referred to an increasing number of primary level organizations, almost all of which were affiliated to the BFTU, that have been systematically denied registration and their leaders and members subjected to anti-union dismissals, harassment, threats and other discriminatory acts.
- 218.** In its last examination of the case in November 2003, the CFA deeply regretted that it had not been able to observe any steps on the part of the Government to implement its recommendations in respect of the very serious matters, despite the

⁸¹ See 324th Report of the Committee on Freedom of Association, Case No. 2090, ILO, *Official Bulletin*, Vol. LXXXIV, 2001, Series B, No. 1, paras. 133-218, approved by the Governing Body at its 280th Session (March 2001); 325th Report of the Committee on Freedom of Association, Case No. 2090, ILO, *Official Bulletin*, Vol. LXXXIV, 2001, Series B, No. 2, paras. 111-244, approved by the Governing Body at its 281st Session (June 2001); 326th Report of the Committee on Freedom of Association, Case No. 2090, ILO, *Official Bulletin*, Vol. LXXXIV, 2001, Series B, No. 3, paras 210-244, approved by the Governing Body at its 282nd Session (November 2001); 329th Report of the Committee on Freedom of Association, Case No. 2090, ILO, *Official Bulletin*, Vol. LXXXV, 2002, Series B, No. 3, paras. 217-281, approved by the Governing Body at its 285th Session (November 2002); 330th Report of the Committee on Freedom of Association, Case No. 2090, ILO, *Official Bulletin*, Vol. LXXXVI, 2003, Series B, No. 1, paras. 207-238, approved by the Governing Body at its 286th Session (March 2003); 331st Report of the Committee on Freedom of Association, Case No. 2090, ILO, *Official Bulletin*, Vol. LXXXVI, 2003, Series B, No. 2, paras. 122-168, approved by the Governing Body at its 287th Session (June 2003); and 332nd Report of the Committee on Freedom of Association, Case No. 2090, ILO, *Official Bulletin*, Vol. LXXXVI, 2003, Series B, No. 3, paras. 301-362, approved by the Governing Body at its 288th Session (November 2003).

fact that two ILO missions had been carried out in the country to assist the Government in this regard. In light of its examination of the case since 2001, the CFA considered that serious attacks had been, and were still being, made on all attempts to maintain a free and independent trade union movement in the country. In these circumstances, and taking into account the complaint under article 26 of the ILO Constitution, the CFA had recommended to the Governing Body to refer the examination of all the pending allegations in this case, along with the complaint submitted in June 2003, to a Commission of Inquiry.

- 219.** The November CFA report was approved by the Governing Body,⁸² which then decided to appoint a Commission of Inquiry to examine the complaint and all relevant matters before the various ILO supervisory bodies. As the matters raised in Case No. 2090 and in the article 26 complaint are so closely linked, the Commission considered that a more detailed review of the positions put forward by the various parties in Case No. 2090, as well as of the CFA conclusions and recommendations in this case and any action envisaged or taken by the Government, would assist in preparing the background to the Commission's own findings and analysis. This review, divided into five main themes – labour legislation and its implementation, obstacles to trade union activity, external interference in trade union affairs, detention and retaliatory acts and social partnership – is set out below.

I. Labour legislation

A. Presidential Decree No. 2 of 1999 and the Labour Code of 2000

- 220.** Initially, the CFA had before it allegations concerning two legislative texts: the Labour Code of 2000 and Presidential Decree No. 2 on some measures on the regulation of activity of political parties, trade unions and other public associations. The complainants maintained that the Labour Code excessively restricted their right to strike and that the application of Presidential Decree No. 2 impeded the rights of workers to form organizations of their own choosing due to both a minimum membership requirement of ten per cent of the workforce at the enterprise level and an apparently anodyne requirement to provide a legal address, which in reality, turned out to be an important obstacle for trade union structures other than those affiliated to the FPB.
- 221.** During its first examination of the case in March 2001, the CFA focused on **Presidential Decree No. 2** and the obstacles that it placed in the way of trade union registration. At that time, the Government had explained that the Decree was issued because of the need to improve the activities of all legal persons in view of the new Civil and Housing Codes. The Government added that it did not consider the minimum membership requirement too high and pointed out that the dissolution provision had never been used.⁸³

⁸² See 332nd Report, *id.*, paras. 360-361.

⁸³ 324th Report, *op cit.*, note 81, para. 197.

- 222.** As concerns legal address, the Government stated that the union could give the address of appropriate premises outside the enterprise, yet also stated that consideration was being given to amending the Decree so as to permit trade union organizational units to give the address of the premises within the locality where the organizational unit was located.
- 223.** The Government emphasised that the absence of legal personality as a result of a denial of registration for primary-level trade unions was not a restriction upon the exercise of fundamental trade union rights, including the right to bargain collectively. The CFA nevertheless noted various communications, annexed to the complaint, emanating from the Ministry of Industry, and from several enterprise directors, stating that in the absence of re-registration, the trade union in question would lose its collective bargaining rights, including the cancellation of already existing agreements, as well as the suppression of other established rights concerning access to the workplace and the provision of premises; moreover its members were vulnerable to disciplinary action for carrying out activities on behalf of “an illegal organization”.⁸⁴ The CFA further noted from the report of the preliminary on-the-spot mission that discussions held with both the workers' and employers' organizations indicated that this requirement had a severe impact upon the Free Trade Unions which had become, as a result, virtually non-existent at the local level.⁸⁵
- 224.** The CFA concluded that Decree No. 2 as applied constituted a violation of freedom of association and requested the Government to exclude trade unions either from the entire scope of the Decree's application (if necessary, instituting a more simplified registration process), or from the excessive restrictions in the Decree, particularly in respect of large enterprises, requiring ten per cent minimum membership at the enterprise level, and from the last two subsections of section 3 concerning the banning of activities of non-registered associations and their liquidation.
- 225.** As concerns legal address under the Decree, while noting the possibility indicated by the Government of eliminating this requirement for recorded organizations, the CFA was still unsure of how such a change would resolve the problems raised in the complaint. Given the difficulties in obtaining the necessary legal address for registration purposes previously cited in the complaint and noted in the report of the preliminary on-the-spot mission, the CFA requested the Government and the complainants to provide additional information as to the practical resolution of the difficulties for registration encountered by the complainants.⁸⁶
- 226.** In October 2001, the Government reiterated its intentions to amend Presidential Decree No. 2 so as to eliminate the obstacles to registration caused by the legal address requirement and to repeal the provision concerning restrictions requiring ten per cent minimum membership at the enterprise level.⁸⁷

⁸⁴ *Id.*, para. 199.

⁸⁵ *Id.*, para. 198.

⁸⁶ *Id.*, paras. 197-202.

⁸⁷ 326th Report, *op. cit.*, note 81, para. 233.

227. Subsequently, in September 2003, the Government stated that it did not consider the ten per cent requirement too high and recalled that this requirement concerned only the establishment of autonomous trade unions (and not primary level organizational structures). The Government further indicated that since regulation 11 of the accompanying regulations on state registration set out the particular cases where registration might be denied, the registration authorities could not exercise any discretion in this regard. Moreover, when registration was denied, the decision of the registration authority could be appealed.⁸⁸ It added, however, that one of the reasons for refusal to register an organization had been the failure to provide a legal address. The Government was working with all interested bodies of the national administration to improve the labour legislation in this respect: the Ministry of Labour and Social Protection, the Ministry of Justice, the Ministry of Industry and the Ministry of Foreign Affairs. Consultations were also being conducted with trade unions and employers' associations.⁸⁹
228. During the ILO mission in September 2003, the Ministry of Labour initially stated that attempts to simplify the registration process and amend the Decree had been opposed by the employers' organizations. Yet during individual meetings with these organizations, they denied any such opposition and the BCIE recalled that it had always called for the total revocation of this Decree, particularly as concerns workers' and employers' organizations.⁹⁰
229. The objections to the **Labour Code** concerned the restrictions on the exercise of the right to strike. In this respect, the CFA considered that sections 388 and 393 permitted the possibility of excessive restrictions on strike action and referred the matter to the Committee of Experts on the Application of Conventions and Recommendations.

B. Presidential Decrees Nos. 8 and 11 of 2001

230. In 2001, the CFA received allegations concerning two additional Presidential Decrees said to violate trade union rights in Belarus: Presidential Decree No. 8 on certain measures aimed at improving the arrangement of receiving and using foreign gratuitous aid and Presidential Decree No. 11 on several measures to improve the procedure for holding assemblies, rallies, street marches and other mass events and picketing actions. The former was stated to be used to interfere with the right of workers' organizations to receive foreign financial assistance to carry out legitimate trade union activities. The latter was considered to represent an important deterrent to any effective mass action or picketing by workers' organizations.
231. As regards **Presidential Decree No. 8**, in June 2001 the CFA noted that a certificate had to be issued registering foreign aid before it could be used and, under paragraph 4.3 foreign gratuitous aid, in any form, could not be used towards

⁸⁸ 332nd Report, *op. cit.*, note 81, para. 329.

⁸⁹ *Id.*, para. 330.

⁹⁰ *Id.*, Annex: Mission Report.

the preparation and carrying out of, inter alia, public meetings, rallies, street processions, demonstrations, pickets, strikes, designing and disseminating campaign material, as well as running seminars and other forms of mass campaign of the population. Paragraph 5.3 provided that violation of this requirement by trade unions could result in the termination of their activities. The commentary to the Decree emphasized that even a single violation could bring about the elimination of a public association, fund or other non-profit organization. The CFA considered that the aspects of the Decree prohibiting trade unions and employers' organizations from using foreign aid, financial or otherwise, from international organizations of workers or employers was a serious violation of the principles of freedom of association and urged the Government to take the necessary measures, as a matter of urgency, to ensure that workers' and employers' organizations could benefit from the assistance which might be provided by international organizations, without previous authorization.⁹¹

232. Later in November 2001, the CFA noted the Government's general indication that the purpose of the Decree was to provide a transparent procedure for receiving foreign aid and that no previous authorization was required. While noting the Government's indication that the use of free foreign aid for preparing or holding assemblies, demonstrations, picketing, strikes, etc., was prohibited when aimed at changing the constitutional system, overthrowing state power, propaganda for war or violence, etc., the CFA observed that the provision dealing with the use of foreign aid for assemblies, demonstrations, pickets and strikes and the provision concerning the overthrow of the Government and war propaganda were not linked. Paragraph 4.3 of the Decree thus appeared to prohibit the receipt of foreign aid for demonstrations, pickets, strikes, etc., regardless of the aim of these activities. The CFA thus once again requested the Government to take steps to ensure its amendment.⁹² In 2002, the Government provided no information on measures taken to implement the CFA's recommendation, but merely indicated that it had not received any complaints in respect of the application of Presidential Decree No. 8 and that several applications from trade unions for foreign aid had been granted.⁹³
233. As concerns **Presidential Decree No. 11**, the CFA, noting that the Decree permitted the dissolution of a trade union in the event that an assembly, demonstration or picketing action resulted in the disruption of a public event, the temporary termination of an organization's activities or disruption of transport, loss of life, or serious bodily harm to one or more persons, recalled that restrictions on pickets should be limited to cases where the action ceased to be peaceful or resulted in a serious disturbance of public order. The CFA therefore requested the Government to take steps to ensure that the Decree was amended so that restrictions on pickets were limited to such cases and so that any sanctions imposed would be proportionate to the violation incurred.⁹⁴

⁹¹ 325th Report, *op. cit.*, note 81, para. 167.

⁹² 326th Report, *op. cit.*, note 81, para. 238.

⁹³ 329th Report, *op. cit.*, note 81, para. 279.

⁹⁴ 326th Report, *op. cit.*, note 81, para. 242.

- 234.** The CFA further requested the Government to provide information on the complainants' allegations that the application of the Decree had resulted in both the refusal of authorization for a picket to take place in front of the Ministry of Industry and subsequently the denial of registration of the Mogilev Automobile Plant and OAO 'Ekran' ('Ekran' enterprise) trade union organizational structures due to the exercise of unauthorized picketing. In its reply of January 2003, the Government admitted that the Decree provided for the closing down of organizations that failed to observe established procedures for organizing public demonstrations, but added that this did not automatically mean that the responsible organization would be closed down. A court order was necessary and the relevant circumstances had to be taken into account. An appeal against the decision was also possible.⁹⁵ The Government did not reply specifically to the earlier allegations of the practical application of the Decree, but indicated that the provision of the Decree permitting dissolution of a union for repeated violation had never been applied.⁹⁶
- 235.** In September 2003, the Government referred to the adoption in August 2003 of the Law on gatherings, meetings, street processions, demonstrations and picketing, which had the aim of consolidating a certain number of laws and decrees on the same subject. The CFA noted with extreme regret that, rather than using this opportunity to amend the paragraphs emanating from Presidential Decree No. 11 that contained disproportionate sanctions for violation of its measures, such as the dissolution of trade unions, all the previous restrictions on mass meetings, demonstrations and picketing remained, thus maintaining significant restrictions on the right of workers' and employer's organizations to organize their activities and to give expression to their positions on socio-economic policy considerations affecting them. Moreover, the new law provided for the possible sanction of dissolution for a single violation. The CFA therefore urged the Government to amend the new law, as well as Presidential Decree No. 11 if still in force, so as to ensure that restrictions on meetings, demonstrations and pickets were limited to cases where the action ceased to be peaceful or resulted in a serious disturbance of public order and so that any sanctions imposed were not disproportionate to the violation incurred, in particular, to eliminate all references to the dissolution of trade unions.⁹⁷

II. Obstacles to trade union activity

A. Practical application of the registration procedure

- 236.** As mentioned above, the complainants maintained that the introduction in 1999 of Presidential Decree No. 2, which obliged all unions to re-register, resulted in a number of primary organizational structures, mostly those affiliated to the BFTU, being denied registration largely due to difficulties arising in respect of the legal

⁹⁵ 330th Report, *op. cit.*, note 81, para. 224.

⁹⁶ *Id.*, para. 236.

⁹⁷ 332nd Report, *op. cit.*, note 81, para. 357.

address requirement. Consequently, these organizations were hindered in their exercise of legitimate trade union activity.

237. The CFA noted from the preliminary on-the-spot mission in 2000 that the registration requirements set out in Presidential Decree No. 2 had a severe impact on the Free Trade Unions rendering them virtually non-existent at local level. According to the BFTU, trade union pressure in early 2000 persuaded the Government that such procedures infringed the right to create workers' associations and a letter from the Ministry of Justice dated 3 February 2000 responded that, for registration, organizations could submit the following types of documents attesting the legal address of the sub-organizational structures: record of the organizational meeting where the trade union enterprise organization was founded, or the record of the republican trade union body about the creation of a sub-organizational structure of the trade union. However, a month later the Ministry of Justice issued a new letter clarifying that the legal address required was indeed the address of the premises given to the trade union by the employer, and the director could, but was not obliged to, allocate such premises.⁹⁸ The Government for its part stated that this letter actually set out that the legal address was to be the address of the premises in which the executive body of the legal entity represented by the owner was located and in this case, owner was meant as the owner of the premises and not the employer *per se*.⁹⁹ The CFA requested the Government to send detailed information on the 15 primary level BFTU organizations that had been denied registration.¹⁰⁰

238. In January 2001, the BFTU indicated that it had only been able to register one of the primary level organizations on its initial list. The BFTU added that, while it always appealed these decisions to the district courts, these courts did not hear the cases on their merits, but simply rubber-stamped the illegal decisions of registration bodies.¹⁰¹ In a communication from February 2001, the Government replied that the facts underlying the refusal to register these primary organizations stemmed from their failure to present information confirming the existence of a legal address (providing the location of their executive bodies). In particular, the Government noted that a basic conflict arose when trade unions wished to indicate the address of the premises made available to them by the employer as a legal address, whereas the employer had no obligation in this respect. This matter was settled rather by negotiation between the parties, on a voluntary basis. The Government stated, however, that in the absence of an agreement with the employer, the trade unions could present the registration body with an address of corresponding premises located outside the enterprise and were therefore not completely dependent on the employer to obtain a legal address required for state registration.¹⁰²

⁹⁸ 324th Report, *op. cit.*, note 81, para. 144.

⁹⁹ *Id.*, para. 181.

¹⁰⁰ *Id.*, para. 202

¹⁰¹ 325th Report, *op. cit.*, note 81, paras. 125 and 126.

¹⁰² *Id.*, para. 138.

239. The CFA noted with regret that the Government had not provided any information to demonstrate that progress has been made in respect of the measures envisaged to eliminate the obstacles to registration caused by the legal address requirement and that it had not provided the information requested concerning the status of the organizations that had been denied registration. It urged the Government to take steps to eliminate the obstacles to registration caused by the legal address requirement and to provide detailed information on the status of the requests for registration made by the organizations listed in the complaint.¹⁰³
240. In its communication of May 2001, the complainants added that two of the BFTU sub-organizational structures, Mogilev Automobile Plant and OAO 'Ekran' ('Ekran' enterprise), had been denied registration because they had carried out unauthorized picketing and the organization of workers at the enterprise 'Samana Plus' was refused registration because the legal address given was that of an owner of a residential building. Furthermore, the decision of the court of the Leninski region ordering the Executive Committee of Grodno to register the BFTU local organization of workers of Grodno 'Khimvolokno' enterprise had not been implemented and its leaders, Mr. Parfinovich and Mr. Liasotski, had been dismissed.¹⁰⁴
241. In October 2001, the Government reiterated its intentions to amend Presidential Decree No. 2 so as to eliminate the obstacles to registration caused by the requirement of the legal address and to repeal the provision requiring ten per cent minimum membership at the enterprise level. It also indicated that local organizations at 'Naftan' enterprise (Novopolotsk) and at 'Zenit' Plant had been registered in May and August 2000, respectively.¹⁰⁵
242. Subsequently, in September 2003, the BFTU transmitted a new list of 31 primary level organizations that had still not been registered. The Government, however, stated that, to date, 20,197 primary-level organizations had been registered and there had only been 59 cases of refusal to register a primary-level organization since the promulgation of the Decree.¹⁰⁶ It provided no information on the measures envisaged to amend the Decree or facilitate the registration of those primary level organizations listed in the complaint.

B. Obstruction of check-off facilities and interference in trade union financial affairs

243. The first complaints concerning interference in the transfer of trade union dues go back to early 2001 when the complainants referred to Instructions issued by the Presidential Administration in January 2001, which set out, among others, that: the Council of Ministers, provincial executive committees and the Minsk Municipal Executive Committee should ensure that, when collective agreements were concluded for 2001, efforts were intensified to speed up the transition to contract-based labour relations *and to resolve the issue of the inappropriateness of*

¹⁰³ *Id.*, para. 156.

¹⁰⁴ 326th Report, *op. cit.*, note 81, para. 217.

¹⁰⁵ *Id.*, para. 233.

¹⁰⁶ 332nd Report, *op. cit.*, note 81, para. 330.

*transferring a proportion of trade union dues to higher level trade union structures.*¹⁰⁷ On this question, the Government transmitted a Constitutional Court ruling of 21 February 2001 in reply to a citizen's appeal, which reaffirmed the constitutionality of the deduction of trade union membership dues from a worker's wages through non-cash payment to trade union accounts where a written application had been submitted by the worker for such payment, but added that, in the absence of an express application, deductions from wages were illegal.¹⁰⁸ The Government further stated that section 27 of the Act on trade unions provided that the sources and procedures for forming and using the resources of trade union budgets were defined by the by-laws of the unions.¹⁰⁹

244. The CFA noted that the Instruction to intensify efforts to “resolve the issue of the inappropriateness of transferring a proportion of trade union dues to higher level trade union structures” coincided with the allegations made by several of the complainants of delays in the transfer of trade union dues to their organizations and with the “citizen appeal” to the Constitutional Court on the procedure for the transfer of trade union dues.

1. *Non-transfer of union dues*

245. As concerns the actual cases of non-transfer, the District Prosecutor investigating the case of the newly created union at the ‘Tsvetotron’ Plant observed in his report that 725,158 roubles had not been transmitted to the REWU, despite the fact that such transfers had been provided for in the collective agreement. The AAMWU referred to the withholding of trade union dues amounting at the end of March to nearly 300 million roubles. The ASWU also referred to significant delays in the transfer of union dues. The CFA expressed its deep concern that, within the context of significant delays in the transfer of dues, the Presidential Instructions of January 2001 called into question the appropriateness of such transfers. It requested the Government to establish, as a matter of urgency, an independent investigation into the claims of delayed transfer of union dues made by the complainants and to take the necessary measures to ensure the payment of any dues owed.¹¹⁰

2. *Withdrawal of check-off facilities*

246. Later, in December 2001, the Council of Ministers ordered the withdrawal of check-off facilities by Ministerial Edict No. 1804 on measures to protect the rights of trade union members. Edict No. 1804 provided that the payment of trade union membership dues should be undertaken by trade union members personally, without deducting the fees from their salaries, thus ending a long history of the use of check-off facilities to pay union dues. Violations were to be sanctioned under the law. The Constitutional Court determined that this Decree was constitutional on the basis of existing legislation and then in October 2002, the Government replied

¹⁰⁷ 325th Report, *op. cit.*, note 81, para. 130.

¹⁰⁸ *Id.*, paras. 160 and 165.

¹⁰⁹ *Id.*, para. 144.

¹¹⁰ *Id.*, para. 165.

to the allegations indicating that these facilities had been restored by Ministerial Edict No. 1282 of 12 October 2002.¹¹¹

247. The CFA deeply regretted that the initial decision to stop check-off facilities – purportedly made to protect the rights of unions and their members – was issued without any consultation with the social partners concerned, despite the dramatic effect it was likely to have on the functioning of trade unions. Furthermore, in the light of the complainants’ allegations that check-off facilities had already been reintroduced in respect of management-controlled unions prior to the issuance of Ministerial Edict No. 1282 and that these facilities were restored by this Order only following a change in the trade union leadership, the CFA queried whether the real intentions on the part of the Government had not rather been aimed at weakening a trade union movement that it held in disfavour at the time. Under these circumstances, the CFA condemned the manipulation of the trade union movement apparently intended by the issuance of Edict No. 1804 terminating check-off facilities, which were then restored once the leadership of the FPB had changed.¹¹²

3. *Freezing of union accounts*

248. The allegations had also referred to the freezing of the FPB bank accounts in September 2000 just prior to their annual congress. In reply, the Government stated that the tax authorities had discovered a number of violations when auditing the financial and economic activity of the FPB and its structural units. The CFA noted with regret that, rather than informing the FPB of the violations discovered and any eventual fines, as well as the possibility of appealing any relevant orders, the Government immediately opted for freezing the union's bank accounts, just prior to their annual congress. While noting that, according to the Government, all frozen bank accounts had been fully restored to the FPB, the CFA requested the Government to avoid having recourse to such measures in the future.¹¹³

III. External interference in trade union activities

A. Presidential instructions and orders

249. The allegations of Government interference in internal trade union affairs have as their root several Instructions issued by the Presidential Administration (hereinafter, Presidential Instructions) calling upon a number of ministries to become involved in union affairs. These Instructions were then reported to take form in the reality of trade union day-to-day life.
250. In particular, the **Presidential Instructions of February 2000** called upon the ministers and chairs of government committees to interfere in the elections of branch trade unions, their congresses, as well as the FPB Congress. In particular, a text of the instructions provided by the complainants set out a list of measures to be

¹¹¹ 329th Report, *op. cit.*, note 81, para. 263.

¹¹² *Id.*, para. 266.

¹¹³ 324th Report, *op. cit.*, note 81, para. 207

taken by government officials, including: 1) the ministers and chairpersons of government committees should submit personally to the Presidential Administration proposals for candidates who they should recommend and support to be elected as leaders of branch trade unions at their republican congresses; 2) turning the attention of the Minister of Industry of the Republic of Belarus to the necessity for more active personal participation in the election process of branch trade unions, the fulfilment of the current tasks, the collaboration with the branch unions during the preparation of their republican congresses and the congress of the FPB and; 3) the chairperson of the State Committee on Aviation should take necessary steps to improve the interaction with the branch trade union organizations with a view to their preparation for their republican congress and the elections of delegates to the FPB Congress and examine the possibility of broadening the branch trade union of the aviation workers through the incorporation of the BTUATC. In case of necessity, he should take the appropriate measures and the results should be reported to the Presidential Administration.¹¹⁴

- 251.** In March 2001, the CFA noted that the Government did not deny that Instructions had been issued by the President and appeared to acknowledge that they had when it told the preliminary contacts mission of October 2000 that the Instructions were no longer relevant since the elections had taken place and the union-favoured candidates had won.¹¹⁵ Later in May 2001, the Government stated that the format of the document attached to the complaint was not a copy of a document issued by the Administration. No documents of that kind had been received by the Ministry of Labour therefore it was not necessary to comment on the information that had not been confirmed.¹¹⁶
- 252.** The CFA concluded that these Presidential Instructions constituted a serious interference in the internal affairs of trade unions. The CFA urged the Government to take the necessary measures to ensure that such interference would not occur in the future, including through the revocation of the relevant instructions and, if necessary, by issuing clear and precise instructions to relevant authorities that interference in the internal affairs of trade unions would not be tolerated.¹¹⁷
- 253.** Additional allegations were later made concerning **Presidential Instructions issued in January 2001** which: 1) called upon the Ministries of Justice, Labour and Industry to draw up provisions relating to the establishment of other worker representative bodies, such as works councils, and indicated that no general agreement should be signed until the adoption of such amendments; 2) called for intensified efforts to speed up the transition to contract-based labour relations and to resolve the issue of the inappropriateness of transferring a proportion of trade union dues to higher level trade union structures and; 3) referred to the need to intensify efforts to establish a municipal trade union council in Minsk. The Government provided specific information on its position on what actually was occurring in respect of each one of these points without denying the existence of

¹¹⁴ *Id.*, para. 149.

¹¹⁵ *Id.*, para. 203.

¹¹⁶ 326th Report, *op. cit.*, note 81, para. 228.

¹¹⁷ 324th Report, *op. cit.*, note 81, para. 206.

the Instructions. The CFA expressed its deep concern, not so much for the substance of the issues raised in the Instructions, but rather for the mere fact that such matters should be the subject of Presidential Instructions, particularly in the light of the general climate of industrial relations in the country since the submission of the complaint. The CFA once again urged the Government immediately to ensure a stop to government interference into the internal affairs of trade unions and to give serious consideration to the need to issue clear and precise instructions to all relevant authorities that interference in the internal affairs of trade unions would not be tolerated.¹¹⁸

B. Government interference in trade union elections and attempts to remove trade union leaders

1. FPB

- 254.** In July 2002, the complainants' alleged that the FPB began to break apart under the pressure of the various actions taken such as, Edict No. 1804, which prohibited automatic transfer of trade union dues, the establishment of "tame" or "management" trade unions at industrial plants (for example, new "management" unions had been established at the Minsk Automobile Plant, the Mogilev Automobile Plant, the Minsk Computer Combine ('KBTEM ONO'), etc.) and the launching of a campaign (linked to the Presidential Administration) in May 2001 to create new regional trade unions which would not be affiliated to the FPB.
- 255.** The complainants then alleged that the Government changed its tactics for undermining the FPB. They stated that the chairperson of the Mogilev Regional Association of Trade Unions had met with the head of the Presidential Administration to work out proposals for replacing the FPB leadership and on 2 July 2002, President Lukashenko decided to appoint the deputy head of the Presidential Administration, Mr. Kozik, to the post of chairperson of the FPB.¹¹⁹
- 256.** According to the complainants, the entire campaign was directed by the Presidential Administration, which also held talks with Mr. Vitko, the then chairperson of the FPB. Members of the FPB Council were subjected to administrative pressure before the plenary. The municipal and regional authorities and enterprise management demanded that Mr. Kozik be put forward and elected at the plenary. Council members were summoned to attend municipal and regional executive committees and meetings with representatives of relevant industry ministries. Management threatened them with dismissal if they failed to vote for Mr. Kozik. The same treatment was experienced by other trade union activists and even the state-run press regarded Mr. Kozik's election to the presidency of the FPB as an appointment by President Lukashenko. Mr. Kozik won a formal majority of votes at the FPB plenary and was thus confirmed as chairperson. Mr. Vitko "voluntarily" resigned.¹²⁰

¹¹⁸ 325th Report, *op. cit.*, note 81, paras. 162 and 164.

¹¹⁹ 329th Report, *op. cit.*, note 81, paras. 229-231.

¹²⁰ *Id.*, paras. 232 and 233.

257. The Government stated that it did not interfere in these matters relating to internal trade union democracy and trade union elections. Any shift in the balance of power within trade unions with the effect of the advancement of some trade union officers and the removal of others resulted in some being dissatisfied. The legal framework in Belarus afforded the necessary opportunities for rank and file trade union members and their leaders to defend their rights, including the rights to apply to the judicial and other competent bodies. The recent elections in the FPB took place openly and publicly. The results of the presidium of the FPB and its subsequent plenary session, at which Mr. Vitko retired and Mr. Kozik was elected chairperson of the FPB, were widely publicized. The plenary session was open to representatives of the state authorities, public organizations and the press and the election took place in accordance with the FPB's by-laws.¹²¹
258. The CFA noted the speech made by the President of Belarus to the FPB Congress in September (when Mr. Kozik's election was confirmed) wherein he referred to his support for the new chairperson. Criticizing trade union activities in the recent past, the President suggested that those who had been unsuccessful should just simply leave and added that he had passed over materials for societal control to Mr. Kozik, suggesting that the federation should take over the role of the former party organizations that were responsible for discipline. The CFA recalled that any interference by the authorities and the political party in power concerning the presidency of the central trade union organization in a country was incompatible with the right to elect representatives in full freedom. When the authorities intervened during the election proceedings of a union, expressing their opinion of the candidates and the consequences of elections, this seriously challenged the principle that trade union organizations had the right to elect their representatives in full freedom.
259. In light of the above, the CFA concluded that there had been undue interference by the public authorities in recent trade union elections in Belarus and strongly urged the Government to institute an independent investigation immediately into these allegations with the aim of rectifying any effects of this interference, including, if necessary, the holding of new elections in circumstances where an independent body with the confidence of the workers concerned could ensure that there would be no interference, pressure or intimidation by the public authorities.¹²²
260. The CFA expressed its deep concern at the apparent confusion of roles demonstrated by the new FPB chairperson's activities on national and international commissions with widespread political implications which could not be considered as directly affecting the fundamental mission of the trade union movement to promote the economic and social advancement of workers and which might seriously compromise the independence of that movement. Moreover, the CFA considered that the statement made by the President of Belarus suggesting that the FPB should take over the role of the former party organizations responsible for discipline represented a clear attempt to transform the trade union movement into an instrument for the furtherance of its political aims. It therefore urged the

¹²¹ *Id.*, paras. 258 and 259.

¹²² *Id.*, paras. 273 and 274.

Government to refrain from any further such attempts in the future so that the Belarus trade union movement might act in full freedom and independence.¹²³

- 261.** The CFA further noted with deep concern the allegations of interference in regional trade union elections, including the removal of Mr. Kovsh, chairperson of the Brest Regional Committee of Science and Education Unions and Mr. Mirochnik, chairperson of the Brest Regional Association of Trade Unions, the former having been replaced by a government official.¹²⁴
- 262.** In September 2003, the Government confined itself to reiterating the technical details of the resignation of Mr. Vitko and the statutory election of Mr. Kozik, without addressing any of the issues raised in the allegations concerning the circumstances of this election and the impact of government interference in this process, nor did it indicate the steps taken to institute an independent investigation.¹²⁵ Additional allegations followed about continuing government interference in respect of other trade union organizations. In the light of all these allegations, the CFA was obliged to conclude that the Government had not had any real intention to have these extremely serious allegations investigated by independent persons having the confidence of all the parties concerned. It once again urged the Government to have the allegations so investigated.¹²⁶

2. *REWU and AAMWU*

- 263.** The complainants alleged that several attempts had been made in 2002-2003 by the new chairperson of the FPB to remove the chairpersons of the REWU and the AAMWU, Mr. Fedynich and Mr. Bukhvostov. In particular, the complainants stated that a decision had been taken by the FPB presidium to apply to the union executive bodies to remove Mr. Bukhvostov because of his connections with the complaint before the ILO. While the FPB chairperson had demanded that the question of Mr. Bukhvostov's position be placed on the agenda of the AAMWU plenary conference, the council members voted for the removal of this point from the agenda.¹²⁷
- 264.** According to the complainants, a decision was also taken to this end by the FPB presidium in respect of REWU, instructing first-level organizations of the REWU to hold an extraordinary congress in order to replace Mr. Fedynich. Moreover, the Deputy Minister of Industry visited enterprises in Vitebsk and Minsk in order to pressure the trade union committees and their representatives in this regard.¹²⁸ The REWU recalled in this respect that the Third Plenary Session of the Republican Council of Trade Unions, held on 19 December 2002, featured an agenda item on the follow-up to decisions taken on the defence of the socio-economic rights and interests of workers in the branch and the strengthening of the trade union's organizational unity, aimed at ousting Mr. Fedynich. The Deputy Minister of

¹²³ *Id.*, para. 275.

¹²⁴ *Id.*, paras. 270-272

¹²⁵ 332nd Report, *op.cit.*, note 81, para. 345.

¹²⁶ *Id.*, para. 352.

¹²⁷ *Id.*, para. 313.

¹²⁸ *Id.*, para. 307.

Industry participated in the plenary session. In response to the pressure that had been brought to bear on the members of the Republican Council representing the trade union committees, Mr. Fedynich made a motion to add an item to the agenda on “Confidence in G. Fedynich, chairperson of the REWU” and to hold a secret ballot. The plenary session approved the motion, despite the interventions by Mr. Kozik and the Deputy Minister, by 49 in favour and only one vote against. It was decided at that time not to convene an extraordinary congress of the REWU until Mr. Fedynich’s term expired in September 2005.¹²⁹

- 265.** The complainants later stated that, on 27 March 2003, at an ongoing seminar of senior officials and local authorities on improving ideological work, the President of Belarus made a report in which the Minister of Industry was given two months to solve the problem posed by the leaders of these two branch unions, Mr. Bukhvostov and Mr. Fedynich, describing them as belonging to the opposition, which was irreconcilably hostile to the State. Mr. Kozik was said to have added that these two leaders were not prepared to discharge their main obligation – trade union work - and that they were actively opposed to society and the FPB.¹³⁰
- 266.** The CFA deplored the allegation of attempts to remove the chairpersons of REWU and AAMWU at the end of 2002 because of their association with the complaint and the allegation of direct orders from the President of Belarus in March 2003 for the Minister of Industry to take the necessary measures to deal with the problem posed by these two chairpersons. The CFA noted with regret that the Government provided no information concerning these orders, not even to deny their existence.¹³¹

(a) The creation of the Belarus Industry Workers’ Union (BIWU)

- 267.** The complainants further pointed out that, shortly after these attempts to remove Mr. Bukhvostov and Mr. Fedynich from their trade union posts, the FPB together with the Ministry of Industry held the constituent general assembly of the Belarussian Industry Workers’ Union (BIWU) in May, barring admittance to members of the REWU and the AAMWU. The complainants added that the Ministry of Industry had sent telegrams to various undertakings ordering directors and union committee chairpersons to attend the constituent general assembly of the BIWU. The complainants considered that the creation of the BIWU was aimed purely at making these two organizations subordinate to the existing power structures. They added that, following the creation of the BIWU, the Deputy Minister of Industry visited a number of enterprises to coerce them into transferring their affiliation to the BIWU.¹³²
- 268.** The Government however maintained that the idea of establishing a trade union of industrial workers was not a new one and had actually been initially suggested in 2000 and had not at that time been opposed by either Mr. Fedynich or Mr.

¹²⁹ *Id.*, para. 308.

¹³⁰ *Id.*, para. 309.

¹³¹ *Id.*, para. 347.

¹³² *Id.*, paras. 310-313.

Bukhvostov. However, at that time, the leaders of the industrial trade unions could not work out a common position on the mechanism of association. The National Industrial Trade Union of Automobile and Appliance Machinery Workers played the most active role in the creation of the new union, the BIWU, which was established on 28 May 2003, with affiliation from this trade union, as well as from other trade unions that were not affiliated to other national industrial unions, such as the trade unions of the Minsk Automobile Plant, 'Atlant', the Belarussian Metallurgical Plant of Jlobin, the regional trade union 'Integral' and others.¹³³

- 269.** The CFA observed, however, that the BIWU was made up of certain unions which had broken off from the REWU and the AAMWU and about which allegations of interference had been made earlier, resulting in the CFA requesting at the time the establishment of an independent investigation into, in particular, the creation of a new regional trade union for workers at the 'Integral' Research and Production Association and the disaffiliation from the REWU of the primary trade union organization at the 'Tsvetotron' Plant in Brest. As regards these break-off unions, the Government continued to refer in September 2003 to the free choice of workers to form new trade unions, yet had still not indicated any measures envisaged to establish an independent investigation into the circumstances surrounding this choice, which had been called into question at the time by the district prosecutor in respect of the 'Tsvetotron' Plant.¹³⁴ The CFA stressed the need to take steps immediately at the highest level to call a halt to the continuing pressure and interference by various ministries and enterprise directors in respect of the leaders and members of the AAMWU and the REWU.¹³⁵

3. ASWU

- 270.** The complainants alleged that, upon instructions from the Presidential Administration, the plenum of the Council of the ASWU discharged Mr. Yaroshuk from the post of chairperson. This was done in gross violation of the Statute of the ASWU, according to which a chairperson is elected to and discharged from the post only by the Trade Union Congress. In further violation of the Statute, a new chairperson, director of the Department of the Ministry of Agriculture, Mr. Samasyuk, was elected at the plenum of the Council, upon the recommendation of the Minister of the Agrarian and Industrial Complex.¹³⁶
- 271.** The CFA strongly urged the Government to institute an independent investigation immediately into these allegations with the aim of rectifying any effects of this interference, including, if necessary, the holding of new elections in circumstances where an independent body with the confidence of the workers concerned could ensure that there would be no interference, pressure or intimidation by the public authorities.¹³⁷

¹³³ *Id.*, para. 339.

¹³⁴ *Id.*, para. 348.

¹³⁵ *Id.*, para. 352.

¹³⁶ 329th Report, *op.cit.*, note 81, para. 238.

¹³⁷ *Id.*, para. 274.

272. In reply, the Government indicated that Mr. Yaroshuk was released from his post at the Committee's plenary sitting on 10 September 2002 with 34 persons voting for, one against and five abstentions. Since the union by-laws did not provide for the procedure of election of the chairperson or other trade union leaders in between the congresses, during this plenum, the question of interpretation of the trade union by-laws was also examined. The plenum decided that, according to normal practice, the election and destitution of the chairperson of the Republican Committee of the Union should be decided by the National Committee itself (43 persons voted for such an interpretation while two voted against). Later on 26 March 2003, Mr. Naumchik was elected chairperson of the Committee during the plenary.¹³⁸
273. Noting that no steps had been taken to begin an independent investigation into the allegations of interference in the ASWU elections, the CFA once again urged the Government to establish an independent investigation into these allegations and to rectify all effects of the interference.¹³⁹

C. Government interference in the trade union structure – MRTUECS

274. The complainants alleged that, in October 2002, the Steering Committee of the Ministry of Culture and of the Minsk Municipal Executive Committee issued Decision No. 10/1497 referring to the "orders of the President of Belarus at the IVth Special Assembly of the FPB on 19 September 2002" and requiring that the FPB create the united Minsk municipal trade union organization of the employees of the cultural sphere. The decision further read that the first deputy Minister of Culture and the deputy chair of the Minsk Municipal Executive Committee were responsible for its implementation. The complainants added that this decision was fully supported by the chairperson of the FPB in a letter dated 9 December 2002 and attempts had been made to dismiss the chairperson of the MRTUECS.¹⁴⁰
275. On 24 December 2002, the IIIrd plenary session of the MRTUECS confirmed the consolidation of its ranks and adopted a resolution criticizing the interference by the state authorities and the FPB leadership in its internal affairs. Further attempts were being made by the state and local authorities and the FPB to create an artificial organization to interfere with the MRTUECS, contrary to the principles of democracy, transparency and the relevant union by-laws.¹⁴¹
276. The CFA noted with deep concern the allegations of a decision issued by the Ministry of Culture referring to the "orders" of the President of Belarus at the FPB special assembly implying the creation of a united Minsk municipal trade union organization of the employees of the cultural sphere and recalled its previous conclusions that certain declarations in the speech of the President of Belarus to the FPB Congress in September 2002 represented a clear attempt to transform the trade union movement into an instrument for the pursuance of political aims. It appeared from the issuance of the above-mentioned decision by the Ministry of Culture that,

¹³⁸ 331st Report, *op. cit.*, note 81, para. 216; 332nd Report, *op. cit.*, note 81, para. 335.

¹³⁹ 332nd Report, *id.*, para. 352.

¹⁴⁰ 331st Report, *op. cit.*, note 81, para. 142.

¹⁴¹ *Id.*, para. 143.

regrettably, the Government had not heeded the CFA's call to refrain from further such attempts so that the trade union movement might act in full freedom and independence. The CFA thus urged the Government to institute independent investigations into the claims that state and local authorities had interfered with the MRTUECS and to take all necessary measures to ensure that this organization was protected from such interference in the future.¹⁴²

277. Subsequently, the Government replied that Mr. Mamonko was a chairperson of one of the trade union units of the Minsk district regional organization of employees of the cultural sphere and not of an independent trade union. Many industrial trade union organizations had district and Minsk city organizations in their structures. The decision to establish a unit belonged to the executive body of the trade union. The Minsk city trade union organization of employees of the cultural sphere was established by decision of the presidium of the National Committee of the trade union according to its by-laws. Mr. Mamonko participated in the work of the presidium, where he argued against the creation of the Minsk city trade union, however, the members of the presidium did not support him. The Government points out that the establishment of the Minsk city organization did not result in the liquidation of the Minsk district organization, and Mr. Mamonko was still the chairperson. The Government supplied a copy of the decision of the presidium of the National Committee of Belarus Trade Union of Employees of the Cultural Sphere, as well as its organizational chart.¹⁴³

278. The CFA, noting that the Government had made no indication that an independent investigation had been undertaken to look into these matters and observing the additional allegations made by the MRTUECS chairperson of government interference in internal union affairs, requested the Government once again to have these allegations investigated by independent persons having the confidence of all the parties concerned and to take steps immediately at the highest level to call a halt to the continuing interference in respect of this organization.¹⁴⁴

D. Dissolution of a trade union – BTUATC

279. In February 2003, the complainants alleged that, the State Committee for Aviation and the 'Belaeronavigatsia' enterprise started violating international law and national legislation in respect of the BTUATC in 2002. For example, when trade union members went through the rating procedure (increase of professional level) the officials of the State Committee asked whether the candidate was a member of the BTUATC and criticized the activity of the union. In October 2002, a representative of the State Committee for Aviation suggested that the leadership of the BTUATC should consider integrating into the existing trade union of aviation workers (affiliated to the FPB); this would have implied liquidation of the BTUATC. The BTUATC made numerous attempts to integrate into the trade union of aviation workers, while nevertheless preserving their legal status, but these attempts failed. The trade union members then decided to join the CDTU. After

¹⁴² *Id.*, paras. 161 and 162.

¹⁴³ 332nd Report, *op.cit.*, note 81, para. 337.

¹⁴⁴ *Id.*, paras. 349-352.

that, the employer made several attempts at liquidating the union. In a number of subdivisions of the enterprise, meetings were held where the heads of these subdivisions convinced the workers that it was impractical to be a member of the BTUATC. Moreover, applications for leaving the union were often written and signed by workers in the office of the head of the corresponding subdivision. For three months the employer did not observe the legislation and the general agreement on transferring trade union dues to the account of the trade union organization, thus seriously impeding the financial activities of the union. Moreover, in June 2002, the administration of the Centre for Flight Coordination did not renew three trade union members who had formed a primary organization of the BTUATC when their contracts expired.¹⁴⁵

- 280.** In November 2003, the CFA noted that, despite its earlier request to the Government to investigate these allegations, the BTUATC had since been dissolved by the Supreme Court. The Government's reply made no indication that measures were being taken for an independent investigation into BTUATC's allegations that their members were being harassed to resign from the union, but simply related that the membership of the union had declined to a point where it was no longer representative at the national level. The CFA observed that no efforts appeared to have been made either by the Prosecutor-General who requested their dissolution, or by the Supreme Court who ordered it, to investigate the BTUATC's allegations that members were leaving the organization only because of the pressure and intimidation placed upon them by their employer and the chairperson of the State Committee on Aviation. In this respect, the CFA deplored the terms of the letter of the chairperson of the State Committee on Aviation to the Minister of Justice in July 2003, which called into question the very fundamental right to form free and independent trade unions and linked the request for the dissolution of the BTUATC to demands made by the President of Belarus.¹⁴⁶ The CFA stressed the need to take steps immediately at the highest level to call a halt to the continuing pressure and interference by various ministries and enterprise directors in respect of the leaders and members of the BTUATC.¹⁴⁷

IV. Harassment, retaliatory acts, arrests and detention

A. Arrests

- 281.** The CFA noted with deep regret that, just one week after the ILO mission in September 2003, the chairperson of the CDTU, Mr. Yaroshuk, was sentenced to ten days' administrative detention for "showing disrespect for the Supreme Court" because he had published a newspaper article criticizing the Supreme Court ruling that dissolved the BTUATC. The CFA recalled that the right to express opinions through the press or otherwise was an essential aspect of trade union rights and called upon the Government to take all necessary measures to ensure that trade

¹⁴⁵ 331st Report, *op.cit.*, note 81, paras. 133-135 and 137.

¹⁴⁶ 332nd Report, *op.cit.*, note 81, paras. 349 and 350.

¹⁴⁷ *Id.*, para. 352.

union leaders could fully exercise their freedom of expression in the future, without fear of reprisal.¹⁴⁸

282. It further observed with deep regret and concern that this was not the only occasion on which recourse was had to administrative detention in respect of trade unionists and leaders. It condemned in this respect the ten-day detention of Mr. Bukhvostov, chairperson of the AAMWU, on 31 October 2003, and the five-day detention of Mr. Odynets, lawyer of the CDTU, on 17 October 2003. The CFA urged the Government to take all necessary measures to ensure in the future that trade unionists were not subjected to detention for the exercise of their fundamental rights of freedom of association.¹⁴⁹

B. Anti-union discrimination and dismissals

283. The CFA examined three specific cases of alleged dismissal related to trade union activity: Mr. Evmenov, Mr. Bougrov and Mr. Evgenov.
284. In respect of Mr. Evmenov, chairperson of the local BFTU organization at OAO Oktyabr ('Oktyabr' Glassworks), the Government indicated that his dismissal was in no way connected with his membership in the BFTU. According to Order 230 of 13 December 1999, Mr. Evmenov was dismissed for systematic non-fulfilment of the duties of his job. In 1999, Mr. Evmenov had been disciplined and denied bonuses several times: Order 78 of 26 April 1999 - a strict reprimand with a 50 per cent bonus cut for a failure to ensure the participation of the department's workforce in a "subbotnik" (unpaid voluntary labour on Saturday) (this Order was appealed against and the appeal was rejected by the courts); Order 166 of 27 August 1999 - reprimand for insufficient control over the workforce activities; Order 241 of 29 October 1999 - rebuke for violation of regulations concerning the operation of high-risk facilities; Order 268 of 25 November 1999 - a reprimand with a 25 per cent bonus cut for non-efficient use of electricity. Subsequent appeals were rejected and on 6 September 2000, the Supreme Court considered this issue and left the previous rulings unchanged.¹⁵⁰ The CFA considered that the information provided gave rise to a strong presumption that Mr. Evmenov was dismissed for the exercise of legitimate trade union activities and requested the Government to take the necessary measures to ensure that he was reinstated in his post with full compensation for any lost wages and benefits.¹⁵¹
285. The complainants subsequently alleged that, since his dismissal in January 2000, Mr. Evmenov was still unemployed. In 2002, he applied directly to the chairperson of the Osipovich District Executive Committee with a demand to implement the ILO recommendation for his reinstatement and compensation of all lost income but only received a cynical reply that due to his negative professional references all enterprises and institutions of the town refused to employ him. In October 2002, he managed to obtain temporary employment but was subsequently dismissed. It was

¹⁴⁸ *Id.*, para. 354.

¹⁴⁹ *Id.*, para. 355.

¹⁵⁰ 324th Report, *op.cit.*, note 81, paras. 176-177.

¹⁵¹ *Id.*, para. 212.

reportedly stated that the competent authorities were commissioned to find out who had helped him obtain employment, even if temporary.¹⁵²

- 286.** In reply, the Government recalled that Mr. Evmenov was not dismissed for failure to organize a “subbotnik” in April 1999 but for failure to assume the responsibilities imposed on him by his labour contract and added that according to the investigation by the labour inspectorate, Mr. Evmenov had been hired by the ‘Rayservice’ enterprise of Ossipovichi for a short-term contract. At the end of his contract, he was dismissed.¹⁵³ The CFA noted that the Government limited itself to stating that he had a short-term contract and therefore it was normal that his contract would come to an end, but did not appear to have actually investigated the allegations of anti-union discrimination and blacklisting of this trade unionist. It once again urged the Government to take the necessary measures to ensure his reinstatement.¹⁵⁴
- 287.** As concerns Mr. Bougrov, chairperson of the Mogilev Automobile Plant Free Trade Union, the complainants stated that he was dismissed for refusing to work on a non-work day, while the Government indicated that, like Mr. Evmenov, his dismissal was related to violation of labour discipline (absenteeism). No violation of the legislation by the plant’s management had been established and this was confirmed by the decision of the Oktyabrsky district court in Mogilev and the Mogilev regional court.¹⁵⁵ The CFA noted from the court judgement in this case, that Mr. Bougrov had been dismissed for being absent from work one day, a day which he contested was a non-workday. The CFA recalled that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection was particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The CFA could not accept that the failure to work on a non-workday should be considered a breach of labour discipline and urged the Government to take the necessary measures to ensure that he was reinstated in his post with full compensation for any lost wages and benefits.¹⁵⁶
- 288.** The complainants also alleged that Mr. Evgenov was dismissed from the Mogilev Automobile Plant (same enterprise as Mr. Bougrov) for refusal to work on his day off. The CFA requested the Government to investigate the circumstances surrounding his dismissal and if it was found that he was dismissed for not working on the “subbotnik”, or for any other reason related to his trade union activity, to ensure that he was reinstated in his post with full compensation for any lost wages and benefits.¹⁵⁷ In reply, the Government merely stated that it had already set out its position in detail on the dismissal of these three individuals in earlier comments.

¹⁵² 331st Report, *op.cit.*, note 81, para. 128.

¹⁵³ 332nd Report, *op.cit.*, note 81, para. 341.

¹⁵⁴ *Id.*, para. 356.

¹⁵⁵ 325th Report, *op.cit.*, note 81, paras. 127 and 140.

¹⁵⁶ *Id.*, paras. 175-177.

¹⁵⁷ 329th Report, *op.cit.*, note 81, paras. 224 and 276.

They were all dismissed in accordance with the legislation and this was confirmed on a number of occasions by the courts.¹⁵⁸ In the absence of any specific information from the Government on the reasons for Mr. Evgenov's dismissal, the CFA requested the Government to take the necessary measures for his reinstatement.¹⁵⁹

C. Additional allegations of anti-union discrimination at the enterprise and management pressure and harassment of trade union members

- 289.** The Government never responded to the CFA's requests for information on the alleged refusal by the Minsk Automobile Plant to re-employ Mr. Marinich following the expiration of his term as officer of the Free Trade Union of Metalworkers at the Plant.¹⁶⁰
- 290.** As concerns allegations of pressure and harassment of members of the 'Khimvolokno' enterprise and 'Zenit' Plant Free Trade Unions to leave these unions, the CFA noted the Government's reiteration that there was no evidence to support these allegations and that no workers had been dismissed at these plants. The CFA regretted that no information had been provided on the measures taken to institute independent investigations into these allegations, despite the documents attesting to such pressure that had been transmitted by the complainant (including allegations of anti-union tactics carried out by the enterprises in the form of bribes offered to union members to encourage their withdrawal from the union and the presentation of statements of resignation to workers). The CFA reiterated its request for an independent investigation into these allegations.¹⁶¹ Subsequently, the Government indicated that no workers had been dismissed at these plants, with the exception of Mr. Popov (dismissed on 2 September 2002 due to staff reductions) and of Mr. Tcherney, the chairperson of the BFTU primary trade union organization.¹⁶²

V. Social partnership

- 291.** In May 2001, the Government maintained that the matters raised in this case should be dealt with in the framework of existing institutions for social partnership, such as the National Council for Labour and Social Issues (NCLSI) and stated that the fact that such partnership worked in the Republic was demonstrated by the General Agreement for 2001-2003, signed between the Government and the employers' and workers' organizations in May 2001.¹⁶³
- 292.** The Government indicated in January 2003 that the constructive nature of the CFA's recommendations was assisting efforts in the Republic to strengthen social

¹⁵⁸ 330th Report, *op.cit.*, note 81, para. 218.

¹⁵⁹ 329th Report, *op.cit.*, note 81, para. 276; 332nd Report, *op.cit.*, note 81, para. 356.

¹⁶⁰ 324th Report, *op.cit.*, note 81, para. 210; 330th Report, *op.cit.*, note 81, para. 234.

¹⁶¹ 330th Report, *id.*, para. 232.

¹⁶² 332nd Report, *op.cit.*, note 81, para. 342.

¹⁶³ 326th Report, *op.cit.*, note 81, para. 223.

dialogue and promote the development of social partnership. The Government was considering questions relating to trade union registration and proposals for improving the legislation in this area. In 2002, a number of steps had been taken to develop constructive collaboration between the Government, trade unions and employers' organizations. The Ministry of Labour and Social Protection and the social partners had formulated a set of proposals on priority areas for cooperation between Belarus and the ILO. Moreover, the NCLSI had been reactivated and a tripartite Group of Experts on the application of ILO standards established.¹⁶⁴

- 293.** The CFA requested the Government to provide information on the extent to which alternative organizations representing workers, such as those present in the complaint, might participate in the various national tripartite bodies, such as the NCLSI and the Group of Experts on issues relating to the application of international labour standards and to reply to the complainants' new allegations concerning the FPB signing of the general agreement in the fall of 2002 behind the CDTU's back.¹⁶⁵
- 294.** In a subsequent examination of this question, the CFA recalled the importance for the preservation of a country's social harmony of regular consultations with employers' and workers' representatives involving the whole trade union movement, irrespective of the philosophical or political beliefs of its leaders and urged the Government to ensure that the representative workers' organizations concerned could effectively participate in the various bodies established in the country for the promotion of social dialogue.¹⁶⁶
- 295.** In September 2003, the Government stated that a seat on the NCLSI was held for the CDTU, despite the fact that the Congress only represented 4,000 members. However, the Government did acknowledge that the CDTU had not participated in the NCLSI since August 2002. The complainants alleged that, despite the Government's assurances, the chairperson of the CDTU was not allowed to attend the NCLSI meeting of 9 October 2003. The CFA urged the Government to ensure independent investigations into these allegations.¹⁶⁷

¹⁶⁴ 330th Report, *op.cit.*, note 81, para. 225.

¹⁶⁵ *Id.*, paras. 230 and 237.

¹⁶⁶ 331st Report, *op.cit.*, note 81, para. 165.

¹⁶⁷ 332nd Report, *op.cit.*, note 81, para. 353.

PART IV

ARGUMENTS AND INFORMATION OBTAINED ON THE FACTUAL MATTERS INVESTIGATED BY THE COMMISSION

- 296.** This part of the report contains an analysis of the arguments and information considered by the Commission. The information received directly by this Commission includes communications and documentation submitted by the complainants, the Government, and by a number of national workers' and employers' organizations and international workers' organizations, as well as written and oral evidence gathered during its mission to Belarus in April 2004, and statements and evidence presented during the hearings held by the Commission in April 2004. Where they refer to the records of the hearings, the footnotes give the name of the party and indicate the session number at which the evidence in question was given.

Chapter 10

Labour Legislation and its Impact on Freedom of Association

I. Introduction: Outline of Arguments

297. In the complaint, the complainants asserted that the Government had adopted and promulgated anti-union legislation and executive decrees. They highlighted, in particular, Presidential Decree No. 2 on Some Measures for Regulation of Activities of Political Parties, Trade Unions, and Other Public Associations; the Labour Code 2000; Presidential Decree No. 8 Regarding Certain Measures Aimed at Improving the Arrangement of Receiving and Using Foreign Gratuitous Aid; Presidential Decree No. 11 on Several Measures Taken to Improve the Procedure for Holding Assemblies, Rallies, Street Marches, Demonstrations and Other Mass Events and Picketing Actions; and Ministerial Edict No. 1804 About Measures to Protect the Rights of Trade Union Members. During the second session of the Commission in Minsk and Geneva, the complainants maintained that these pieces of legislation breached ILO Conventions No. 87 and No. 98, and provided further oral and written material. They argued that, despite Belarus' longstanding membership of the ILO and its commitment to international standards on the basis of Article 8 of its Constitution, many decrees and laws not only did not recognise the primacy of trade union guarantees, but in certain cases even violated international standards.¹⁶⁸

298. The Government disputed the complainants' allegations, arguing that the legislative provisions of the Republic of Belarus were in accordance with international standards. The Government also provided the Commission with oral and written material during its second session that both highlighted Belarussian legislation's consistency with international requirements concerning freedom of association, and placed the matter in an international and socio-historical context. While maintaining that Belarussian law was consistent with international norms, the Government acknowledged that improvements were possible.¹⁶⁹

II. Presidential Decree No. 2: The issue of registration

A. Outline of issue and arguments

299. The complainants stated that registration itself, as set out in Presidential Decree No. 2, was in contradiction with Convention No. 87.¹⁷⁰ It was not a simple matter of purely formal notification, but rather one by which previous authorization was

¹⁶⁸ Complainants' representatives, formal hearings, session IV.

¹⁶⁹ Government representatives, formal hearings, session IV.

¹⁷⁰ Complainants' representatives, formal hearings, session IV.

required for a trade union to function. The rules and procedures were long and complex. Presidential Decree No. 2 had led to many instances of non-registration of trade unions through the practical implications of the requirement to provide a legal address, often not a simple matter, and the ten per cent minimum membership requirement at the enterprise level. The complainants argued that, effectively, any newly established trade union that was not supportive of the Government would not be registered.¹⁷¹

- 300.** The complainants provided the Commission with details of specific cases in which registration was refused on these grounds and trade unions had not been able to enjoy the rights associated with registration. This had happened to a number of trade unions, which had often been given contradictory advice from the registration bodies on what the law actually was and the measures they needed to take to redress the situation. The judicial system also appeared somewhat obstructionist in this respect and cases where unions were finally registered were often reversed upon appeal.
- 301.** At the hearings, the Government pointed out that the registration requirement was not limited to trade unions, but applied equally to all other non-governmental bodies. A trade union could not, however, carry out its activities without registration. The Government did not believe that the registration requirement amounted to obliging trade unions to obtain previous authorization and pointed out that the Decree included Rules and Regulations which set out detailed instructions as to the requirements for registration and allowed for appeals in cases in which registration was refused, thus ensuring that registration was not granted on a discretionary basis. The Government disputed certain of the individual cases raised by the complainant, arguing that there were valid reasons why many of the organizations had not been registered.¹⁷²
- 302.** Further, the Government pointed out that registered trade unions and registered organizational structures were granted legal personality, but organizational structures could choose to be recorded rather than registered, should they not require legal personality and in this case they would not have to meet the ten per cent minimum membership requirement. In fact, 22,000 organizational structures had been registered under the Decree, and only 59 applications had been refused, usually on the basis that insufficient information had been submitted.¹⁷³
- 303.** The specific practical application of Presidential Decree No. 2 will be examined in chapter 11.

B. Legal address

- 304.** The complainants stated that the requirement for trade unions to have a legal address was not expressed explicitly in the Decree. Nevertheless, it was vigorously enforced. Attempts to create new primary organizations of the Belarussian Free

¹⁷¹ Mr. Fedynich, formal hearings, session IV.

¹⁷² Government representatives, formal hearings, session IV.

¹⁷³ Government representatives, formal hearings, session IV.

Trade Union (BFTU), for example, often failed as the trade union found it impossible to obtain the legal address required for registration. The complainants advised the Commission that a trade union would usually request a legal address from the enterprise concerned as a first step. If the enterprise would not provide a legal address, then the trade union would be forced to consider renting other premises. The price of renting premises in the private sector was, in general, too high for trade unions; government owned space, on the other hand, was often refused to them; and, under the Housing Code, private residences could not be used for other than residential purposes, such as the legal address for a trade union. These factors combined to leave the trade unions with very few options for registration. This was particularly so as cases existed where even trade unions with premises were unable to have those premises certified as a legal address.¹⁷⁴

- 305.** Representatives of the Ministry of Justice who met with the Commission in Minsk explained that in addition to Decree No. 2, certain general pieces of legislation were relevant in this area. The first was the Housing Code, s. 8(1) of which stated that habitable premises could only be used for residential purposes. Other uses were possible only with the permission of the local executive and administrative authorities (s. 8(4)). This meant that residential properties could not be used as a legal address for a trade union; only uninhabitable premises could be used as a legal address. In addition, Presidential Decree No. 439 set out the uses to which state property might be put.
- 306.** The issue of what exactly could be used as a legal address was raised during discussions with the Commission in Minsk. The complainants pointed to an earlier letter from the Ministry of Justice to the BFTU dated 13 December 1999, in which it had been stated that a garage was presumably suitable for a legal address. In contrast, the Ministry of Justice confirmed that a garage could not be a legal address for a trade union, as the premises would have to be of a sort that could be reasonably used as a headquarters for the legal person. Actual physical space that could be used for office-type purposes was necessary. The complainants stated that this was a further obstacle to obtaining a legal address for trade unions, as was the confusion surrounding exactly what would be considered adequate by the registering body.
- 307.** For this reason, the BFTU filed an application with the Supreme Court demanding that the Rules accompanying the Decree that called for provision of a legal address be annulled. The Supreme Court, however, refused initiation of the case on 21 October 2001 as it was outside its jurisdiction. The Chairperson of the Supreme Court, with whom the Commission met in Minsk, explained that the Court did not have the authority to provide legislative clarifications in the absence of a specific case.
- 308.** The Government stated during the hearings that it did not consider the legal address requirement to be exceptional or contrary to ILO standards and referred to the ILO practice of ensuring that the special features of individual countries should be taken into account when considering such matters. The requirement of legal address in

¹⁷⁴ Complainants' representatives, formal hearings, session IV.

Presidential Decree No. 2 was in accordance with the general provisions of the Civil Code that all organizations must have a legal address. In reply to questioning by the Commission, a representative from the Ministry of Justice explained that legal address amounted to the location of the organization, as the Civil Code provided that for a legal person, registration should be in the same place as the place in which the leadership of the organization was located.¹⁷⁵ The place where the trade union carried out its activities was usually a wider concept than the headquarters of a trade union, although sometimes they would coincide. The sum effect of the Civil Code and Presidential Decree No. 2 was that a trade union operating in one district could not have a legal address in another district. Registration must occur in the place at which the trade union was located and carried out its activities. The details of 'legal address' required generally in the Regulations were not set out in the Decree, but could be implied when s. 3 of the Decree was read together with the general law (and, in particular, the Civil Code).¹⁷⁶

- 309.** The legal address was not, therefore, necessarily the place of the enterprise in the case of trade unions seeking registration. The Government explained in the hearings that there was no obligation on employers to make facilities and premises available to trade unions operating in an enterprise; in fact, many employers were not able to provide all trade unions with premises as there simply would not be the space. Section 28 of the Law on Trade Unions provided a right to employers to grant premises to employees, but this did not create an obligation on employers to so provide. In reply to a query from the Commission as to the ability of a non-registered union to negotiate with an employer for premises, the Government stated that trade unions could not exercise their activity without being registered.¹⁷⁷

C. Minimum membership requirement

- 310.** The complainants argued that the ten per cent minimum membership requirement was in contradiction with Convention No. 87 and created a significant obstacle for the registration of trade unions.¹⁷⁸ The Government stated that the requirement was not excessive in practice and, in any event, it applied only to the autonomous trade unions and not to organizational structures of branch or republican level trade unions. The Government added that Convention No. 87 set out no specification for minimum membership other than that it should be reasonable.¹⁷⁹
- 311.** Despite the clear understanding that the ten per cent minimum membership requirement only applied to autonomous trade unions created at enterprise level, the complainants provided the Commission in Minsk with court judgments in a specific case in which the ten per cent minimum requirement had been applied to an organizational structure. In this case, the primary organization of the BFTU at the 'Khimvolokno' enterprise in Grodno had been denied registration. The trade

¹⁷⁵ Civil Code, s. 50: "the location (whereabouts) of a legal person is the place of its state registration if, in accordance with the legislation, the by-laws of a legal person do not provide otherwise".

¹⁷⁶ Government representatives, formal hearings, session IV.

¹⁷⁷ Government representatives, formal hearings, session IV.

¹⁷⁸ Complainants' representatives, formal hearings, session IV.

¹⁷⁹ Government representatives, formal hearings, session IV.

union appealed the registration body's decision to the court of first instance, and a court order was made obliging the Grodno Executive Committee to, indeed, register the union. The Chairperson of the Grodno Regional Court, within his supervisory jurisdiction, filed a protest to the Court's Presidium seeking an annulment of the lower court's decision on the basis that the Court had not verified all documents, including those relating to the ten per cent requirement in Decree No. 2.

- 312.** The Presidium of the Regional Court quashed the first instance decision and referred the case back to the lower court for a further consideration. The Presidium based its decision to annul the lower court's decision on the fact that the trade union had not submitted any information about its membership numbers, and the Decree required ten per cent and at least ten people. Upon its second consideration of the case, the lower court issued a new decision denying the trade union registration. The Supreme Court held, on an application filed by the BFTU, that there were no grounds for annulling the Regional Court's decision, as it was clear that the BFTU had not submitted all the relevant documents and had thus not fulfilled the requirements for registration.
- 313.** In response to questioning from the Commission at the hearings, the Government's representatives were unable to explain this case, which contradicted their earlier statement that the ten per cent minimum membership requirement would not apply to trade union organizational structures.¹⁸⁰

D. Registration Commission

- 314.** Pursuant to reg. 7 of the Regulations on the State Registration (Re-Registration) of Political Parties, Trade Unions, and Other Public Associations, the decision as to whether or not a trade union should be registered will be taken by the appropriate regional registering body, "on the basis of the conclusion of the Republican Commission". During the hearings, the complainants explained that Decree No. 2 introduced substantially more complex rules than those that had previously existed and that it was more difficult for trade unions to achieve registration under this system than it had been under the previous system.¹⁸¹ The system was not transparent as, in particular, the membership of the new Republican Registration Commission established by the Decree was not published, but it included members of the security services, governmental departments and ministries, and was chaired by the Deputy Head of the Presidential Administration. The Registration Commission did not include any representatives from the trade unions.¹⁸²
- 315.** The Government's representatives at the hearings confirmed that the Deputy Head of the Presidential Administration chaired the Registration Commission, but indicated that they did not personally know its full composition. While not all its members were lawyers, lawyers from the Ministry of Justice prepared the documentation upon which the Registration Commission reached its decisions. It

¹⁸⁰ Government representatives, formal hearings, session IV.

¹⁸¹ Complainants' representatives, formal hearings, session IV.

¹⁸² Mr. Fedynich, formal hearings, session IV.

was not an arbitrary body, but had a clearly defined role and operated along collegial lines.¹⁸³

316. The Government explained that the idea that the Registration Commission took wide-ranging, arbitrary decisions was wrong and, in fact, the Commission did not have any discretionary powers pursuant to the legislation. In essence, the only conclusion that the Commission could reach was whether or not the proper documentation had been submitted. It would refer this conclusion as to whether registration was possible back to the appropriate registering body for that body to take the decision as to whether registration should occur. The Registration Commission's conclusions were of a recommendatory nature, so that the registering body was not bound to accept them; the Government referred in this matter to reg. 7 of the Regulations to Decree No. 2.

317. In relation to the question of the precise role of the Registration Commission, the Government's representatives at the hearings explained that reg. 7 of the Regulations on State Registration provides:

“After examination of the materials presented for the state registration (re-registration) the registering body shall send them to the Republican Commission for Registration (Re-Registration) of Public Associations, which shall make a conclusion about the possibility of the registration (re-registration) of the association and send the same to the registering body within 5 days from receipt of the materials. The registering body on the basis of the conclusion of the Republican Commission shall make the decision on the state registration (re-registration) of the association for Registration (Re-Registration) of Public Associations.”

318. The complainants' witness stated that he believed that there had never been a case of a registering body ignoring the recommendation of the Republican Commission and, in fact, the Commission's conclusions were considered binding.¹⁸⁴

319. The Government concluded that this was the procedure for all associations. There was nothing secret about the Registration Commission and the Government was not aware that this was a matter of importance.¹⁸⁵

III. Presidential Decrees Nos. 8 and 24: The issue of foreign aid

320. Presidential Decree No. 24 On the Receipt and Use of Free Foreign Aid, which replaced Decree No. 8, set up a system whereby the use of foreign gratuitous aid must be registered by the Presidential Administration. The complainants argued that these Decrees restricted the right of employers' and workers' organizations to receive foreign support for their work in Belarus. Foreign financial aid could not be used for organizing and holding meetings, rallies, street marches, demonstrations,

¹⁸³ Government representatives, formal hearings, session IV.

¹⁸⁴ Mr. Fedynich, formal hearings, session IV.

¹⁸⁵ Government representatives, formal hearings, session IV.

picketing, strike actions, making and distributing campaigning materials, and running seminars and other forms of political and mass campaigning. The procedure established allowed the authorities to have effective control over the finances of trade unions. The Decrees contravened international standards guaranteeing freedom of association both by allowing the authorities to interfere in trade union matters, as well as by allowing trade unions to be dissolved solely on the basis of a single breach.

- 321.** During the hearings, the Government explained that Decree No. 24 had made the previous situation transparent. The registration of foreign aid that it created was a simple and quick procedure, and it was unobjectionable as many countries had similar requirements that aid be registered. The procedure did not hinder the receipt of foreign aid by trade unions, as long as their intention was to use it for legitimate purposes.¹⁸⁶ In addition, these Decrees did not target trade unions but covered all associations.¹⁸⁷
- 322.** During a meeting in Minsk, representatives of the Belarussian Union of Employers and Entrepreneurs named after Professor M.S. Kunyavsky (BUEE) advised the Commission that while it did not consider that Presidential Decree No. 8 amounted to a prohibition on foreign aid, there were problems because all technical assistance projects were subject to registration which was a costly and time-consuming process. Its experience had been that it had taken approximately two months to receive the required permission to use foreign aid in the past.

IV. Presidential Decree No. 11 and the Law on Mass Activities

- 323.** The Law on Mass Activities, which substantially incorporated the provisions of Presidential Decree No. 11, was alleged to control protests in Belarus, including activities conducted by trade unions and picketing carried out by individuals. During the hearings, the complainants argued that the Decree and Law limited the right to conduct protest actions. In particular, s. 15 of the Law provided for liquidation of trade unions for breach of the legislative requirements and the application of administrative sanctions in cases of breach. Details were provided of an instance when an administrative detention was imposed in response to an unlawful picket undertaken by one person in a very speedy court hearing.¹⁸⁸
- 324.** The provisions of the Law on Mass Activities were applied in such a way that the effective exercise of demonstrations and picketing were for all intents and purposes banned. The power in s. 6 of the Law allowing the local executive and administrative body to alter the date, place and time of an event was being used in such a way that mass events were only allowed in secluded and unfrequented parts of the city. The complainants explained that it was not worth organizing demonstrations or picketing in the remote Bangalore Square to which trade union

¹⁸⁶ Government representatives, formal hearings, session IV.

¹⁸⁷ Government representatives, formal hearings, session IV.

¹⁸⁸ Mr. Bukhvostov, formal hearings, sessions II and IV. This instance is discussed in more detail in chapter 12.

mass events were always relegated. In this way, the right to hold mass events in Belarus was illusory.¹⁸⁹

- 325.** The Government explained during the hearings that Decree No. 11 and the Law on Mass Activities established a procedure to organize mass events and were necessary to protect the rights of the wider community and to ensure law and order. This was the sole purpose of the legislation. This Decree was also applicable to all associations. While the legislation did permit dissolution, no trade unions had been liquidated pursuant to this power.¹⁹⁰
- 326.** In reply to questioning at the hearings, the Government's representatives explained that the Law required one single person wishing to undertake a picket to make an application to the relevant authorities stating his or her intention; without the appropriate permission, the person would be in breach of the Administrative Code. In the case of breach, however, administrative detention could be applied only by the court, following a hearing at which defendants would be entitled to legal representation. The Government explained that an individual to whom such a sanction was applied could appeal it to the Prosecutor-General from the moment of its imposition. Should the individual have chosen not to have a lawyer present for the trial, the Government representatives explained that inmates of Detention Centres were regularly visited by the Prosecutor-General to enable them to seek such a review of their sentence.¹⁹¹ The Government's representatives disagreed, therefore, with the Chairperson of the Supreme Court, who had stated to the Commission during a meeting in Minsk that in his opinion it was impossible for a person to appeal the imposition of an administrative sanction without first serving the sentence, due to the period of time the court process would take combined with the fact that a detention was of immediate effect. An appeal against the sentence could be undertaken after its expiration, in the opinion of the Chairperson of the Supreme Court, solely as a matter of principle.
- 327.** Finally, the Government clarified that Decree No. 11 was still in force, but its provisions had been consolidated in the Law on Mass Activities. It was on a list of Decrees that would be repealed, and this was only a matter of time.¹⁹²

V. General labour legislation

A. Right to strike

- 328.** The complainants stated that the right to strike guaranteed to Belarussian workers in the Constitution, as well as by virtue of ILO Conventions, had been limited by the Labour Code that had come into force in 2000 and, in particular, by the lengthy procedure it introduced.

¹⁸⁹ Complainants' representatives, formal hearings, session IV.

¹⁹⁰ Government representatives, formal hearings, session IV.

¹⁹¹ Government representatives, formal hearings, session IV.

¹⁹² Government representatives, formal hearings, session IV.

329. In the Government's opinion, workers in Belarus enjoyed the right to strike. The Labour Code set out clear procedures in this regard. The Government further added that it did not agree that Convention No. 87 covered the right to strike and there were indeed different interpretations as to what international labour standards actually meant. The Government did not believe that it was the only constituent of the ILO to take this position.¹⁹³

B. Independence of trade unions

330. Both at meetings in Minsk and during the hearings in Geneva, the complainants drew the Commission's attention to the fact that the most recent Law on Trade Unions no longer explicitly guaranteed the independence of trade unions, and that the President enjoyed a power pursuant to the Constitution by which he was entitled to delete sections from bills before they became law.¹⁹⁴

331. The complainants alleged that the commitment in Presidential Ordinance No. 639 that unions would participate in the drafting of bills affecting trade unions was in fact an empty promise.¹⁹⁵ While trade unions may have been involved in the drafting of the new Law on Trade Unions 2000, this did not mean that the draft changes discussed were enacted. In particular, the complainants explained that the requirement for trade unions to be independent that had existed in the previous law, had been repeated in the 2000 Bill upon which the trade unions were consulted. It did not, however, appear in the Law on Trade Unions as enacted, as the President of the Republic had used his power under Article 100 of the Constitution to delete the phrase,¹⁹⁶ so that it had not come into effect in the current Law.¹⁹⁷ Thus, the independence of trade unions was no longer protected by the legislation.

332. The Government acknowledged that the Law on Trade Unions no longer referred specifically to the 'independence' of trade unions, but this did not make them dependent. The first section of the Law provided that they may act freely. In that context there was no need for the word 'independent'.¹⁹⁸

C. Use of fixed term contracts

333. During meetings in Minsk, the complainants drew the attention of the Commission to Presidential Decree No. 29 (26 July 1999) which entitled employers to conclude

¹⁹³ Government representatives, formal hearings, session IV.

¹⁹⁴ Complainants' representatives, formal hearings, session IV.

¹⁹⁵ Presidential Ordinance No. 639, s. 3.2: "With the participation of Republic-level employers' associations and the Federation of Trade Unions of Belarus, by 1 January 1998, draft and submit in accordance with the established procedure to the President of the Republic of Belarus bills to amend and supplement the Acts of the Republic of Belarus respecting trade unions, respecting collective contracts and agreements, and respecting the procedure for the settlement of collective labour disputes, taking account of the provisions of this Decree".

¹⁹⁶ Constitution, Art. 100: "If the President does not agree with the text of the bill, he returns it together with his objections to the Chamber of Representatives, which shall consider it with the objectives of the President within thirty days... the bill shall be signed by the President and become a law without the provisions which have been rejected by the President".

¹⁹⁷ Section 2 of the Law on Trade Unions did not come into force.

¹⁹⁸ Government representatives, formal hearings, session IV.

one-year fixed term contracts in Belarus.¹⁹⁹ By virtue of this Decree, the conclusion of a fixed term contract was carried out in accordance with the procedure established by legislation. Workers who had previously been employed on an unlimited basis were advised about their transfer to a contract of limited duration at least one month in advance, but a refusal to accept the new terms resulted in the termination of the employment relationship due to a refusal to accept changes concerning essential working conditions.

- 334.** The complainants provided details of individual cases in which this Decree was used as a tool of anti-union discrimination. Transfer to this less desirable form of employment was used to punish activists and members of the ‘independent’ trade unions, and a disproportionate number of trade union activists and members did not have their contracts renewed at their expiration.
- 335.** The Government stated that the Decree was an example of legislative reforms intended to establish firmly a market economy in the country. The introduction of fixed term contracts was a necessary step and while it was implemented fairly, it had met with an understandable resistance from workers and their representatives.

D. Representativeness of trade unions

- 336.** At the hearings, the complainants provided the Commission with recent texts that they considered would further undermine the possibilities for an independent trade union movement in Belarus.²⁰⁰ Presidential Ordinance No. 57, promulgated on 9 February 2004, set out the plan of legislation for the year and the bodies responsible for each piece of reform. Inter alia, the Council of Ministers and the Federation of Trade Unions of Belarus (FPB) were required to prepare a draft of a new Law on Trade Unions by September 2004, with a bill ready for discussion by December 2004. On 26 March 2004, the Council of Ministers issued Edict No. 341, adopting the legislative plan set out in Presidential Ordinance No. 57. In relation to the Law on Trade Unions, it stated that the question of representativeness was included for discussion, and that the Ministers of Justice and Labour, and the FPB, were to produce the draft.

¹⁹⁹ Factual elements related to this issue will be addressed in chapter 13.

²⁰⁰ Complainants’ representatives, formal hearings, session IV.

Chapter 11

Obstacles to Trade Union Activity

I. Introduction: Outline of arguments

- 337.** In the written documentation, the complainants asserted that there had been a systematic refusal to register trade union primary organizations; refusal by governmental authorities and employers to provide unions with the necessary means to carry out their legitimate activities, including legal address, office space and commodities such as electricity and telecommunication facilities; cancellation of check-off facilities for the collection of trade union membership fees; interference in the free disposal of collected union dues and membership fees by trade unions; and the freezing of trade union bank accounts.
- 338.** During the hearings in Geneva, the complainants reiterated their previous statements that obstacles had been placed in the way of trade union activity in Belarus. The question of registration was crucial as without registration, a trade union could not operate. A pattern of refusal to register primary organizations existed, principally through the denial of legal address which had been implemented with the intention of ensuring the abolition of independent trade unions. The resource difficulties experienced by independent trade unions derived, to some extent, from the problems with registration. Financial controls exerted by governmental authorities over the trade unions' activities included the withdrawal of check-off, freezing of bank accounts, and interference with the disposal of union dues. The restoration of check-off was a reward for bringing the Federation of Trade Unions of Belarus (FPB) under governmental control.²⁰¹
- 339.** The Government stressed that Belarussian legislation guaranteed trade unions the right to determine their own structure independently, and regulated the provision of facilities by employers to trade unions. Further, many of the problems raised by the complainants had been resolved, such as the withdrawal of check-off and the freezing of bank accounts. The Government disputed that a restriction on the right of trade unions to dispose freely of membership dues had existed in Belarus.
- 340.** During the hearings, the Government reiterated that Presidential Decree No. 2 concerning registration applied not only to trade unions, but also to other bodies. The refusal to register trade unions was often based on the legitimate grounds of failure by the trade union to show legal address or to provide the proper documentation. In some cases, trade unions had insisted upon establishing a legal address in inappropriate premises or incorrect regions. In only 0.003 per cent of

²⁰¹ Complainants' representatives, formal hearings, session III.

cases, that is 59 primary level organizations, had there been a refusal to register a trade union.²⁰²

II. Denial of registration

A. General

- 341.** The complainants reiterated that Presidential Decree No. 2 introduced a procedure of registration that, while its terms appeared fairly unobjectionable, the way in which it had been enforced in practice had resulted in an effective requirement for previous authorization of trade unions. In particular, as a result of the requirement read into the Decree that trade unions provide a legal address, many trade unions had been refused registration. A certain pattern had formed whereby the employer would refuse to provide premises to a union or primary level organization which would result, in turn, in that organization being denied the registration necessary to carry out its activities. The situation differed significantly from that which had existed prior to the enactment of the Decree, when organizations were formed freely, without previous authorization.
- 342.** During the Commission's mission to Minsk, the complainants had provided the Commission with certain decisions of the Prosecutor-General evidencing the effect of a denial of registration on trade union activities. For example, the Commission was made aware of a decision of the Prosecutor-General dated 17 February 2000, concerning Belarussian Free Trade Union (BFTU) access to the 'Zenit' Plant in Mogilev. The Prosecutor-General rejected the BFTU's request for criminal proceedings to be commenced, stating generally that, as the primary organization was not registered, there was no violation. In another example, the complainants provided a decision of the Prosecutor of Oktyabrsky District, Grodno dated 12 October 2000 concerning a BFTU complaint of anti-union discrimination. The Prosecutor held that the allegations were unfounded and, moreover, as the trade union was not registered, the refusal of management to transfer union dues of union members to the national BFTU structure was not illegal.
- 343.** During the hearings in Geneva, the Government representatives did not accept that Presidential Decree No. 2 amounted to a previous authorization requirement, nor that the requirement for legal address was objectionable. In fact, the Decree had resulted in a denial of registration only in an insignificant number of cases and many of these cases were ones in which the trade unions had not properly followed the clear requirements and provided the necessary documentation.²⁰³ The Government confirmed, however, that a trade union could not undertake activities without registration.²⁰⁴
- 344.** During the Commission's mission to Minsk, the Government had arranged meetings with various officials who were able to provide the Commission with

²⁰² Government representatives, formal hearings, session III.

²⁰³ Government representatives, formal hearings, session III.

²⁰⁴ Government representatives, formal hearings, session IV.

detailed information concerning the way in which the registration procedure operated in practice. In particular, the representatives of the Ministry of Justice and the Deputy Prosecutor-General explained that the registering bodies decided registration, in accordance with the rules, upon the recommendation of the Republican Commission. The decision concerning registration was not discretionary.²⁰⁵ The Deputy Prosecutor-General advised the Commission that the Prosecutor's Office only interfered in the registration of trade unions when a request to do so was filed by the Ministry of Justice and not on its own volition.

- 345.** When the Commission met with the Belarussian Union of Employers and Entrepreneurs (BUEE) during its mission to Minsk, the organization explained that it believed that there were problems with the registration and re-registration process under Presidential Decree No 2. BUEE, whose membership consisted largely of small private enterprises, was the first non-governmental organization to be re-registered under the Decree, following a costly and time-consuming process of gathering documentation for all 200 of its member organizations. In fact, the process took seven months to complete. The BUEE made further reference to a legislative proposal they had made concerning the registration of both trade unions and employers' organizations. This approach was aimed at transforming the process from one that involved requiring permission to one that was more of the nature of advising the registration body of the organization's existence. It would also clarify the issue of legal address. Finally, the BUEE confirmed that none of the enterprises that had been the subject of the complaint were members of their organization and that their members always provided a legal address to trade unions when requested.
- 346.** During meetings in Minsk, the chairperson of the FPB, Mr. Kozik, informed the Commission that the FPB had not had problems with registration. He explained that the Federation was a very old organization, and registration had only proved to be a problem for newly established organizational units. While the FPB would be prepared to assist other trade unions having problems with obtaining legal address, other trade unions did not tend to approach the FPB. There was no legislation preventing the establishment of trade unions, nor creating obstacles to their running.

B. Individual cases

- 347.** The complainants provided details of a number of cases in which registration of primary level organizations had been refused for a variety of reasons. While it was true that many primary level organizations had been registered, these were mostly FPB organizations. Many independent trade unions had, in comparison, experienced serious problems. The last communication received from the BFTU in relation to CFA Case No. 2090 in September 2003 noted 31 cases in which registration was still denied.²⁰⁶

²⁰⁵ See further discussion of the Republican Commission and the legislative aspects of the registration process in chapter 10.

²⁰⁶ This list is set out in Annex 4.

348. In a communication dated 31 May 2004, the Government provided its comments on a certain number of the primary organizations that had been listed by the BFTU. The Government disputed many of the individual cases listed, providing additional or contradictory evidence both at the hearing and in the documentation received after the hearing had ended. The Government, stating that the complainants had mentioned 43 instances of refusal to register or record trade union organizational units in CFA Case No. 2090, pointed out that ten of those primary organizations had not actually applied for registration. In a further six cases there had not, in fact, been a refusal to register at all. In most cases in which registration had been refused, trade unions did not avail themselves of their right to reapply, or to appeal to the courts.

1. *Mogilev Automobile Plant, 'Ekran' enterprise and the Mogilev 'private entrepreneurs' - BFTU*

349. The complainants alleged that the director of the Mogilev Automobile Plant refused to provide a legal address to the BFTU primary organization and, as a result, registration was denied by Oktyabrsky district administration at Mogilev on 12 April 2000. The BFTU lodged a complainant with the district court which, in July 2001, ordered the registration of the primary organizations at Mogilev Automobile Plant, 'Ekran' and the Mogilev private entrepreneurs. In February 2002, however, Mogilev Regional Court overturned the decision of the court at first instance on the basis of a protest filed by the chairperson of that court. None of these unions are, currently, registered.

350. The Government explained that as a result of the continued failure of the registration body to take a decision in the case of the BFTU primary organizations at Mogilev Automobile Plant, the 'Ekran' enterprise and the private entrepreneurs, the BFTU had filed a complaint with the Oktyabrsky District Court. That Court handed down a decision on 16 October 2000, ordering the district administration to examine the application. In April 2001, the district administration refused registration on the following grounds: lack of decisions of the founding assemblies or proof that the BFTU was operating at the enterprises; that the organizations had carried out illegal activities such as unsanctioned picketing; late submission of documentation by missing the deadline; and use of a residential address for legal address. The BFTU's appeal to the Oktyabrsky District Court was rejected on 11 February 2002. There were no further applications by these primary level trade unions to be registered or recorded.

2. *'Polotsk-Steklovolokno' Company - BFTU*

351. The complainants stated that in November-December 1999, management refused a legal address to the BFTU primary organization. In March-April 2003, the primary organization received confirmation that this matter was being considered. In May 2003, management refused to provide a legal address, referring to the requirement that at least ten per cent of the workforce should be members, for the trade union to be legitimate. At 1 April 2003, only 2.9 per cent of the enterprise employees were members of the BFTU primary organization. The general manager of the enterprise sought a suspension of all transactions through the union's bank account; requested

the union to be re-registered in connection with the restructuring of, and name changes to, the enterprise; and, consequently, refused to sign the collective bargaining agreement with the BFTU union. The union is not, currently, registered.

352. The Government replied that the primary organization was recorded on 26 August 1999 and, on 3 June 2003, was registered owing to the change in the name of the enterprise. There were no instances of refusal to register or record this organization.

3. *Minsk Automobile Plant - FMWU*

353. The complainants stated that on 12 June 2000, the Zavodskoy district administration refused to register the Free Metal Workers' Union (FMWU) primary organization, as the employer had refused to confirm the union's legal address. On 4 December 2003, registration was refused for a second time. The union is not, currently, registered.

354. The Government provided no information in this respect.

4. *Orsha Flax Processing Factory - BFTU*

355. The complainants stated that on 1 August 2000, the mayor of the municipality ordered the annulment of the BFTU primary organization's registration. The union is not, currently, registered.

356. The Government provided no information in this respect.

5. *Novopolotsk Heat and Power Generation Plant - BFTU*

357. The complainants explained that in February 2002, the BFTU primary organization was refused a legal address and premises for an office. In May 2003, management refused to start collective bargaining negotiations with the BFTU primary organization at the plant. The employer required documentation from the union including the registration certificate. The union is not, currently, registered.

358. The Government explained that the organizational unit was recorded on 9 October 2000, but needed to undergo re-registration following amendments to the trade union by-laws. On 14 January 2004, the registering body refused re-registration of the organization for failure to submit the minutes of establishment of the unit, the decision of the competent body of the trade union conferring the status of legal entity on the organizational unit, and a list of members of the elected bodies. In February 2004, the trade union re-applied. On 28 April 2004, the trade union was refused registration for failure to submit the list of members of the supervisory and auditing committee, non-conformity of the rental contract for the premises where the legal address was specified, and non-conformity of the name of the organization with the Civil Code and with the enterprise's name.

6. *Baranovich Technological College of the Belkoopsoyuz - BFTU*

- 359.** The complainants explained that in July 2002, the BFTU primary organization was refused registration, despite the fact that the director of the college had provided the union with a legal address. The union is not, currently, registered.
- 360.** The Government explained that this organizational unit did not submit documents for registration to the registering body.

7. *'Naftan' enterprise - BFTU*

- 361.** The complainants stated that in August 2002, the employer refused to confirm the legal address of the BFTU primary organization. The union is not, currently, registered.
- 362.** The Government explained that the organization was recorded on 12 May 2000. As the trade union had changed its by-laws, it was required to re-register. On 14 January 2004, the registering body refused registration for failure to submit the minutes of establishment of the unit, the decision of the trade union's competent body conferring the status of legal entity on the organizational unit, and a list of members of the elected bodies, and for failure to submit documents within the deadline. In February 2004, the organization re-applied. On 28 April, registration was denied on the grounds of non-confirmation of the list of members of elected bodies and the rental contract for the premises where the legal address was specified.

8. *'Orshateploseti' enterprise - BFTU*

- 363.** The complainants alleged that in January 2003, management refused to provide the BFTU primary organization with a legal address. The union is not, currently, registered.
- 364.** The Government provided no information in this respect.

9. *Automated Lines Plant, Baranovich - BFTU*

- 365.** In March 2003, plant management refused to recognise the BFTU primary organization on the ground that the union did not represent ten per cent of the workforce. In August 2003, the enterprise director once again refused, verbally, to provide a legal address to the union.
- 366.** The Government stated that the trade union was registered in 2001 and there was no refusal to register it. The trade union is not, however, active at present.

10. *'Orsha-Zhilfond' enterprise - BFTU*

- 367.** The complainants stated that on 27 March 2003, the BFTU primary organization was refused a legal address. The union is not, currently, registered.

368. The Government stated that the trade union did not, in fact, make an application to be registered. Documents for registration were not submitted to the registering body.

11. Minsk Instrumental Plant - FMWU

369. The complainants stated that on 2 April 2003, management refused a legal address to the FMWU primary organization. The union is not, currently, registered.
370. The Government stated that the organizational unit did not submit documents for registration to the registering body.

12. 'Avtogydrousilitel' Plant - FMWU

371. The complainants explained that in October-November 2003, management of this plant in Borisov did not answer the requests to provide a legal address for the FTUM primary organization, or gave 'irrelevant replies'. The union is not, currently, registered.
372. The Government explained that in July 2001, the organizational unit submitted the application form for registration to the appropriate registering body, but did not submit any other of the required documentation. In response to advice that documentation was required, a second application was lodged in December 2001, again without the required documentation. A further letter of advice was sent to the organizational unit in this regard.

13. BFTU Regional Organisation, Baranovich

373. The complainants explained that in March 2003, the regional organization was not registered as it did not have a legal address. The union is not, currently, registered.
374. The Government stated that the regional organization did not submit documents for registration to the registering body.

14. BFTU Regional Organisation, Novopolotsk-Polotsk

375. The complainants stated that in August 2003, the local authority suspended the registration of the regional organization of the BFTU at Novopolotsk-Polotsk. The union is not, currently, registered.
376. The Government explained that the organization was recorded on 3 May 2000. In 2003, an application was made to the Novopolotsk executive committee for registration, in connection with amendments made to the by-laws of the trade union. On 16 October and 9 December 2003, the municipal executive committee postponed registration for failure to submit documents regarding registration of primary level organizations. On 14 January 2004, it refused registration for failure to submit the decision of the BFTU establishing the regional organization and conferring legal status. A second application was lodged on 4 February 2004. On 2 March 2004, registration was postponed for failure to submit documents

confirming that the conditions for establishing a regional organization had been met (registration of at least three primary level organizations), the rental contract was signed by the chairperson of the organizational unit whereas the trade union's by-laws do not provide the chairperson of a regional organization with the right to sign economic contracts, and the rental contract did not specify its duration. A further application for registration was refused on 28 April 2004 on the grounds that the conditions in the union's by-laws had not been met.

15. BFTU Regional Organisation, Mogilev

- 377.** The complainants stated that the BFTU regional organization for Mogilev had not been registered.
- 378.** The Government explained that the regional organization was refused registration in 1999, as the decision of the BFTU to establish and register the organizational unit was not submitted to the registering body. Registration was refused for a second time in 2000, on the ground of lack of evidence that the conditions in the BFTU by-laws for establishing a regional organization had been met (i.e. existence of at least three primary-level organizations), and the ground that no document had been submitted that indicated agreement on the location of the organization at a residential address.

16. 'Khimvolokno' enterprise – BFTU

- 379.** The complainants explained that the local union at the 'Khimvolokno' enterprise had been recorded on 26 November 1999, but that subsequently the Prosecutor's Office had decided that the organizational structure should have been registered. Following difficulties in getting the union registered, the BFTU took a complaint to the district court, which issued a decision that registration should be carried out. The Chairperson of the Grodno Regional Court, within his supervisory jurisdiction, filed a protest to the Court's Presidium seeking an annulment of the lower court's decision on the basis that certain factors had not been taken into account. The Presidium of the Regional Court quashed the first instance decision and referred the case back to the lower court. Upon its second consideration of the case, the lower court issued a new decision denying the trade union registration because it did not account for ten per cent of the workforce (568 workers) among its members. The Supreme Court held, on an application filed by the BFTU, that there were no grounds for annulling the Regional Court's decision.²⁰⁷
- 380.** In response to questioning from the Commission at the hearings, the Government's representatives were unable to explain this case.²⁰⁸

²⁰⁷ See chapter 10, above, in which this case is discussed in relation to the interpretation of the ten per cent requirement.

²⁰⁸ Government representatives, formal hearings, session IV.

17. ‘Samana Plus’ enterprise – BFTU

- 381.** The complainants explained that the primary level trade union was refused a legal address by the management of the enterprise. On the basis of an earlier letter dated 13 December 1999 from the head of the Ministry of Justice’s directorate of non-governmental organizations, in which it was stated that it was ‘presumed’ that it was possible to use a garage as a legal address, the union applied for registration using the garage of one of the trade union members as the legal address. Registration was, however, denied; the district and regional courts held that a garage was not suitable for a legal address.
- 382.** The Government explained that registration was refused in this case as a garage had been given as the legal address of the primary level union. An appeal was filed with the district court, which was rejected on 31 October 2001. A further appeal with the regional court was rejected on 14 January 2001. The trade union did not apply again for registration of the primary level organizational unit.

18. ‘Kristina’, ‘Aleksandrina’, ‘Uspekh’, and ‘Pavlinka’ hairdressing salons, Mogilev – BFTU

- 383.** In their communication concerning Case No. 2090, the complainants stated that the primary level organizational units at these four hairdressing salons in Mogilev had not been registered.
- 384.** The Government replied that the primary level organizations at ‘Aleksandrina’, ‘Uspekh’, and ‘Pavlinka’ salons had not submitted documents for registration to the registering bodies. The Government provided no information in respect of the ‘Kristina’ hairdressing salon.

19. Construction Trust No. 12, Mogilev – BFTU

- 385.** In their communication concerning Case No. 2090, the complainants stated that the primary-level organization had not been registered.
- 386.** The Government explained that the organization had been denied registration on the grounds that its legal address was a residential premise, and no documentation had been submitted recording a decision of the executive committee to move the premises. The trade union did not re-apply for registration.

20. Novopolotsk Housing and Communal Services enterprise – BFTU

- 387.** In their communication concerning Case No. 2090, the complainants stated that the primary level organization had not been registered.
- 388.** The Government stated that in 2002 a decision to postpone registration for one month was taken, as the legal address that was given was, contrary to the legislation, a residential apartment. The trade union did not re-apply for registration.

21. *Gantsevichi Central District Hospital – BFTU*

389. In their communication concerning Case No. 2090, the complainants stated that the primary level organization had not been registered.
390. The Government stated that the primary level organization had been denied registration on the basis of the unresolved matter of its legal address: trade union representatives insisted upon a legal address in Minsk. The trade union did not re-apply for registration.

22. *Minsk Tractor Plant – FMWU*

391. In their communication concerning Case No. 2090, the complainants indicated that this primary level organization had not been registered.
392. The Government stated that, at the primary level organization's own instigation, a request had been filed in February 2004 to suspend its activity and to dissolve it.

23. *Minsk Motor Plant – FMWU*

393. In their communication concerning Case No. 2090, the complainants indicated that the primary level organization had not been registered.
394. The Government stated that the primary level union had been registered on 11 April 2000. The Partizansky district administration of Minsk cancelled the registration on 21 April 2003, in response to a request by the District Prosecutor on the grounds of systematic violation of the legislation on trade unions.

24. *Artificial Fibre Production Plant named after V. V. Kuibyshev, Mogilev – BFTU*

395. In their communication concerning Case No. 2090, the complainants stated that the primary level organization had not been registered.
396. The Government provided no information in this matter.

25. *Polotsk Secondary School No. 10 - BFTU*

397. In their communication concerning Case No. 2090, the complainants stated that this primary level organization had not been registered.
398. The Government stated that this organizational unit had not applied for registration, but that union members had merely consulted on the subject of registration.

26. *Minsk Electro-Technical Plant - BFTU*

399. In their communication concerning Case No. 2090, the complainants stated that this primary level organization had not been registered.

400. The Government stated that this primary level union had not applied for registration to the registering body.

27. *Novopolotsk Secondary Schools No. 4 and No. 7 - BFTU*

401. In their communication concerning Case No. 2090, the complainants stated that these primary level organizations had not been registered.

402. The Government stated that there were no instances of refusal to register these organizations. The primary level union at Secondary School No. 4 was registered on 3 May 2000, and the primary level union at Secondary School No. 7 was registered on 12 May 2000.

28. *Minsk Instrument Making Plant ('Belvar') - BFTU*

403. In their initial communication concerning Case No. 2090, the complainants stated that this primary level organization had been denied registration as a result of Presidential Decree No. 2. It was no longer listed in the complainants' latest communication concerning Case No. 2090, nor in communications addressed to the Commission.

404. In its latest communication, the Government stated that this primary level organization had not applied for registration to the registering body.

29. *'Shveytnik' enterprise, Borisov - BFTU*

405. In their initial communication concerning Case No. 2090, the complainants stated that this primary level organization had been denied registration as a result of Presidential Decree No. 2. It was no longer listed in the complainants' latest communication concerning Case No. 2090, nor in communications addressed to the Commission.

406. In its latest communication, the Government stated that this primary level organization had not applied for registration to the registering body.

30. *'Tsvetotron' Plant, Brest - FMWU*

407. In their initial communication concerning Case No. 2090, the complainants stated that this primary level organization had been denied registration as a result of Presidential Decree No. 2. It was no longer listed in the complainants' latest communication concerning Case No. 2090, nor in communications addressed to the Commission.

408. In its latest communication, the Government stated that this primary level organization was denied registration when it first applied on the grounds that it failed to submit a document indicating the existence of a legal address. The union had been registered on its second application in July 2000, after remedying the earlier shortcomings.

31. *'Zenit' Plant – BFTU*

409. In their initial communication concerning Case No. 2090, the complainants stated that this primary level organization had been denied registration as a result of Presidential Decree No. 2. In CFA Report No. 323, the complainants acknowledged that this primary level organization had been registered and no longer listed it in its communications.
410. In its latest communication, the Government stated that there had been no refusal to register this organization. It was recorded on 29 September 2000.

C. Latest developments

1. *BTUATC primary level organization*

411. During the hearings in Geneva, Mr. Migutskiy explained that after the national level BTUATC was dissolved by the Supreme Court,²⁰⁹ the union had re-created itself as a primary level union of the Democratic Union of Transport Workers Union (DUTW). The employer refused to grant legal address to the organization, which sought a legal address from the DUTW. The organization had asked the registering authorities expressly where it should be registered and was told to do so in Oktyabrsky, as this was where the enterprise was located and thus where it would carry out its activities.²¹⁰
412. Mr. Migutskiy stated that the primary level organization was registered in September 2003, without fault. Nevertheless, the employer refused to enter into relations with the union. For unknown reasons, its registration was revoked on 23 March 2004, by the director of the Oktyabrsky administration.²¹¹ The Commission was provided with two documents in this regard. The first was a copy of a letter from the Oktyabrsky administration revoking the previous decision to register the trade union, stating that the legal address was in the Leninsky district and they should have been registered there. (Indeed, the legal address was actually in the Zavodskoy district.) The second was an extract from the Protocol of a meeting of the Oktyabrsky administration, held to consider the Minsk Transport Prosecutor's protest to the administration against the decision to register the primary level union. At the meeting, it was decided to revoke the order to register taking into account the earlier letter, which had already revoked the registration.
413. While the Commission provided the Government with copies of these two documents, the Government provided no information in this regard.

2. *BITU Regional Organization, Soligorsk*

414. During the formal hearings in Geneva, the Commission received a copy of a communication from the Belarussian Congress of Democratic Trade Unions

²⁰⁹ See chapter 12, in which this matter will be discussed in further detail.

²¹⁰ Mr. Migutskiy, formal hearings, session III.

²¹¹ Mr. Migutskiy, formal hearings, session III.

(CDTU) dated 26 April 2004 concerning attempts to dissolve the Belarussian Independent Trade Union (BITU) and its organizational structures. The CDTU saw this as a vivid attempt to dissolve its major affiliate. A copy of this communication was transmitted directly to the Government's representatives at that time.

415. The CDTU enclosed a communication from the chairperson of the Soligorsk municipal executive committee, Mr. Omeliantchuk, to the Ministry of Justice. He indicated that while the BITU had informed the executive committee of the change in legal address of its regional organization and submitted the tenancy agreement as proof, the Soligorsk executive committee could not consent to the use of this legal address by the BITU as the premises 'are built without design estimates and were not put into commission in accordance with the established order'. He further noted that the republican level BITU had also changed its legal address. Given that as at 15 March 2004, the Soligorsk regional organization of the BITU had not submitted any of the additional documents that had been requested on 20 February, the Ministry was 'requested to consider the question of dissolution' of the BITU and its organizational structure.
416. The Government provided no information in this matter.

III. Financial matters: Withdrawal of the check-off facility and other obstacles to the use of union dues

417. These matters had been fully considered by the Committee on Freedom of Association and are no longer outstanding. What follows is, therefore, merely a brief re-stating of the arguments.
418. During 2000, the complainants explained, certain issues had arisen concerning the use of trade union dues. The bank accounts of the FPB had been frozen on 27 and 28 September 2000, immediately prior to the union's congress. Further, during the hearings in Geneva, Mr. Bukhvostov explained that at that time, trade union membership fees had often been kept by employers or returned, in some cases, to the employees, rather than having been properly forwarded to the union.²¹² In fact, Mr. Fedynich stated that by September 2001 more than \$900,000 was owed in arrears of trade union dues. The then chairperson of the FPB wrote to the President of the Republic, seeking the proper distribution of this money. These two features had caused considerable hardship to the trade union movement. Mr. Fedynich stated that 30-50 per cent of trade union employees were made redundant at this time or worked without pay.²¹³
419. The complainants explained that Ministerial Edicts No. 1804 (14 December 2001) and No. 1282 (18 October 2002) were legislative acts concerning the check-off facility for payment of trade union membership dues. Edict No. 1804, while referring to 'protection of trade unionists', effectively prevented direct deduction of membership dues. The system was reinstated by Edict No. 1282, ten months later.

²¹² Mr. Bukhvostov, formal hearings, session III.

²¹³ Mr. Fedynich, formal hearings, session III.

- 420.** Nevertheless, during the period that the check-off facility was officially withdrawn, the complainants stated that the so-called ‘yellow’ unions were able to continue to utilize the system. This was the case at the Minsk Automobile Plant²¹⁴ and at ‘Integral’ Scientific and Production Association.
- 421.** Indeed, during the hearings in Geneva, Mr. Yemelyanov, the General Director of the ‘Integral’, explained that a new and unaffiliated union had been set up in the ‘Integral’ enterprise in September 2000. During the time that Edict No. 1804 prohibited the check-off procedure for collecting union fees, the check-off facility continued to be operational at ‘Integral’. Mr. Yemelyanov stated that, on reflection, it was clear that he had violated the Ministerial Edict in continuing to deduct union dues at source and he could not explain why no measures were taken against him at that time, for this breach of the law. While he was aware that ignoring an Edict could have led to his dismissal, he had decided to do so to maintain the positive relationships within ‘Integral’ between the unions and management. Mr. Yemelyanov explained that his personal status was such that on occasion he could act independently, especially in relation to matters of business; in practice, the enterprise was rather autonomous.²¹⁵
- 422.** The complainants alleged that the withdrawal of the check-off facility had extremely serious financial results for the rest of the trade union movement, repercussions of which were still felt. The reinstatement could be explained, according to the complainants, by the Government’s ‘appointment’ of Mr. Kozik as chairperson of the FPB, so that it was no longer necessary for the Government to exercise such control over the trade unions in this way. Equally, other attempts to control the finances of the FPB ceased once Mr. Kozik became chairperson.²¹⁶
- 423.** The Government stated that the problem with check-off had been properly resolved by Edict No. 1282, once the problem had been identified and recognised in the appropriate manner. The Government had attempted to resolve a problem with trade union dues that the complainants acknowledged had existed previously. In any event, it was important to distinguish between the right to collect union dues and the way in which the right was carried out in this matter – that is, check-off at source or employees paying fees directly to the trade union.²¹⁷
- 424.** Mr. Kozik, the current chairperson of the FPB, explained to the Commission during its mission to Minsk that the resumption of check-off was a matter that he had managed to solve by implementing a constructive and firm approach to relations with the Government upon his appointment. This had been lacking before his election.

²¹⁴ Mr. Bukhvostov, formal hearings, session III.

²¹⁵ Mr. Yemelyanov, formal hearings, session I.

²¹⁶ Complainants’ representatives, formal hearings, session III.

²¹⁷ Government representatives, formal hearings, session III.

IV. Provision of facilities

- 425.** The complainants asserted that there had been instances when employers had denied independent trade union facilities such as office space, electricity, and telecommunications. The provision of facilities depended upon whether or not the trade union was independent. During the hearings, Mr. Yaroshuk explained that the CDTU was unable to carry out its activities in a normal way because of resource difficulties. The FPB, following Mr. Kozik's election as chairperson, increased rent to a level that the CDTU was unable to pay, creating a series of problems with obtaining new premises and a lease. As a result, the trade union currently has no offices of its own. Indeed, it was now having difficulties in finding appropriate and affordable premises given that they had been recently subjected, once again, to an increase in rent, contrary to the rental agreement with the Government authority owner.²¹⁸
- 426.** The Government explained that section 28 of the Law on Trade Unions stated that problems concerning the provision by employers of equipment, premises, transport and means of communication to trade unions should be resolved by consultation between employer and trade union. This was not a matter in which the Government was involved, or should be involved. Complaints could be lodged with the Prosecutor-General concerning allegations of unfavourable or illegal treatment by employers and, in fact, some such complainants had been made and duly found to be baseless.

²¹⁸ Mr. Yaroshuk, formal hearings, session III.

Chapter 12

External Interference in Trade Union Affairs

I. Introduction: Outline of arguments

- 427.** The complainants asserted that there had been considerable government interference in the internal affairs of trade unions, including in such matters as trade union elections and the holding of congresses, conferences, and other statutory meetings of unions' decision-making bodies at national, regional and local levels. There had also been forced resignations by workers from their trade union membership. Such interference resulted from instructions issuing from the very highest parts of the governmental hierarchy.
- 428.** During the hearings in Geneva, the complainants reiterated their belief that governmental interference in trade union affairs was central to the complaint. In this sense, the 'Government' included the Presidential Administration and enterprise directors/managers, who often acted in a concerted fashion with other governmental authorities to influence the activities of trade unions in the country. In particular, the Government had organized or been involved in trade union meetings; put its own people in trade union office; forced individuals to resign trade union positions; created entirely new organizations such as the Belarussian Industry Workers' Union (BIWU); dissolved the Belarussian Trade Union of Air Traffic Controllers (BTUATC); and exerted pressure on individuals to leave unions, or to transfer primary level organizations to other trade union structures. In particular, there was interference in the Federation of Trade Unions of Belarus (FPB), the Agricultural Sector Workers' Union (ASWU), the Radio and Electronics Workers' Union (REWU), and the Belarus Automobile & Agricultural Machinery Workers' Union (AAMWU). The imposition of Mr. Kozik as chairperson of the FPB was a critically important act, which was both preceded and followed by further acts to bring the FPB into the state structure and effectively undermine the independence of the trade union movement in Belarus.²¹⁹
- 429.** Both in its communications and during the formal hearings, the Government stressed that the issues of trade union elections, transfers, and reorganization fall exclusively within the authority of the trade unions, and so the Government will not interfere in such matters. In fact, Belarussian legislation makes it a criminal offence to interfere in the activities of trade unions. The important role trade unions held in Belarus had never been in doubt. In accordance with the legislation, trade unions conduct their own elections and meetings, as well as organize themselves independently. In particular, the Government maintained that the elections for the position of chairperson of the FPB had been carried out in accordance with

²¹⁹ Complainants' representatives, formal hearings, session I.

legislation and reflected the wish of the majority of trade union members.²²⁰ There was no convincing evidence of a link between the Government and matters such as trade union elections and transfers. There are many reasons for tensions and conflict, but they cannot be attributed to the Government.²²¹

II. Instructions of the Presidential Administration

A. Instructions of the Presidential Administration 2000

- 430.** Submissions to the Committee on Freedom of Association (CFA) in respect of Case No. 2090 and statements made by the complainants during the formal hearings, maintained that the Head of the Presidential Administration issued a set of Instructions on 11 February 2000, instructing Ministers and local executive bodies to interfere in the elections of branch trade unions, in their Congresses, and in the work of the FPB Congress, as well as to call upon various ministries to be more involved in the internal affairs of unions within their field of competence. The complainants alleged that these Instructions epitomized the intention of the authorities to unashamedly interfere in trade union matters, with the aim of ensuring a trade union movement that reflected governmental and presidential wishes. It heralded the start of a concerted campaign against the independent trade unions, with significant results.²²²
- 431.** The first four Instructions call for various ministries and chairpersons of executive committees to submit a list of proposed candidates not only to be represented on the branch union national congresses, but also for various elected positions in the unions. The complainants had, during Case No. 2090, indicated that efforts had been made in 2000 to influence the outcome of trade union elections, in particular of the branch level unions but that these attempts had been unsuccessful. Instructions 5 and 6 concerning ministry interference in trade union affairs are set out in greater detail below.
- 432.** During a meeting at the Presidential Administration in Minsk, a representative from the Ministry of Labour replied to queries raised about these Instructions. The document purported to be Instructions from the Head of the Administration. As such, they must be assumed to have been prepared in a personal capacity, as the ministerial representatives at the meeting were not aware of the existence of such a form of official document. This matter had been raised at the time in the tripartite National Council for Labour and Social Issues (NCLSI). The Government had explained that the unions had carried out their activities normally and no interference was allowed. In any event, the Instructions could not have been carried out, as they concerned the internal activities of trade unions which are within the exclusive authority of trade unions. During the hearings in Geneva, the Government's representatives stressed that the form of the document provided could not be said to be an official document.²²³

²²⁰ Government representatives, formal hearings, session I.

²²¹ Government representatives, formal hearings, session IV.

²²² Mr. Bukhvostov, formal hearings, session I.

²²³ Government representatives, formal hearings, session IV.

433. Mr. Kozik, the chairperson of the FPB, advised the Commission during its mission to Minsk that he could not comment on the Instructions, as such 'Presidential Instructions' were not a form of documentation of which he was aware.

B. Instructions of the Presidential Administration 2001

434. A copy of a further set of Instructions from the Head of the Presidential Administration in 2001 had been furnished to the CFA in respect of Case No. 2090, elements of which had been referred to by several of the complainants' witnesses in Minsk. These Instructions sought the establishment of other worker representative bodies, called for the acceleration of contract-based employment, questioned the practice of direct transfer of union dues, reviewed issues of co-operation with the ILO, and called for the establishment of a municipal union council in Minsk. Some of these issues, in particular the question of the inappropriateness of the check-off facility, were examined in detail in the CFA and are no longer outstanding.

435. During discussions in Minsk, however, almost all of the complainants referred to the manner in which Instruction 2, which called upon the Council of Ministers, provincial executive committees and the Minsk municipal executive committee to speed up the transition to contract-based labour relations, had been used in a discriminatory manner against trade union activists. In addition, it was an effective tool for threatening workers if they did not agree to change their union affiliation.²²⁴

436. The Government stated that the move to fixed term contracts of employment was a part of the establishment of a market economy in the country. Despite its fair implementation, there was understandable resistance to the change from workers and their representatives.

III. Change in the FPB leadership: July 2002

437. The complainants stated that following the failure by governmental authorities to obtain their desired result on the basis of the Instructions, the Government switched tack from attempting to eliminate or weaken the FPB, to aiming to change its leadership to one that was supportive of the Government.²²⁵ A critically important step in the subjugation of Belarussian unions to state control was accomplished with the appointment of the Deputy Head of the Presidential Administration, Mr. Kozik, to the leadership of the FPB.

438. In explaining how this take-over of the FPB was possible, the complainants described the intense pressure that was placed on delegates to the FPB Plenum to change its leadership. During meetings in Minsk, Mr. Burak, the former deputy chairperson of the FPB, stated that in June 2002, the Presidential Administration transmitted an order to all regional and branch trade unions, demanding Mr.

²²⁴ See further discussion of this point in chapters 10 and 13.

²²⁵ Mr. Bukhvostov, formal hearings, session I; Mr. Yaroshuk, formal hearings, session I.

Vitko's resignation. He advised the Commission that, during July 2002, he had been subjected to pressure to vote for Mr. Kozik in the up-coming Plenum. Such pressure, exerted in his case by representatives of a municipal executive committee, a regional executive committee, his plant management, and the Deputy Minister of Industry, had not only been directed at him, but also at his colleagues on the FPB Plenum.

- 439.** According to the complainants, pressure was also exerted on Mr. Vitko, the chairperson of the FPB at that time, in order to obtain his resignation. Mr. Vitko was required to attend meetings with various senior members of the Presidential Administration, including Mr. Kozik, then its Deputy Head. Mr. Vitko was told that the chairperson of the FPB could only be a person enjoying the full confidence of the President of the Republic, and attempts were made to negotiate the terms of his resignation. Mr. Yaroshuk, during the hearings in Geneva, explained that Mr. Vitko had eventually succumbed to the great deal of pressure upon him so that in July 2002 he had agreed to leave the FPB. Mr. Yaroshuk recounted Mr. Vitko saying to him at this time that he was a normal person wanting a normal life, and he had felt that he had no other option open to him. Mr. Vitko subsequently took up a post in the Belarussian embassy to Bulgaria.²²⁶
- 440.** In July 2002, an extraordinary meeting of the FPB Plenum passed a vote of no confidence in Mr. Vitko, who had resigned, leaving the way open for the Plenum to elect Mr. Kozik as chairperson. In September, an extraordinary Congress of the Federation confirmed Mr. Kozik's election. Mr. Lukashenko, President of the Republic, spoke at this Congress, stating that trade unions should become one of the pillars of authority in Belarus. The complainants stated that the procedure by which Mr. Kozik was elected was flawed and contrary to the FPB statutes. In fact, it amounted to an orchestrated 'appointment', rather than a true election.²²⁷ Mr. Kozik, for example, was placed without a proper election on the FPB Council immediately prior to the election, simply to ensure his eligibility as a candidate for chairperson.²²⁸
- 441.** The complainants pointed to various factors which, they believed, proved that Mr. Kozik was not independent from the Government but was, in fact, still part of the governmental machinery when he became chairperson of the FPB. First, it was undeniable that Mr. Kozik was a high-ranking official in the Presidential Administration at the time of his election, who continued to undertake governmental roles following the election. In fact, until October 2002, Mr. Kozik continued to perform functions on both the Belarussian-Iraqi Trade and Economy Commission, and the Commission on Unification with Russia. Second, the Government's previously aggressive attitude towards the FPB immediately changed once Mr. Kozik became chairperson. For example, the check-off facility was restored, the establishment of 'yellow' unions stopped, and social dialogue recommenced. Finally, Mr. Kozik himself explicitly stated that he believed in bringing the FPB into closer alignment with governmental authorities.

²²⁶ Mr. Yaroshuk, formal hearings, session I.

²²⁷ Mr. Yaroshuk, formal hearings, session I.

²²⁸ Mr. Bukhvostov, formal hearings, session I.

442. The Government reiterated that elections to trade union positions are matters that fall wholly within the authority of the trade unions, and the Government is not entitled to interfere. The election of Mr. Kozik during the FPB Plenum in July 2002 was carried out in accordance with the standards laid down in law and the statutes of the trade unions concerned. The appropriate procedure was followed and the required quorum was reached.²²⁹ In relation to Mr. Kozik's alleged continuation in his role in the Presidential Administration, the Deputy Head of the Presidential Administration, Mr. Proleskovskiy, advised the Commission during its mission to Minsk that Mr. Kozik had undertaken certain of these functions as a personal representative of the President, not as a state official. Following his election to the FPB he was, therefore, separate from the Government.

IV. The FPB under the leadership of Mr. Kozik

443. The complainants asserted that following the appointment of Mr. Kozik as chairperson of the FPB, it became, to all intents and purposes, an instrument of the state that interfered in the activities of other unions and their organizational structures and obstructed their means for acting independently. Mr. Lukashenko made a speech to the FPB Congress at which Mr. Kozik's election was confirmed, clearly expressing his belief that this was to be so. Mr. Kozik himself made no secret of the fact that he was there to carry out the President's wishes. This included, clearly, the intention to absorb all trade unions in the country within the FPB as the sole trade union structure, and to ensure that all trade union activities reflected governmental policy. There would be no place for trade unions – or their leaders – which criticized, rather than supported, governmental policy. There was a two-pronged approach taken to such trade unions within the FPB structure, involving actions to change their leadership to candidates approved by the Government and actions to disaffiliate primary organizations and reduce membership numbers of the independent unions.²³⁰

444. The Government reiterated that these matters fell within the authority of the trade unions. Some conflict and tension was inevitable during a period of re-organization.

445. During the meeting of the Commission with the FPB in Minsk, Mr. Kozik stated that it was an exaggeration to say that the FPB had a special relationship with the government. Rather, simply by working the hardest, it achieved the best results. While many of the proposals for change in relation to trade union matters that had been made by the Federation following Mr. Kozik's election had been accepted by the Government, others had been rejected. Nevertheless, Mr. Kozik believed that he had achieved positive gains for the trade union movement as a whole in Belarus by implementing an approach to the Government that was based on co-operative social partnership. Mr. Kozik stated that he would like to have cooperation with the other trade unions, and that he had made statements to this effect both directly to

²²⁹ Government representatives, formal hearings, session I.

²³⁰ This will be discussed in detail in the following section of this chapter.

them and in the media. While he desired a united trade union movement, the aim was for co-operation with parallel trade union structures and he was pleased that a parallel structure existed.

A. Discharge of Mr. Yaroshuk, ASWU

- 446.** During the hearings in Geneva, Mr. Yaroshuk recalled that, following Presidential Instructions 2000, the Government had tried to coerce and threaten him to withdraw from the ASWU elections. He was even taken to the Presidential residence and offered a diplomatic post which he refused. He stated that his re-election as chairperson of the ASWU was not tolerated by the Government and he was therefore discharged from his position two months after Mr. Kozik became the FPB chairperson. Mr. Yaroshuk asserted that, as he had signed the initial complaint to the CFA, he had been one of a number of leaders of the independent trade unions to be placed on a Presidential Administration list of those who should be replaced.²³¹
- 447.** The complainants stated that Mr. Yaroshuk was dismissed by the ASWU Plenum, contrary to the statutes of the organization. During the hearings in Geneva, Mr. Yaroshuk advised the Commission that he believed that Mr. Kozik had ensured his dismissal so that when the FPB Congress met in September 2002 to confirm Mr. Kozik's election, Mr. Yaroshuk would not be able to be present as a potential threat. Mr. Yaroshuk stated that he had decided not to appeal the decision to dismiss him as he had felt that it would not be fruitful. He believed that those that voted against him had done so under pressure, and therefore he did not consider them to be 'enemies' and did not wish to impugn their actions. Two months after his dismissal from the ASWU, Mr. Yaroshuk was elected chairperson of the Belarussian Congress of Democratic Trade Unions (CDTU).²³²
- 448.** Mr. Buketov, the Head of the Moscow Office of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF), of which the ASWU was an affiliate, gave evidence on this matter at the formal hearings in Geneva. On behalf of the IUF, he had attended the July 2000 ASWU election. Mr. Buketov advised the Commission that he had been present when the Minister of Agriculture's candidature as chairperson of the union was supported by the Deputy Prime Minister. In a secret ballot, however, the Plenum overwhelmingly supported Mr. Yaroshuk to continue as chairperson of the ASWU.²³³
- 449.** Mr. Buketov again attended the December 2003 Plenum of the ASWU. Not only were all the delegates not present, but the meeting commenced an hour earlier than had been announced, and there were several unknown people present. According to Mr. Buketov, these individuals were suspected of being members of the secret service and the Plenum was, consequently, subdued. Mr. Yaroshuk was prevented from chairing the meeting and a vote was held to dismiss him as chairperson.

²³¹ Mr. Yaroshuk, formal hearings, session I.

²³² Mr. Yaroshuk, formal hearings, session I.

²³³ Mr. Buketov, formal hearings, session I.

However, according to the rules, only the Congress could dismiss the chairperson, as the Congress had elected him. The Plenum voted, nevertheless, to discharge Mr. Yaroshuk from his position as chairperson and, upon the recommendation of the Minister of Agriculture, who spoke at the Plenum, replace him by Mr. Samasyuk, a Department director in the Ministry.²³⁴

- 450.** The Government, in response to Mr. Yaroshuk's evidence in the formal hearings, stressed that Mr. Yaroshuk himself had previously been a member of a governmental authority. He had been the Deputy Governor of the Minsk Region for approximately two and a half years. Mr. Yaroshuk replied that the real issue was not whether an elected trade union officer had been part of the Government at one point in time, but rather whether when taking up that position he would defend the workers' interests independently or simply acquiesce with the Government line.²³⁵ The Government observed that when Mr. Yaroshuk became chairperson of the ASWU, its membership had been 1.2 million; however, when Mr. Yaroshuk was dismissed, three years later, its membership had dropped to 900,000.²³⁶

B. Changes internal to the FPB

- 451.** The complainants stated that the FPB was now run in a way that allowed for no dissension within its ranks. During the hearings, the complainants stated that there had been an almost complete replacement of FPB deputies by Mr. Kozik with individuals who came, not from trade unions, but from state authorities. This included former members of the secret service. Mr. Kozik made the change in leadership and main officials of the Federation his priority task. What occurred was not consonant with the normal functioning of a democratic trade union and at times the process breached the FPB's standing orders and constitution.²³⁷
- 452.** The Commission heard evidence from two individuals who had been discharged by Mr. Kozik. Mr. Burak, deputy chairperson of the FPB from May - September 2002, advised the Commission during meetings in Minsk that Mr. Kozik had discharged him as deputy chairperson, stating that he had such power on the basis of their contractual relationship and pursuant to the Labour Code. The statutes of the FPB, however, stated that the deputy chairperson was an elected position, and so any discharge could only be by a decision of the Plenum of the FPB's Council. Mr. Kozik told Mr. Burak that he did not want a deputy like Mr. Burak, who would vote against him. The two new deputy chairpersons, who took office on 31 October 2002, were the former Head of the Presidential Administration's Department of the Economy, and the former Deputy State Secretary of the Union of Belarus and Russia, neither of whom had trade union experience.
- 453.** Mr. Starykevich, former editor of the 'Belarusski Chas' newspaper from 2000-2002, advised the Commission during its mission to Minsk that Mr. Kozik had placed his dismissal on the agenda of the first Presidium he chaired. This proposal

²³⁴ Mr. Buketov, formal hearings, session I.

²³⁵ Mr. Yaroshuk, formal hearings, session I.

²³⁶ Government representatives, formal hearings, session I.

²³⁷ Mr. Fedynich, formal hearings, session I.

was not passed but, on 9 August – that is, two weeks later – Mr. Kozik issued a personal order dismissing him, without specifying the grounds. This decision violated the statutes of the FPB, which stated that the nomination of the editor was to be decided by the FPB Presidium. Mr. Starykevich decided not to appeal against his dismissal because he felt that he would not have succeeded and because he had determined to concentrate his efforts on producing another newspaper.

- 454.** The Government reiterated its belief that internal trade union matters were outside its authority. Questions of the way in which trade unions organized themselves were internal to the trade union movement.

C. Interference in the AAMWU and the REWU

- 455.** The complainants recalled the earlier Instructions from the Presidential Administration to interfere in the internal activities of trade unions, and stated that the interference by governmental authorities, management, and the FPB in the affairs of other unions has continued through intimidation and pressure on individual members as well as on trade union leaders, wholesale transfer of primary level organizations, and the imposition of governmental figures as trade union leaders to replace those independent of the government. The establishment of the BIWU had been central to this, as had the change in the FPB Procedural Instructions facilitating the transfer of primary level organizations from REWU and AAMWU to the BIWU.
- 456.** The complainants asserted that Mr. Kozik commenced a campaign against Mr. Bukhvostov and Mr. Fedynich following his election as chairperson of the FPB. On 28 November 2002, the Presidium of the FPB had taken a decision to recommend the dismissals of Mr. Fedynich and Mr. Bukhvostov to the governing bodies of REWU and AAMWU. The representative bodies of these two unions resisted such efforts, retaining their confidence in their leaders despite the significant pressure put on both the organizations and their individual members.
- 457.** On 27 March 2003, Mr. Lukashenko gave a speech to a national seminar on ideological issues attended by heads of governmental bodies. During this speech, Mr. Lukashenko stated that the leaders of the AAMWU and the REWU continued in pushing their ideological position, which could not be ignored. He gave the Ministry of Industry two months to solve the matter.²³⁸ On the same date, Mr. Kozik stated that Mr. Bukhvostov and Mr. Fedynich continued to use their positions to undertake political activities and should be replaced. In December 2003 Mr. Bukhvostov was discharged from his position as chairperson of the AAMWU. While Mr. Fedynich remained in his position as chairperson of the REWU, its membership had decreased, as many primary organizations had disaffiliated to join the BIWU.
- 458.** The Government stated, in communications addressed to the Commission, that in accordance with properly run elections, several trade union leaders who had lost the trust of their trade union members were obliged to leave their positions in the

²³⁸ The full text of this speech is reproduced on the President of the Republic's official website.

last year. The Government stated that these individuals used their contacts within the international trade union movement to attempt to exert pressure on the Government to change the results of the elections. The Government reiterated that matters of trade union elections, the transfer of trade union members from one union to another, and trade union reorganization fall wholly within the authority of the trade unions themselves. The Government did not interfere in such matters.

1. The establishment of the BIWU

- 459.** The complainants asserted that following Mr. Kozik's election as chairperson of the FPB, a new trade union within the FPB was established with the aim of taking members from the REWU and the AAMWU. The founding conference of the BIWU, held on 28 May 2003, was organized and attended by the FPB and the Ministry of Industry. Recalling the instruction given by the President to the Ministry in March 2003 to deal with the problem of Mr. Fedynich and Mr. Bukhvostov, the complainants added that the Ministry of Industry had actually been central to the creation of the BIWU. During meetings in Minsk the complainants provided the Commission with a copy of an invitation sent by 'telephonogram'²³⁹ to trade union committees to attend the founding Congress of the BIWU. The document, ostensibly from the 'organizational committee', indicated a telephone number belonging to the Ministry of Industry as its source. The Commission met with several enterprise level union leaders and members in Minsk whose statements corroborated that the Ministry of Industry had been involved in the creation of the BIWU.
- 460.** The founding members of the BIWU were principally those primary organizations that had been established in various enterprises in 2000, and had remained unaffiliated until the establishment of the BIWU. In their written communications, the complainants stated that the primary level organizations at 'Integral' Scientific and Production Association and Minsk Computer Engineering enterprise that had broken away from REWU in 2000 and early 2001 following pressure from the Presidential Administration,²⁴⁰ had joined the BIWU at its creation in May 2003. Similar primary level organizations that had been established at the Mogilev Automobile Plant, the Minsk Automobile Plant, the Belarusian Metallurgical Plant and the Rechitsa Hardware Plant had subsequently joined the BIWU.
- 461.** Further, the complainants asserted that, following the creation of the BIWU, the Government organized a campaign to ensure disaffiliation of primary level trade unions from the REWU and AAMWU, and their subsequent re-affiliation to the BIWU. At a meeting in July 2003 of the Presidium of the Belarusian Association of Radio and Electronic, Informatics and Tool Making, the Deputy Minister of Industry ordered employers to ensure the transfer of primary organizations affiliated to the REWU and operating at their enterprises, to the BIWU.

²³⁹ A telephonogram is a message sent by telephone and recorded in writing. A copy of this document was provided to the Government.

²⁴⁰ The earlier interference at 'Integral' enterprise was the subject of the complaint in Case No. 2090. Instruction No. 5 of the Instructions of the Presidential Administration 2000 turned the attention of the Minister of Industry to the necessity of more active personal participation in the internal affairs of trade unions.

- 462.** According to the complainants, the Deputy Minister of Industry also visited various enterprises to force the management to put a proposal to the union committees affiliated to the REWU and the AAMWU that they should re-affiliate to the BIWU. A series of measures was used to pressure managers and, through them, the union committee chairperson and members to leave REWU and the AAMWU. This pressure included threats of non-renewal of contracts, of cancellation of orders, and of refusal to sanction official trips abroad. Trade union leaders were threatened with reprimands and dismissal.
- 463.** The complainants provided details of cases in which management had pressured trade union members to sign previously prepared applications to leave unions affiliated to REWU and AAMWU. During a meeting in Minsk, members of REWU explained that managers had approached employees with two documents in hand: an application to leave the trade union, and a document to extend their employment contracts. The complainants pointed out that the applications, formulated in the same wording, were often returned to the plant management rather than the trade union committee concerned. During meetings with members of the AAMWU in Minsk, the Commission was provided with copies of applications to resign from the AAMWU and join the non-affiliated primary organization at Minsk Automobile Plant, which later became a member of the BIWU. These also included applications for direct deduction of membership dues, despite the fact that at this time check-off was unlawful pursuant to Ministerial Edict No. 1804.²⁴¹ These applications indicated that 20,000 copies were issued for the 22,000 workers employed at the Plant.²⁴²
- 464.** The complainants stated that the process of disaffiliation by which members joined the BIWU usually followed the same sequence. A trade union meeting was organized following an order given by the director of an enterprise. In one case, such a meeting was held in the director's office. While REWU and AAMWU representatives were usually prevented from participating, enterprise directors and other members of the management attended and spoke to encourage disaffiliation from the REWU or the AAMWU. At the 'Evistor' factory, in fact, the minutes of such a trade union meeting recording the decision to disaffiliate from REWU and re-affiliate to the BIWU, were sent not only to Mr. Fedynich, but also to Mr. Kharlap, the Minister of Industry.
- 465.** Some examples given by the complainants of the campaign for disaffiliation from the REWU and the AAMWU included the pressure placed on the chairperson of the REWU primary organization at 'Korall' enterprise which, despite her refusal to follow the director's orders, was successfully transferred to the BIWU due to management pressure. Further pressure was brought to bear on the REWU primary organizations at Minsk Electro-Mechanical Plant and the 'Planar' Precision Electronic Engineering Concern.

²⁴¹ The issue of check-off is discussed in further detail in chapter 11.

²⁴² Copies of these applications to leave unions were made available to the Government before the formal hearings.

- 466.** During the hearings, the Government pointed out that the idea to create the BIWU was not new. In 2000, the question of creating a trade union of industry workers was raised within the REWU and the AAMWU. An organizing committee had been established at that time, and draft by-laws and other documents had been prepared, but the union chairpersons could not agree on the question of power sharing. The new union was not, therefore, established at that time. The Government representatives stressed that this was a question of intra-union reorganization and as such the Government could not interfere.²⁴³
- 467.** During the mission to Minsk, at the meeting with the Deputy Minister of Industry, he reiterated the specifics of relationships between trade unions and Government in transition economies. In such countries as Belarus, it was not exceptional for management, and even Government Ministers, to be members of the same trade unions as workers in the industrial sector concerned. The Deputy Minister stated that his attendance at trade union congresses was by invitation, not by imposition.
- 468.** Many of the enterprise managers whose actions had been questioned by the complainants were also present at the meeting with the Commission. These managers expressed their view that there had been no pressure on trade union committees to disaffiliate from the REWU or the AMMWU and re-affiliate to the BIWU. In their opinion, these issues involved a struggle for power in the trade union movement. The manager at the Vitebsk Television Production Plant disputed the allegations made about his involvement in such a disaffiliation at his enterprise, stating that he was not interested in inter-union matters and he had merely been advised of the transfer. The plant manager at 'Kalibr' Plant clearly stated that neither he nor his employees were puppets; they would not have accepted pressure, even if it had been exerted. The manager of another plant suggested that the real reason for the transfers to the BIWU was that its membership dues were lower than those of the REWU and AAMWU.
- 469.** Mr. Yemelyanov, the General Director of the 'Integral' Scientific and Production Association, in reply to statements that a 'yellow' union had been created at this enterprise, stated during the hearings in Geneva that that he had not interfered in trade union activities. He stated that he had been aware of the disagreement between the REWU and its primary organizations, during which the REWU had resorted to pressure. In September 2000, the primary level trade unions left the REWU at their own choice and established the new 'Integral' regional trade union. Once the BIWU was established, the primary level organizations affiliated to it and thus that the regional level organization no longer existed.
- 470.** Mr. Yemelyanov clarified that while he was often invited to attend trade union meetings, particularly to comment on matters such as social protection of workers, the trade union always took its own independent decisions. He stated that there was no interference by the Ministry of Industry in the trade union. In reply to questions from the complainants concerning the existence of enterprise representatives on the 'initiative group' on establishing the 'Integral' trade union, Mr. Yemelyanov replied that more than 80 per cent of members initiated the step of leaving the

²⁴³ Government representatives, formal hearings, session I.

REWU and management could not possibly exert pressure on so many people. He confirmed that the check-off of membership dues continued at 'Integral' for the new trade union, despite Ministerial Edict No. 1804, which had rendered the use of check-off illegal.²⁴⁴ He further confirmed that he had received no sanction from the Government in respect of the continued breach of the law.²⁴⁵

- 471.** During meetings in Minsk with unions affiliated to the FPB, the Commission met with officials of the BIWU and the chairpersons of various trade unions affiliated to the BIWU. All attested that the changes in affiliation had followed the Procedural Instructions established by the FPB, and that at no time had pressure been placed on trade union members to change their affiliation. It was explained that the wholesale changes in affiliation were due to a lack of support by individual trade union members in the policy followed by Mr. Fedynich and Mr. Bukhvostov. The representatives accepted that there had been cooperation from plant management and that the existence of the BIWU was positive for the Ministry of Industry, but did not have any knowledge of the pre-prepared application forms to disaffiliate from the REWU and the AAMWU that appeared to show management collusion and orchestration. The BIWU had a membership of approximately 179,000 individuals and included approximately 151 local trade union organizations. While explaining that the main intention had been to unite the branch level unions into a stronger single structure facilitating bargaining for one single agreement, the chairperson of the BIWU was not able to say whether there were actually fewer branch structures since its founding. The other branch union structures within the FPB had not yet chosen to unite with it.

2. *Amendments to the FPB Instructions on the Procedure of Transfer of Branch Local Unions*

- 472.** The complainants explained that in October 2003, the leadership of the FPB introduced amendments to its Instructions on the Procedure of Transfer of Branch Local Unions from one union to another within the FPB. These amendments ignored the statutes of affiliated trade unions by allowing trade union committees of primary level organizations to take the decision to transfer the affiliation of primary organizations to another trade union, without seeking the opinion of individual trade union members. In effect, this meant that individual trade union members may find themselves members of a different trade union structure, without having had any say in the process. Further, the amendments enabled the FPB executive committee to recall registration documents from local registering bodies. Recalling registration documents had the effect of closing down the primary organizations in question.
- 473.** During meetings in Minsk, the complainants explained that the amendment replaced the previous situation whereby any individual could apply in an individual capacity to transfer, and the FPB would process the transfer. Under the new system, entire trade unions would be transferred at once, in a process that involved the primary organization taking a new registration. The organization in its previous

²⁴⁴ The matter of check-off is discussed in further detail in chapter 13.

²⁴⁵ Mr. Yemelyanov, formal hearings, session I.

form would not be liquidated, but would be de-registered. In September 2003, when the REWU complained to the Ministry of Justice and Presidential Administration that the amendments created an illegal system, as it did not require individual consent to be transferred, the Ministry replied that this was a matter of internal trade union organization and so should be regulated by the trade unions between themselves. Mr. Fedynich explained that the Prosecutor-General had equally found no reason to respond to their concerns about the amendment.²⁴⁶

- 474.** The complainants stated that, the impact of the creation of the BIWU and the facilitated transfer of entire primary organizations through the use of the amended FPB Procedural Instructions was significant. Between June and December 2003, under pressure from the Ministry of Industry, 41 primary organizations disaffiliated from the REWU to join the BIWU. During the same period 12 primary organizations disaffiliated from the AAMWU to join the BIWU. The complainants provided extensive documentation concerning 18 cases of disaffiliation from the REWU and the AAMWU and subsequent affiliation to the BIWU, and seven cases where primary unions of the REWU changed their affiliation to other unions, some of which later affiliated to the BIWU. During meetings in Minsk, members of the AAMWU explained that in many instances, former trade union members had not been aware of the change in their affiliation until after it had occurred. Others stated that they had not wished to be transferred.
- 475.** In their written communications, the complainant stated that, in accordance with the new Procedural Instructions, the FPB recalled the registration documents of two AAMWU primary organizations at the Borisov 'Avtogydrousilitel' Plant and the Minsk Motor Plant.
- 476.** The complainants further pointed out that the registration of newly created primary trade unions of the BIWU went through a speedy registration. A REWU representative provided a copy of the registration document of the primary trade union of the BIWU at 'Radiovolna' enterprise in Grodno. In this case, the decision to disaffiliate from the REWU was taken on 28 August 2003. The trade union was re-registered, as a primary organization of the BIWU, on 12 September 2003 even though the process of registration usually took at least one month.
- 477.** The REWU representatives indicated that on numerous occasions they had complained to the Prosecutor's Office, who had replied that disaffiliation from the REWU and affiliation to the BIWU was done in accordance with the FPB by-laws.
- 478.** During the hearings in Geneva, the Government representatives raised the question of Art. 4.4 of the REWU Charter 1995, which also allowed primary level organizations to leave a branch trade union if a two-thirds majority supported such a move and a lack of confidence was expressed.²⁴⁷ Mr. Fedynich, in response, agreed that such provisions had existed, but stated that they had been brought into

²⁴⁶ Mr. Fedynich, formal hearings, session I.

²⁴⁷ Government representatives, formal hearings, session I.

line with the law in 1996, so that the right to join trade unions and transfer between trade unions was given to individuals.²⁴⁸

3. *Interference in AAMWU elections*

- 479.** During meetings in Minsk, the complainants stated that following his election as chairperson of the FPB, Mr. Kozik began a campaign against Mr. Bukhvostov, chairperson of the AAMWU. The first formal expression of this was in November 2002, when Mr. Kozik attempted to organize a no-confidence vote in Mr. Bukhvostov. Plant managers applied pressure on delegates to vote against Mr. Bukhvostov in some cases and, in other cases, refused permission for known supporters of the chairperson to attend the Plenum. Nevertheless, on 26 November 2002, at the AAMWU Council's Plenum, the vote of no confidence was rejected.
- 480.** The complainants explained that on 23 December 2003, however, following pressure from enterprise managers and the FPB leadership, the AAMWU was obliged to convene an extraordinary Congress of the union. Delegates to the Congress were selected in meetings controlled by enterprise directors, and many delegations were led by enterprise directors or their deputies. At the Congress, a vote to dismiss Mr. Bukhvostov was held, under pressure from Mr. Kozik, who was effectively running proceedings. Although less than half the delegates to the Congress were in favour of his dismissal, Mr. Bukhvostov could not secure a secret ballot for the vote on his dismissal. Following the vote by open ballot, he was dismissed from his post as chairperson of the AAMWU. Immediately following this decision, Mr. Bukhvostov's office and the offices of the AAMWU staff were sealed. The complainants advised the Commission that 70 former members of the AAMWU joined with Mr. Bukhvostov following his dismissal to establish the 'Independent AAMWU' (IAAMWU).
- 481.** The Government reiterated its belief that trade union elections were an internal matter, into which it would not interfere. In any event, its investigations showed that the elections had been carried out fairly and in accordance with the law. Mr. Bukhvostov had lost the confidence of his members.
- 482.** During a meeting in Minsk with the current chairperson of the AAMWU, Mr. Kuzmich, the Commission was told that, in his opinion, his election was fully in accordance with the statutes and was, in fact, a decision to save the trade union. The decision to dismiss Mr. Bukhvostov was supported by 68.6 per cent of those who voted at the Congress, and the motion had been placed on the agenda as an extraordinary measure, on the basis of a loss of trust in him by many members. Mr. Kuzmich stressed the fact that he had previously worked on the shopfloor and had been a member of the trade union. In reply to a query about the new united industry structure, he stated that his union did not intend to join the BIWU.

²⁴⁸ Mr. Fedynich, formal hearings, session I.

4. Interference in REWU elections

- 483.** The complainants stated that the REWU, like the AAMWU, had been subjected to interference by the FPB and Ministry of Industry in the form of pressure to change its leadership from Mr. Fedynich, as well as in relation to significant efforts to reduce its membership through intimidation and the arbitrary transfer of primary level organizations from the REWU to the newly formed BIWU. Details of the pressure on primary level organizations to disaffiliate from the REWU are set out above.
- 484.** In relation to the question of its leadership, the complainants advised the Commission that in November-December 2002, the Deputy Minister of Industry visited enterprises in Minsk and Vitebsk and demanded that chairpersons of trade union committees organize an extraordinary REWU Congress. The purpose of this Congress was to dismiss Mr. Fedynich, the REWU chairperson. Members of the REWU Council, however, adopted a decision not to convene an extraordinary Congress of the union and confirmed their trust in Mr. Fedynich as chairperson. Following continuing pressure both at enterprise level and from the leadership of the FPB, an extraordinary Congress of the REWU decided to disaffiliate from the FPB. It subsequently united its forces with Mr. Bukhvostov and the IAAMWU.
- 485.** The Government reiterated its position that it did not interfere in trade union matters such as elections. It was, nevertheless, unexceptional in the Belarusian context for Ministers to be present at trade union meetings and to be members of trade unions.

D. Interference in the MRTUECS

- 486.** During meetings in Minsk, Mr. Mamonko, the former chairperson of the MRTUECS, a trade union affiliated to the FPB, advised the Commission that his union had been the subject of significant external interference. In complaints made to the CFA under Case No. 2090, the MRTUECS had stated that, following Decision No. 10/1497 of the Steering Committee of the Ministry of Culture and of the Minsk Municipal Executive Committee, and with reference to the orders of the President of the Republic at the FPB Congress in September 2002, a new Minsk municipal trade union of employees in the cultural sphere, outside the regional union, had been established. Further, after a number of years of pressure and intimidation Mr. Mamonko, who had opposed the creation of the Minsk union and the Government interference in this respect, had been removed as chairperson on 13 February 2004 in an open ballot of the union's Plenum. This Plenum followed an orchestrated campaign of threats and intimidation on the members of the Presidium, to vote to remove Mr. Mamonko. As a result of the campaign, only 29 of the 45 members of the MRTUECS regional committee participated in the Plenum, 19 of whom voted to remove Mr. Mamonko. Mr. Mamonko expressed doubts to the Commission as to whether the quorum was secured and about how the votes were counted. He further asserted that he was dismissed for his part in bringing a complaint within the framework of Case No. 2090.

- 487.** The CDTU submitted a case to the district court seeking Mr. Mamonko's reinstatement, on the grounds that Mr. Mamonko was dismissed contrary to the union's statutes: as Mr. Mamonko had been appointed to his position by the MRTUECS conference, only the conference could remove him from his position. The Court held that Mr. Mamonko's dismissal was in accordance with the union's statute, and, as a result, the decision of the presidium was upheld.
- 488.** During its mission to Minsk, the Commission met with the chairperson of the Belarussian Trade Union of Employees in the Cultural Sphere (BTUECS) and representatives of MRTUECS. Those representatives stated that 18 members of the trade union committee had expressed a vote of non-confidence in Mr. Mamonko in the January 2002 Presidium. Since then, Mr. Mamonko's colleagues had continued to accuse him of taking unilateral decisions, ignoring the provisions of the Statutes of the trade union, and causing the disintegration of the MRTUECS. While noting charges against Mr. Mamonko related to the transfer of union dues and his refusal to cooperate with the union's auditing committee, the chairperson of the BTUECS stated that his dismissal was, overall, based on questions of character, expression and behaviour. The procedure followed to remove Mr. Mamonko from his post was in accordance with the trade union's Statute and entirely justified.
- 489.** One representative who had broken away from MRTUECS to join the Minsk City Union confirmed that it was on the basis of a decision of the Minsk municipal executive committee as the cultural employees in the capital should be more autonomous in their decision-making. This structure had subsequently indicated that it would return to MRTUECS if Mr. Mamonko was no longer its chairperson.

V. Interference in the BTUATC

- 490.** Instruction 6 of the Presidential Instructions issued in February 2000, which had been referred to by the complainants, called upon the Chairperson of the State Aviation Committee to examine broadening the branch trade union of the aviation workers through the incorporation of the BTUATC and the Civil Aviation Union.
- 491.** Mr. Burak, the chairperson of the Civil Aviation Union from May 2000 until September 2002, advised the Commission during a meeting in Minsk that upon his election, he met with Mr. Ivanov, the Chairperson of the State Aviation Committee, who was appointed at approximately the same time. At this meeting, Mr. Ivanov had instructed him to eliminate the BTUATC, because he did not wish to have two unions with whom he was required to negotiate. A dispute resulted as Mr. Burak did not agree and, instead, decided to work with the BTUATC. Consequently, Mr. Ivanov suggested that Mr. Burak should resign, as he did not understand the governmental approach. The dispute culminated in significant pressure being brought to bear on the Civil Aviation Union, including attempts being made to deprive the union of its premises and legal address, as well as to transfer primary level organizations from the branch union, which did not succeed.

- 492.** Mr. Burak further explained that, following pressure from the management, employees at 'Belaeronavigatsia', which had been largely represented by BTUATC, set up a small local union to be affiliated to the Civil Aviation Union. This union was, however, unpopular, and members did not pay their dues; some members subsequently rejoined the BTUATC.
- 493.** Mr. Migutskiy, former chairperson of the BTUATC, explained that the organization had been set up in 1991 to tackle the specific issues of air traffic controllers, but had expanded to include other employees within the civil aviation industry so that by the time registration was required pursuant to Decree No. 2 in August 2001, the trade union had 900 members, surpassing the requirement for registration at national level of 500. Pressure began, however, to be exerted by management on the trade union and, at the end of 2001 when the check-off facility was withdrawn, membership numbers began to decrease.
- 494.** In their written communications, the complainants referred to a significant increase in pressure on the BTUATC following the election of Mr. Kozik to the FPB and the BTUATC's decision to affiliate to the CDTU. Thus, according to Mr. Migutskiy, between October and November 2002, a total of some 400 applications to leave the union were filed. Mr. Migutskiy considered that at least 200 of those individuals had complained of pressure, such as the imposition of additional examinations and inspections. Many resignations were also stated to be due to the use of limited duration contracts and the control that could be wielded by the employer in such circumstances.
- 495.** The former deputy chairperson of the BTUATC stated that while many of these people had formally resigned from the union, they continued to be unofficial members, paying their membership dues directly to the union, so as to avoid retaliatory acts by their employer. He also considered that their troubles arose from a statement made by the chairperson of the FPB, Mr. Kozik, that there should only be one union in the country to represent workers' interests. Other members of the civil aviation industry stated that the Chairperson of the State Aviation Committee, Mr. Ivanov, had wished the BTUATC to be eliminated, so that only one trade union, the Civil Aviation Union, existed in the industry.
- 496.** At this time, the complainants explained, the Prosecutor-General initiated an investigation into the membership of the trade union following a referral of the matter made by the Ministry of Justice. The Commission had been provided with copies of communications between the Chairperson of the State Aviation Committee and the Ministry of Justice, in which pressure had been exerted by the Chairperson on the Ministry, in an attempt to have the trade union de-registered. Initially, the Ministry of Justice had replied that the registration could not be challenged as BTUATC had the required number of members at the time it was registered. In a second letter, Mr. Ivanov suggested that the Ministry of Justice's earlier communication that the BTUATC's registration was in order was 'insufficient'. He stated that free and independent trade unions pose a threat to the implementation of specific civil aviation tasks, and 'contradicts the President of the Republic's requirements in relation to trade unions'. These illustrated that the intention of the State Aviation Committee was to have the BTUATC de-registered,

through whatever means possible, and that the Ministry had been used as a tool in this endeavour.²⁴⁹

- 497.** In the course of the investigation, the Prosecutor-General refused to investigate complaints made by the BTUATC that the drop in membership numbers was due to pressure from management, and would not accept the ‘unofficial’ members as individuals who should be counted for the purpose of the registration process. When the Transport Prosecutor-General came to verify the BTUATC’s membership to determine whether they still met the requirements of Decree No. 2, individual members were taken aside three at a time, and asked questions of a political nature by three representatives of the Prosecutor’s Office. Confidentiality was not respected. The leaders of the trade union refused to disclose their full membership lists, as they feared increased pressure on their members. When they explained, however, to the Prosecutor-General that certain members paid their dues directly, the Prosecutor-General did not take this information into account, stating that such a situation was not explicitly provided for by the union’s rules. The BTUATC provided copies of testimony given to the Prosecutor-General about the pressure to leave the union.
- 498.** The complainants explained that the Prosecutor’s Office had simply concluded that the BTUATC had thus fallen below the minimum membership required for registration of a national level trade union and had commenced the procedure in the Supreme Court to have thus the BTUATC dissolved. Once again, in the court proceedings, the evidence setting out the pressure exerted on trade union members was considered irrelevant and a decision was taken to de-register the BTUATC.
- 499.** The Government reiterated that the 500 minimum membership requirement only applied to national-level trade unions and that, following due investigations and court proceedings, it had been discovered that the BTUATC did not meet that requirement. While it had been dissolved as a national level body, it was free to re-establish itself as a primary-level organization, which had no minimum membership requirement. The Government was confident of the correctness of the procedure followed by the Ministry of Justice, the Prosecutor’s Office, and the Supreme Court in this matter.
- 500.** During meetings in Minsk, the Deputy Prosecutor-General provided the Commission with certain information concerning the case. He explained that, following routine checks made by the Ministry of Justice on membership numbers that showed a potential discrepancy, the matter was referred to the Prosecutor’s Office, which had conducted a normal investigation as a consequence. As the trade union would not release its membership records, but rather preferred to keep them confidential, the Prosecutor’s Office found that the trade union could only prove membership of half the minimum required pursuant to Presidential Decree No. 2. As a result, a case was stated to the Supreme Court, which decided on that basis to terminate the activities of the trade union at the national level.

²⁴⁹ The Government was provided with copies of these letters before the formal hearings in Geneva.

- 501.** The Deputy Prosecutor-General also explained that, despite claims that harassment of its members was the reason for the decline in the BTUATC membership numbers, the Office was never in a position to investigate this as no specific complaint was ever formally lodged by the BTUATC. The Prosecutor's Office would have needed verifiable names of individuals allegedly harassed to leave the union before the Office could consider taking such a case to the Court for decision. The Prosecutor's Office had not received copies of the letter from the Chairperson of the State Aviation Committee, Mr. Ivanov, to the Ministry of Justice, exerting pressure to annul the union's registration. The Prosecutor's Office would follow the procedure required by law and would not inquire into the reason that the Ministry had approached that Office for an investigation, if the approach itself was legal. In other words, the reason for the investigation being commenced in relation to something that the union had already proved at the time of registration was irrelevant, as the Ministry of Justice had a right to request the Prosecutor's Office to conduct such an investigation.
- 502.** During the mission to Minsk, the Chairperson of the Supreme Court also provided the Commission with details of his Court's role in this case. In response to questioning from the Commission concerning the Court's failure to take the allegations of pressure into account, it was explained that no appeal to the Chairperson of the Supreme Court, in his supervisory role, had been lodged in this matter. He was not, therefore, in a position to answer questions because, should it ever be appealed, he would be required to consider the matter judicially, and at the moment he did not have the necessary elements for consideration. Nevertheless, it was pointed out to the Commission that the Prosecutor-General's investigation showed that while some had said that they had been put under pressure to leave the union, the majority of individuals who had left the BTUATC did not confirm that there had been any pressure. In the absence of an appeal, it was fair to assume that all parties were in agreement with the decision.
- 503.** During a meeting in Minsk, the Chairperson of the State Aviation Committee, Mr. Ivanov, stated that neither the Committee nor the management of relevant enterprises interfered in the affairs of trade unions. In response to questions from the Commission concerning the letters that he had written to the Ministry of Justice relating to the BTUATC's registration, Mr. Ivanov questioned the translation. His deputy stated that he was the one that had actually written the letter, and not Mr. Ivanov. He stated that its purpose was to ensure safety: if there were groups which favoured a split a society, they cannot just sit back and watch. Security must be the priority.
- 504.** Finally, the chairperson of the Civil Aviation Union, elected in 2002, who was present at the meeting with the State Aviation Committee, stated that there had been an increase in his union's membership, particularly as concerns air traffic controllers. He also explained how the union functioned and negotiated agreements within the sector.

Chapter 13

Harassment, Retaliatory Acts and Detention

I. Introduction: Outline of arguments

505. In the written documentation, the complainants stated that the Belarus authorities and many employers committed gross violations of ILO Conventions Nos. 87 and 98, including arrests, detentions and fines for exercise of their trade union rights, harassment and threats, arbitrary transfers of union members and their leaders, demotions, dismissal, transfers to contractual form of employment, non renewal of labour contracts and other forms of anti-union discrimination. During the second session of the Commission in Minsk, the complainants provided further details and documents relating to incidences of arrests and detentions of trade union activists and other sanctions imposed on trade unionists under the Administrative Code, as well as on cases of harassment and threats trade union members had experienced, extending to dismissals and non-renewal of labour contracts. With respect to the latter, the complainants explained that the new and accelerated use of fixed-term contracts was aimed at placing pressure on trade union members.

506. During meetings held with various governmental officials in Minsk, the Government disputed the complainants' allegations. In particular, the Government pointed out that the Administrative Code is of general application. It emphasised that in cases mentioned by the complainants, its application was according to regular legal procedures, through the ordinary judicial process. In relation to the alleged individual instances of harassment and anti-union discrimination, the Government considered that many of these cases were not proved and some others had been previously considered by the courts where they had been found not to be related to trade union activities. As concerns the use of fixed-term contracts, the Government stated that the new form of labour relations was an example of Belarus' attempt to transform itself to a market economy and that the Government's intention was that the contractual form of employment should be widely used. Finally, the Government emphasised that the Belarus labour legislation provided for guarantees against anti-union discrimination.

II. Arrests, detention and legal sanctions imposed under the Administrative Code

507. The complainants asserted that the authorities of Belarus pursue a repressive policy against independent trade unions, their leaders and activists. The complainants provided the Commission in Minsk with details of three cases in which trade union

activists were arrested and confined to administrative detention and five cases where fines or warnings pursuant to the Administrative Code were imposed on trade union members.

A. Arrests and detention under the Administrative Code

- 508.** The complainants recalled that the decisions in the first two cases of administrative arrest, concerning Mr. Yaroshuk, the President of the Belarussian Congress of Democratic Trade Unions (CDTU), and Mr. Odynets, the CDTU legal representative, were based on s. 166-1 of the Administrative Code, which provides for contempt of court. In the third case, concerning Mr. Bukhvostov, the AAMWU chairperson at the time, administrative charges were brought under s. 167-1 (2) of the Administrative Code (violation of the procedure for organizing or holding religious, sporting, cultural or entertainment events, and meetings, rallies, street processions, demonstrations and pickets).
- 509.** In the first case, the Court of Minsk Leninsky district sentenced Mr. Yaroshuk, on 17 September 2003, to ten days of administrative arrest following the publication of an article in the newspaper in which he expressed his opinion about the legal proceedings as a result of which the Belarussian Trade Union of Air Traffic Controllers (BTUATC) was liquidated. The complainants stated that this decision was aimed at humiliating Mr. Yaroshuk and reminding other citizens that it was dangerous to have an opinion of your own in Belarus.
- 510.** Mr. Odynets had served a sentence of five days administrative arrest for showing disrespect to the court. In Mr. Odynets' case, the disrespect was considered to have been expressed in his failure to appear in court. During a meeting in Minsk, Mr. Odynets explained to the Commission that he was representing a claimant in a civil process, who had informed the court that he was ill and therefore would not be able to appear. According to the provisions of the agreement with his client, Mr. Odynets had no right to deal with the case in the absence of his client. Mr. Odynets further stated that his request to use the services of a representative in respect of his own hearing, was refused on the grounds that the Administrative Code did not provide for such a right. Mr. Odynets appealed to the Chairpersons of the Minsk City Court and the Supreme Court. The formal replies provided that the punishment was applied taking into account the personality of Mr. Odynets. The latter considered that these actions by the authorities were taken in order to punish him for being active in rendering legal assistance to trade unions and, more particularly, to the BTUATC.
- 511.** In relation to the third case of administrative arrest, the complainants stated that on 30 October 2003, Mr. Bukhvostov was arrested and sentenced to ten days of administrative arrest by the district court for picketing alone at the Oktyabrskaya Square in Minsk to protest against violations of workers' and trade union rights in Belarus. The complainants asserted that, as in other cases dealing with protest actions by trade unions, the authorities had denied a request for permission to hold the meeting in Minsk's centrally located Oktyabrskaya Square and granted him authorization only for a picket in the remote Bangalore Square. At the hearings in

Geneva, Mr. Bukhovostov stated that during the court proceedings, although the judge asked him whether he would like a lawyer to represent him, he declined this right, considering that he was able to defend himself. Moreover, Mr. Bukhovostov alleged that things happened so quickly (only one hour between his arrest and trial), that he did not have time to appreciate the situation. For the same reason, he was not able to appeal the decision to the Prosecutor once it was rendered. In fact, according to the decision, it “was not subject to appeal in proceedings in cases involving administrative offences and was an enforceable document”.²⁵⁰

- 512.** With respect to these cases, the Government provided the relevant judgments and indicated that they were taken in accordance with the law. The Government pointed out that there are approximately 300,000 cases of administrative responsibility per year. Two thousand people per year were found guilty of contempt of court and 25 per cent of defendants were subject to administrative arrest.
- 513.** As concerns the case of Mr. Yaroshuk, the Government indicated that the article in question made a number of critical comments about the Supreme Court Judge. In discussions with the Commission in Minsk, the Deputy Prosecutor-General indicated that, in his reference to the judge, the author of the article used clearly disrespectful expressions. In accordance with s. 22 of the Law on the Public Prosecutors, the Deputy Prosecutor-General issued a resolution on 4 September 2003 to institute proceedings against Mr. Yaroshuk. The Deputy Prosecutor-General explained to the Commission that as concerns the administrative violations, the following bodies had the right to institute proceedings against the perpetrator: the judge, the Prosecutor (although that was rare) and, in some cases, the Ministry of Interior and the Ministry of Labour. While it was rare for the Prosecutor-General to institute proceedings, it was done in the case of Mr. Yaroshuk because the case of dissolution of the BTUATC, which was the subject of Mr. Yaroshuk’s article, had been considered upon the initiative of the Prosecutor-General. The Deputy Prosecutor-General said that his Office just happened to react quicker than the judge in this case. The Deputy Prosecutor-General, as well as the Chairperson of the Supreme Court, however, indicated to the Commission that they thought that the verdict would be limited to the imposition of a fine, but due to Mr. Yaroshuk’s behaviour in court, his character and personality, the judge sentenced him to ten days of administrative arrest.
- 514.** As concerns the case of Mr. Odynets, the Ministry of Justice indicated to the Commission in Minsk that normally only fines were given for the frequent violation consisting of not showing up in court. It was rare to provide administrative detention in such cases.
- 515.** In relation to the administrative penalty imposed on Mr. Bukhovostov, in its communication to the Commission dated 15 March 2004, the Government indicated that the basis for bringing administrative charges against Mr. Bukhovostov was his unsanctioned picket on 30 October 2003 in Oktyabrskaya Square in Minsk, which violated the procedure laid down in the Law on Mass Events.

²⁵⁰ Mr. Bukhovostov, formal hearings, session IV.

516. In the case of Mr. Yaroshuk and Mr. Bukhvostov, it was pointed out that they had not appealed the court decisions. During the hearings, the Government explained that a person sentenced to administrative detention may approach the Prosecutor-General to make a review of that sentence. The appeal could be lodged from the moment the sentence was passed. The Government indicated to the Commission that the Prosecutor-General visited the detention centre to ask individuals whether they wished to lodge an appeal or review.²⁵¹ This explanation given by the Government differed from the statement of the Chairperson of the Supreme Court, made to the Commission in Minsk. The latter stated that any appeal on an administrative detention could only be lodged once the sentence was served and therefore would only establish the question of principle.

B. Other legal sanctions imposed under the Administrative Code

517. While in Minsk, the Commission was provided with details and documentation in respect of other legal sanctions imposed on trade union activists. Four of those cases concerned members of the Free Metal Workers' Union (FMWU) working at the Minsk Automobile Plant and one case took place at 'Lyos' enterprise in Baran city.

518. In December 1999, four trade union members working at Minsk Automobile Plant were accused and found guilty of preparing an unauthorized meeting, an infraction punishable under s. 167-1 of the Administrative Code (violation of the procedure provided for organization of public meetings, etc). While with regard to one of the trade union members a warning was issued, three others were sentenced to pay a fine. One of the persons concerned, the chairperson of the primary union of the FMWU, was found guilty of conducting an unauthorized meeting with campaigning purposes in front of the central entrance check-point of Minsk Automobile Plant on 16 December 1999, while the accused chairperson maintained that he only organized a meeting of the trade union members. The other three persons were accused of conducting a meeting at the same place later that day, while two of them maintained that they were just waiting for the trade union newspaper, which was to be distributed that day and the third person stated to have been there just to talk to his friends denying that a meeting took place.

519. In the second instance, the chairperson of the primary trade union at 'Lyos' enterprise was found guilty, on 30 March 2004, of obstruction of the work of employees of the Prosecutor's Office (Administrative Code, s. 166-9). Indeed, on 2 March 2004, the chairperson received requests to attend the Prosecutor's Office to respond to questions concerning the primary level organization of which he was chairperson. After the third such visit, and following questioning of the members of the union at the workplace, he queried the justification for these requests in a letter to the District Prosecutor dated 9 March 2004. Having received no reply, he advised the Prosecutor that he would no longer attend meetings that had not been officially requested under legal authority and in writing. In response, he explained, he was notified that he had been charged with obstructing the work of the Prosecutor's Office; his complaint was left unanswered. While his request to obtain

²⁵¹ Government representatives, formal hearings, session II.

the written documentation relating to the case had been denied, he managed to obtain the report written by the employee of the Prosecutor's Office. This report contained a note stating that the activities of the FMWU were under investigation following an order by the Prosecutor-General of Belarus²⁵². The trade union chairperson was found guilty for obstructing the Office's work in this regard and was sentenced to pay a fine, despite never having been officially convoked. His request to get a copy of the decision was denied on the ground that it had been sent to the Prosecutor's Office of Vitebsk region. He paid the fine after receiving a warning that he could be sentenced to fifteen days administrative arrest for not complying with the court order.

- 520.** In Minsk, the Government stated that all of those cases were considered by the courts, which sanctioned violations of Belarus' legislation committed by certain individuals. None of these decisions were taken in order to persecute the trade union movement in Belarus.

III. Anti-union discrimination

- 521.** The complainants stated that trade union activists and rank-and-file members were subject to acts of anti-union discrimination committed by the employers. In particular, the complainants spoke about acts of harassment and threats, reprimands, dismissals, transfers to fixed-term contracts, non-renewal of the labour contract and other forms of discrimination.

A. Harassment and threats

- 522.** During the Commission's mission to Minsk, the complainants provided details on acts of harassment and threats, including cases of physical abuse, aimed at forcing members of primary level trade unions of the Belarus Automobile & Agricultural Machinery Workers' Union (AAMWU), the Belarussian Independent Trade Union (BITU), the Belarussian Free Trade Union (BFTU), the Radio and Electronics Workers' Union (REWU) and the BTUATC to leave their respective unions. Trade union leaders, activists and rank-and-file members were told to leave their unions if they wanted to pass their re-examinations, receive benefits, see their career advance and to avoid disciplinary punishments, reprimands, dismissals, transfers to fixed-term contracts and termination of contracts. On many occasions, trade union members were called to their managers' offices for individual talks where they were told that if they wanted to have a normal life and be able to feed their kids, they should leave their union and join a "normal" union – the Federation of Trade Unions of Belarus (FPB). Those acts of harassment and threats took place at a number of enterprises in Belarus.
- 523.** Witnesses from 'Belaeronavigatsia' enterprise informed the Commission in Minsk that in January 2003, members of the BTUATC were subjected to psychological pressure aimed at forcing them to leave their union and join the state union. In a number of departments of the enterprise, meetings were held where the heads of

²⁵² A copy of this document was provided to the Commission.

these departments tried to convince workers that it was impractical to be a member of the BTUATC. Moreover, applications for leaving the union were often written and signed by workers in the office of the head of the corresponding departments. The witnesses pointed out that the Prosecutor-General ignored the complaints made by trade union members about the pressure they had been subjected to and that the court failed to consider this information when it decided to suspend the activities of the BTUATC in August 2003. The witnesses provided the Commission with copies of some of the complaints made to the Prosecutor-General in February 2003 about the pressure placed upon members of the BTUATC to leave their union.

- 524.** According to the Supreme Court judgement, provided by the Government, which suspended the activities of the BTUATC, “the representatives of the BTUATC indicated that some of the members had left the trade union under pressure from the employer [but] the reasons for leaving the trade union do not carry legal weight in the settlement of the dispute, given that according to the BTUATC’s by-laws, members have the right to leave the union freely on their own request, without giving reasons”. During the meeting with the Deputy Prosecutor-General in Minsk, the Commission was told that the BTUATC had never addressed any compliant about the pressure exercised on its members to the Prosecutor’s Office.
- 525.** In Minsk, the REWU representatives stated that in July 2003, the director of the ‘Korall’ enterprise threatened the chairperson of the trade union committee and demanded that she organize a conference with the objective to disaffiliate the primary trade union at ‘Korall’ from the REWU and join the Belarussian Industry Workers’ Union (BIWU). She refused to follow the order, but under pressure from management, the shop supervisors were forced to hold meetings. As a result, the primary trade union of workers of the ‘Korall’ affiliated to the BIWU. The REWU representatives further stated that their members at ‘Plata’ and ‘Tsvetotron’ Plants were also threatened with reprimands and pressured to leave their trade union and join the trade union of the ‘Integral’ Scientific and Production Association ‘Integral’.
- 526.** In addition, witnesses from the following enterprises, who experienced similar pressure and threats, made statements before the Commission in Minsk: Minsk Metro, ‘Belaruskaliy’ enterprise (Soligorsk), Grodno Automobile Aggregate Plant, ‘Zenit’ Plant (Mogilev), Brest State University named after A.S. Pushkin, ‘Oktyabr’ Glassworks (Elizovo), Novopolotsk Heat and Power Generation Plant and ‘Pridneprovskaya’ Poultry Processing Factory.
- 527.** The Deputy Prosecutor-General pointed out to the Commission that except for the complaint about acts of threats and harassment, which allegedly took place at Novopolotsk Heat and Power Generation Plant, it had received no other complaints in this respect. As concerns the Novopolotsk Plant, the Deputy Prosecutor-General stated that the investigations were carried out and that these allegations were not confirmed.
- 528.** In Minsk, the Commission was provided with details on two instances of physical abuse of trade union activists. In one case, the chairperson of the primary trade union of the BFTU at the ‘Pridneprovskaya’ Poultry Processing Factory was beaten

up in the plant director's office. A criminal case was initiated, but no offender was ever found.

- 529.** In another case, Mr. Roman, an AAMWU activist, informed the Commission that on 8 March 2004 he was returning home when two unknown individuals stopped him, dragged him into a car parked nearby and beat him up. Mr. Roman stated his belief that this incident was related to his trade union activities for the following reasons: firstly, the assault took place on the day when he learned that he would be appearing before the Commission and secondly, the police did not want to consider his claim about assault and battery.

B. Reprimands

- 530.** Members of the AAMWU, the BFTU and the FMWU provided the Commission with documents, including court decisions, showing that trade union members were subjected to reprimands and disciplinary punishments at the workplace. In all cases, the reprimands were imposed without the agreement of the trade union of which they were members. The complainants spoke about cases where workers – trade union activists - were reprimanded for not fulfilling a particular task regardless of the fact that those workers were not only not responsible for such tasks but were also not licensed to carry out such activity. Employees from the following enterprises made statements in this respect: Minsk Automobile Plant; Zhitkovichi Motor Plant, 'Oktyabr' Glassworks (Elizovo), 'Soligorskvodocanal' enterprise (Soligorsk), Grodno Automobile Aggregate Plant, Novopolotsk Heat and Power Generation Plant and Mogilev Construction Trust No. 12.

C. Dismissals

- 531.** The complainants provided details and extensive documentation on cases of dismissals of the BFTU, FMWU, BITU, AAMWU, BTUATC and REWU leaders and members. The complainants pointed out that, formally, dismissals were carried out for reasons not related to trade union activities. Officially, violation of labour discipline, non-fulfilment of work duties or failure to pass an examination were the grounds for dismissal. The complainants stated, however, that in fact, enterprise managers were openly telling trade unionists that a pretext to fire them could always be found.
- 532.** In most cases, trade union members were dismissed without consultation with their respective trade unions, whereas according to s. 46 of the Labour Code, termination of a labour agreement upon the initiative of an employer can take place two weeks after notification has been given to the relevant trade union (certain exceptions are provided by the legislation). Collective agreements also often provided that termination of labour relations with a worker could only take place after an agreement of the relevant trade union.
- 533.** The witnesses stated that problems with their employers began as soon as they became involved in trade union activities. Most of them had been employed at their respective enterprises for a long period of time. For example, one witness was dismissed from his post at the Minsk Automobile Plant in 2000 after having been

employed at the enterprise for 15 years. Another witness was dismissed at the Mogilev Automobile Plant in 2000, after having been employed for 16 years. A witness, who had been a member of the AAMWU since 1999, was dismissed in 2003 when he became particularly outspoken about trade union problems at his enterprise. He had been employed at the enterprise for 7 years. The witnesses stated that many of those who had been dismissed were still not able to find employment despite the fact that they were referred to an employer by an employment centre.²⁵³

- 534.** In one case, notwithstanding a court judgment, a trade union member had still not been reinstated in his post at Minsk Automobile Plant. At the Minsk Motor Plant, following transfers and downgrading, one FMWU member was forced to leave the plant.
- 535.** A witness from ‘Khimvolokno’ enterprise (Grodno) stated that in order to prevent registration of the primary level trade union of the BFTU at the enterprise, the management had carried out a campaign to dismiss the most active members of the BFTU. The witness, who had worked at the enterprise since 1977 and was dismissed in 2001, just after his involvement with the BFTU, provided details and documentation on three other dismissals at that enterprise. In all of these cases, the courts did not find grounds for reinstatement.
- 536.** Mr. Evmenov and Mr. Evgenov, BFTU activists, told the Commission about their dismissals and further submitted documents concerning the dismissal of Mr. Bougrov, the chairperson of the BFTU primary trade union. Mr. Evgenov, who had worked at the Plant since 1985, and Mr. Bougrov, were dismissed from the Mogilev Automobile Plant in 2000. Mr. Evmenov was dismissed from the ‘Oktyabr’ Glassworks in the Mogilev area, where he had worked for 20 years. Mr. Evmenov stated that in April 1999 he was elected chairperson of the BFTU primary trade union. He was dismissed in December 1999 following his refusal to organize a “subbotnik” (unpaid voluntary labour). Mr. Evgenov, and Mr. Bougrov were dismissed for refusing to work on Saturday, which had been declared to be a working day by the plant manager without the agreement of the workers concerned, as required by the collective agreement.
- 537.** Other witnesses attested to dismissals at the Minsk Automobile Plant, ‘Oudarnik’ Plant (Minsk), ‘Soligorskvodocanal’ enterprise (Soligorsk), Grodno Automobile Aggregate Plant, ‘Epos’ enterprise (Logoisk), Construction Trust No. 12 (Mogilev), Mogilev Automobile Plant, ‘Pridneprovskaya’ Poultry Processing Factory and Brest State University.
- 538.** During the meeting of the Commission with the FPB representatives in Minsk, Mr. Kozik, the FPB chairperson, pointed out that most of the persons mentioned in the complaint had been dismissed a long time ago. He also stated that he had proposed to the Government to deal with these workers so as to resolve the situation.

²⁵³ According to s. 16 of the Labour Code and s. 10 (2)1) of Act No. 828-II of 30 May 1991 on the employment of the population, an employer shall conclude a labour agreement with a worker referred to him or her by the employment centre.

- 539.** On the question of dismissals, both in Minsk and during hearings in Geneva, the Government reiterated that Mr. Evmenov, Mr. Evgenov and Mr. Bougrov were dismissed due to their violation of labour discipline and not for refusal to organize or to come to a subbotnik. This was confirmed by the decision of the Oktyabrsky District Court of Mogilev and the Mogilev Regional Court. The Government pointed out that these workers were dismissed entirely in accordance with legislation, and this had been confirmed on a number of occasions by the courts.²⁵⁴
- 540.** The Government stated that as concerns ‘Khimvolokno’ enterprise, out of three workers who were allegedly dismissed, two workers were still employed at the enterprise and the other was dismissed at a date later than that indicated by the complainant. The Government stated that investigations had confirmed that the allegations about dismissals and threats of dismissals were groundless.²⁵⁵

D. Transfers to fixed-term contracts and non-renewal of labour contracts

- 541.** During the meetings in Minsk, the complainants expressed their concerns over the application of Presidential Decree No. 29 adopted in July 1999, which provided for the right of employers to conclude contracts with employees for a term of at least one year. According to the decree, the term “contract” refers to a labour agreement concluded in written form for a certain period of time and containing some peculiarities as compared to the general legal labour regulations. It should be noted that the system of fixed term labour contracts is a new system of labour relations in Belarus. The Labour Code, adopted in 1999, does not contain the notion of labour contract, but provides, in its s. 17, for a “labour agreement”, which can be concluded for an unlimited period of time (until recently, the most commonly used system), and, on certain conditions, for a limited period of time or for a time necessary to fulfil a certain work.
- 542.** The complainants considered that Presidential Decree No. 29 had been used since 2003 as a tool of anti-union discrimination. Transfers to fixed-term labour contracts were used to punish trade union activists and to make it relatively easy to dismiss them upon termination of their contracts. If the employee who had been previously employed on an unlimited basis did not agree to sign the contract, he or she would be dismissed according to s. 35(5) of the Labour Code for refusing to work following changes of essential working conditions.
- 543.** The complainants provided details and documentation on individual cases where this Decree was used as an instrument to get rid of trade union activists, including in respect of the BFTU members at Novopolotsk and Polotsk Heat and Power Generation Plants, ‘Polotsk-Steklovolokno’ Company and Pinsk Gymnasium No. 5, as well as FMWU members at Minsk Motor Plant. In all of these cases, no justification was provided to the workers, who were transferred to the contractual form of employment. The complainants pointed out that according to Ministerial Edict No. 1476 issued in 1999 (amended in 2000) and accompanying regulations, a fixed-term contract could be concluded with a worker with whom a labour

²⁵⁴ Government representatives, formal hearings, session II.

²⁵⁵ Government representatives, formal hearings, session II.

agreement had been concluded for an unlimited period of time, only in cases justified by industrial, organizational or economical reasons.

- 544.** In Minsk, three witnesses had stated that at Novopolotsk Heat and Power Generation Plant, all trade union activists were transferred to fixed term contracts. According to the chairperson of the local trade union, 17 per cent of staff were offered fixed term contracts, including all BFTU members. Moreover, only BFTU members, including the chairperson of the local union and two other witnesses who met with the Commission, were informed that their contracts were not going to be renewed. The witnesses had been working at the Plant for over ten years, two of them had been awarded with an Honour Diploma of Novopolotsk Heat and Power Generation Plant and stated that they were considered the best specialists in their fields. The labour contract of the chairperson of the Novopolotsk – Polotsk regional BFTU organization was not renewed either. Further, witnesses stated that at Polotsk Heat and Power Generation Plant, the contract of Mr. Shaytor, the chairperson of the local union, was terminated.
- 545.** In a communication of 21 May 2004, the ICFTU submitted additional information on the developments affecting the BFTU members at Novopolotsk and Polotsk Heat and Power Generation Plants. Following the notification of non-renewal of labour contracts of Mr. Obuhov and Mr. Gaychenko, members of the BFTU Council at Novopolotsk Heat and Power Generation Plant, and Mr. Duhomenko, its chairperson, the ICFTU made inquiries to the management of the Plant about these cases. The management stated that the contracts of the above-mentioned workers had not been renewed because of their poor working performance. The ICFTU indicated, however, that no observation concerning their work had been made previously to the persons concerned. The management further justified the termination of the contract with Mr. Duhomenko by a previous disciplinary measure, which was imposed on him for exercising his legitimate trade union activities. As concerns the chairperson of the primary BFTU trade union at Polotsk Plant, Mr. Shaytor, the ICFTU confirmed that this trade union activist was indeed dismissed on 26 March 2004.
- 546.** At the ‘Polotsk-Steklovolokno’ Company, a contract of one BFTU member was terminated after the company’s administration brought a civil action against him for causing material damage to the company amounting to US\$15. According to the worker concerned, this case against him was totally fabricated. In Pinsk, the chairperson of the local BFTU union was transferred to a fixed term contract to find out later that his contract was not going to be renewed.
- 547.** At Minsk Motor Plant, a FMWU member explained that he had been subjected to pressure to leave the trade union. He was then offered a one-year contract to replace his permanent employment status, which he refused to sign and, as a result, he was fired.
- 548.** As concerns the use of fixed term contracts, the Government denied that the new system was used for discriminatory purposes. During hearings in Geneva, the Ministry of Labour representative asserted that at Novopolotsk Heat and Power Generation Plant, 127 contracts had been renewed. Ten out of the eleven contracts

which were not renewed concerned FPB members. He further stated that the Ministry of Labour received only three complaints from Vitebsk region²⁵⁶ about the non-renewal of labour contracts. Those cases were investigated by the labour inspectors, who concluded that the non-renewal of contracts was not related to the trade union membership of the complainants.²⁵⁷

E. Other acts of discrimination

- 549.** The complainants further argued that their members were constantly discriminated against. For instance, the BFTU witnesses have argued that in Mogilev, it became almost impossible to find a job for a BFTU member. At the ‘Polotsk-Steklovolokno’ Company, a condition for being hired was to leave the BFTU.
- 550.** Other cases of trade union discrimination included refusal by the enterprise management to extend the application of a collective agreement to workers who were members of the FMWU. In two cases,²⁵⁸ the witnesses explained that they had complained to the Ministry of Industry, which concluded, in one case, that a violation of labour legislation had been committed and requested the plant director to comply with legislation, and to courts, which in both cases ordered the extension of the application of the collective agreement to the workers concerned.
- 551.** Witnesses met in Minsk explained that from January 2002, members of the BFTU at Brest State University have been advised to leave their trade union. Following a warning that if they did not leave the BFTU, they would face dismissals, five trade union members left the union and two quit their jobs at the University. Moreover, financial aid was refused to two members of the BFTU on the grounds of their trade union membership. In March 2003, the University administration pursued a campaign aimed at liquidating the BFTU primary organization. From 72 members in 2001, the organization had 52 members by the end of 2003. The witnesses also stated that in November 2003, one trade union member failed to pass a “qualification examination” despite 25 years of working experience at Brest University. The commission on labour disputes, to which the employee concerned had complained, concluded that the qualification examination was carried out with a number of procedural irregularities. It further considered the results of the qualification examination to be politically motivated. A copy of this decision was provided to the Commission in Minsk.
- 552.** Witnesses from Construction Trust No. 12 in Mogilev stated that members of the BFTU only received their New Years’ gifts after they submitted a complaint against their employer.
- 553.** At the ‘Zenit’ Plant in Mogilev, the elected trade union leader explained that he was released from his duties so that he could carry out his trade union functions only two months after his election and only after the intervention of the Prosecutor.

²⁵⁶ Polotsk and Novopolotsk.

²⁵⁷ Government representatives, formal hearings, session II.

²⁵⁸ At Zhitkovichi Motor Plant and Minsk Electro-engineering Plant.

- 554.** At Novopolotsk Heat and Power Generation Plant, the chairperson of the local union explained that he had not received a promotion since becoming a trade union activist, although before becoming a trade union member in 2000 he was promoted every year. Another trade union member was forced to accept a downgrading.
- 555.** The BFTU and the FMWU witnesses further mentioned to the Commission in Minsk several cases of transfers that occurred at 'Pridneprovskaya' Poultry Processing Factory and Minsk Motor Plant. The chairperson of the primary trade union of the BFTU and his trade union colleagues were transferred to the location situated from 10 to 15 kilometres away from the plant without any transport being provided. As a result, they were forced to resign. The BFTU primary trade union at 'Pridneprovskaya' Poultry Processing Factory ceased to exist. At Minsk Motor Plant, one trade union activist was transferred to different departments two times in two years before she was offered a one-year contract, which she refused to sign.
- 556.** Mr. Starykevich, the Editor-in-Chief of the FPB newspaper 'Belarusski Chas', told the Commission that on 8 August 2002, he was dismissed under a personal order from Mr. Kozik, the chairperson of the FPB. This decision ran contrary to an earlier decision by the FPB Presidium to refuse the removal of Mr. Starykevich from his post. Mr. Starykevich maintained that Mr. Kozik's decision constituted a violation of the FPB statutes, according to which, the nomination of the Editor-in-Chief of the Federation's newspaper should be based on the decision of the Presidium of the FPB.
- 557.** In relation to the alleged individual instances of trade union discrimination, the Government asserted that those cases had not been proved. The Government pointed out that some of the alleged cases were considered by courts and instances of anti-union discrimination were never found. The Government insisted that the labour legislation of Belarus provided for the necessary guarantees against anti-union discrimination. As concerns more specifically the case of Mr. Starykevich, the Government considered that this case related to the conflict within the trade union itself and did not involve the Government; it therefore saw no grounds for intervention.

Chapter 14

Social Partnership

I. Introduction: Outline of arguments

- 558.** In relation to the issue of social partnership, the complainants stated that from mid-2001 to mid-2002 there had been no forum for social dialogue in the country as the tripartite National Council for Labour and Social Issues (NCLSI) had not been convened. In addition, there had been a lack of consultation concerning the selection of the workers' delegates to the 2002 International Labour Conference (ILC). During the hearings in Geneva, the complainants maintained that there could be no true social partnership in Belarus at present given the lack of independence in the functioning of the Federation of Trade Unions of Belarus (FPB) and the fact that, as 80 per cent of the enterprises were state controlled, the employers' organizations also represented state interests. Thus, while there might technically be three social partners, they all represented the interests of the state. The complainants provided further information concerning the way in which independent trade unions had been excluded from social dialogue.²⁵⁹
- 559.** The Government disputed the complainants' allegations concerning social partnership in Belarus. The Government emphasised legislative provisions creating institutions of social dialogue in Belarus and stated that the relationship between trade unions and the Government was based on consultation. The Government provided the Commission with relevant texts in this respect: Presidential Ordinance No. 252 concerning the NCLSI and associated regulations, and Presidential Ordinance No. 639 concerning measures to improve cooperation between the state administrative bodies and the trade unions. It denied the allegations of non-independence of the FPB and stressed the long and arduous discussions that took place in the NCLSI, which examined highly important matters of socio-economic policy and concluded general agreements.²⁶⁰
- 560.** During the mission to Minsk, both employers' organizations stated that trade unions and employers' organizations have contradictory aims. Nevertheless, they stated that they aimed for the resolution of problems through social dialogue, rather than through conflict. While the Belarussian Union of Employers and Entrepreneurs named after Professor M.S. Kunyavsky (BUEE) stated that it had a commitment to social dialogue and supported the existence of a strong independent trade union movement in Belarus, it explained that it was composed solely of small businesses often without trade unions and that the current conflict did not touch it. In fact, it found that it shared a similar vision of economic development and necessary reform with the independent trade union movement. The Belarussian

²⁵⁹ Complainants' representatives, formal hearings, session IV.

²⁶⁰ Government representatives, formal hearings, session IV.

Confederation of Industrialists and Entrepreneurs (Employers) (BCIE) stated that it did not take a position in relation to the conflict between the Government and the independent trade union movement.

II. Governmental relationship with the FPB

- 561.** During the hearings, the complainants noted that relations between the trade unions and governmental authorities worsened following the decision of the then chairperson of the FPB, Mr. Goncharik, to stand for election in the national Presidential elections in 2001. Nevertheless, the NCLSI was not only not convened during this period of particular tension, but there had still been no meetings during the entire period of the FPB's subsequent chairperson, Mr. Vitko. Following the change in leadership from Mr. Vitko to Mr. Kozik in 2002, however, cooperation immediately recommenced at the national level through the NCLSI.²⁶¹
- 562.** According to the complainants, this was not real social dialogue, as the FPB was not in truth independent from government and so did not provide a real workers' perspective. Since Mr. Kozik's election as chairperson of the FPB, the Federation had been a part of the government system as even Mr. Kozik had stated that he was there to carry out the President's wishes. The previous FPB executive had been replaced by an executive made up of members who had been, or still were, governmental officials, and the organization became an instrument for the implementation of government orders. This fact, added to the governmental control over most property, was a dangerous tendency that should not be ignored. In addition, there had been clear favouritism to the FPB since Mr. Kozik became its chairperson through measures such as a Presidential Decree allowing the FPB to use the official name of the Republic in its title, its right to establish a special innovative fund, and the anniversary celebrations of 100 years of trade unions in Belarus, which were jointly funded by the FPB and the Presidential Administration.²⁶²
- 563.** The Government stressed, during the hearings, that legislation in Belarus included a right to social partnership. Further, the Government considered that the arguments made by the complainants were more related to internal union affairs and rivalry, and the Government was prohibited by legislation from interfering in matters concerning the relationships between trade unions.²⁶³
- 564.** The Commission had discussions in Minsk with the FPB leadership and representatives of many of its affiliates on this matter. Mr. Kozik explained that after he was elected to the post of chairperson of the FPB in 2002, he began, together with the others holding managerial posts in the Federation, to build a relationship with the government on the basis of social partnership. On some issues the FPB had been successful, while other proposals had been rejected by the government. The FPB had worked within a framework that ensured that all benefits

²⁶¹ Complainants' representatives, formal hearing, session IV.

²⁶² Mr. Yaroshuk, formal hearings, session IV.

²⁶³ Government representatives, formal hearings, session IV.

it secured were extended to all workers in Belarus, and not simply to its members. Examples included the reinstatement of the check-off facility and the negotiation of the Collective Agreement. Many powers that trade unions had enjoyed during Soviet times had been lost or, in some cases, given away by trade union leaders prior to 2002 who had not adequately resisted the government's actions.

565. Mr. Kozik stated that he would like to have cooperation with the other trade unions, and that he had made statements to this effect both to them and in the media. The aim was for co-operation with the parallel trade union structure. Despite his openness, the FPB received only criticism from the minor trade unions. It was an exaggeration to say that the FPB had a special relationship with the government. Rather, it was simply that the one who worked hardest, got the best results. The FPB had used the advantage of being the largest union and had been brave to state clearly what should be done, and so had received significant results.

III. National Council for Labour and Social Issues

566. During the Commission's mission to Minsk, the Government explained that the NCLSI was the tripartite body through which social partnership in Belarus was carried out. Its periodic meetings were organized, chaired, and hosted by each of the social partners in turn. Each group had the responsibility for determining which representatives should fill its allocated eleven seats. For example, the Government's working group was headed by the First Deputy Prime Minister and was composed of representatives from the Ministries of Labour and Social Protection, Justice, Finance, Industry and Economy, and the employers' group was composed of the two Belarussian employers' organizations: the BCIE and the BUEE.
567. The complainants argued that 'independent' trade unions had, effectively, been excluded from any real social dialogue. In particular, the Belarussian Congress of Democratic Trade Unions (CDTU) had often not been invited to the meetings of the NCLSI (although it had been allocated one of the eleven seats at the time that Mr. Goncharik was chairperson of the FPB) and, when the CDTU had been invited, it had been denied the right to determine its own representative. The CDTU, represented by its then chairperson, Mr. Kanakh, had only been able to attend the first meeting following the election of Mr. Kozik.²⁶⁴ In November 2002, the CDTU leadership changed from Mr. Kanakh to Mr. Yaroshuk; at this time, Mr. Kanakh became deputy chairperson. Following this change, the new chairperson was denied access to an NCLSI meeting and was told that only Mr. Kanakh could represent the CDTU.
568. During its mission to Minsk, the CDTU furnished the Commission with a number of letters in which it had informed the co-chairpersons of the NCLSI of its desire to participate in the meetings and to be represented by its new chairperson. First, on 26 December 2002, the CDTU sent a letter to the FPB, as one of the co-hosts of NCLSI, stating that it had learnt from television that the NCLSI had met earlier that

²⁶⁴ Mr. Yaroshuk, formal hearings, session IV.

month, but that Mr. Kanakh, the current representative, had not been invited. Another letter of the same date was sent by the CDTU to the NCLSI Government and employer co-chairpersons, expressing the hope that the CDTU's new representative – Mr. Yaroshuk, its new chairperson – would receive all the necessary documentation for the next NCLSI meeting.

- 569.** The complainants stated that receipt of these letters was confirmed orally but the CDTU never received a reply. Another letter was sent to the FPB by Mr. Yaroshuk on 30 April 2003, recording that the previous letters remained unanswered, and that the CDTU had not been invited to the 4 December 2002 and 18 April 2003 meetings of the NCLSI, the latter of which had been convened by the FPB. Mr. Yaroshuk indicated during the hearings that he had approached the Vice Prime Minister (NCLSI Government co-chairperson) about this, and had insisted on the need to be part of the social partnership.²⁶⁵
- 570.** Mr. Kanakh explained to the Commission during its mission to Minsk that, as he had been personally invited to the NCLSI October 2003 meeting to be held at FPB headquarters, he went to the FPB to speak with Mr. Kozik about the fact that the invitation was still addressed to him and the FPB's apparent insistence that the CDTU should only be represented by him. Mr. Kanakh explained that the matter of the CDTU's representation on the NCLSI was for the CDTU to decide. Nevertheless, when Mr. Yaroshuk showed up at the meeting, he was denied access. Consequently, there had been no CDTU involvement in the latest General Agreement, which was signed on behalf of all workers' organizations including the CDTU, by Mr. Kozik alone. On 23 December 2003, the CDTU again wrote to all three co-chairpersons, noting that the CDTU had not been invited to the NCLSI for an entire year, and reiterating that Mr. Yaroshuk was its representative. The complainants considered that the exclusion of the CDTU from the NCLSI had been carried out, or orchestrated, by Mr. Kozik, in accordance with the wishes of the Government.
- 571.** During the hearings, the Government for its part acknowledged that the complaint submitted to the Committee on Freedom of Association (CFA) in 2000 may have influenced relations with the FPB at the time because of the serious allegations made. Nevertheless, while the dialogue did become more difficult at that time, it had continued despite the complaint, to the extent that a General Agreement was concluded in May 2001. Subsequently, when Mr. Goncharik ran for President of the Republic, it was natural that the tension between the two parties would limit their dialogue. In relation to the issue of Mr. Yaroshuk not being accepted as the appropriate representative of the CDTU for the purposes of the NCLSI, the Government explained that it had no involvement in the selection of workers' representatives. Each of the social partners would select its' own representatives. The list of workers' representatives that had been established included the name of Mr. Kanakh, who was chairperson of the CDTU at the time that the list was created. The Government did not know the basis previously used by Mr. Gontcharik to allow the CDTU to be represented on the NCLSI.²⁶⁶

²⁶⁵ Mr. Yaroshuk, formal hearings, session IV.

²⁶⁶ Government representatives, formal hearings, session IV.

- 572.** The Government stressed that the focus that the ‘independent trade unions’ placed on the NCLSI was misplaced, as the FPB represented the vast majority of trade unions and workers in Belarus. There was a problem amongst the workers’ organizations in Belarus in this regard, as other trade unions currently represented by the FPB, but with a much larger membership than the CDTU, also thought they should have a place among the eleven seats on the NCLSI set aside for workers’ organizations. The Government had felt unable to solve the issue of representativeness on the NCLSI, as it had feared that it would be interpreted, in the context of Case No. 2090 before the CFA, as pressure exerted on the smaller trade unions and suppression of the trade union movement. However, the matter would be solved by the incorporation in Belarus of the concept of the most representative union, properly determined on the basis of objective criteria, such as quantity of members and territorial representation, in accordance with the CFA’s jurisprudence on the matter. The need to ensure differing views did not, in the Government’s opinion, represent an objective criterion.²⁶⁷
- 573.** The complainants indicated during the hearings that a plan of legislation had been established by the Government for 2004 pursuant to Presidential Ordinance No. 57 and Ministerial Edict No. 341, including the issue of representativeness of trade unions to be finalised by September. They considered that the intention behind this proposal was to ensure that the smaller trade unions would not be recognized as representative at any level and this would surely result in the elimination of the CDTU.²⁶⁸
- 574.** During the Commission’s mission to Minsk, Mr. Kozik explained that the FPB had initiated the resumption of the NCLSI after his election as chairperson. Mr. Kanakh, then chairperson of the CDTU, had attended the first meeting as its representative, upon the invitation of the FPB at whose premises the meeting was held. The second meeting of the NCLSI was hosted by the employers, in accordance with the rotation of its location and chairperson. Mr. Kozik explained that the employers did not invite the CDTU, despite the FPB having advised the appropriate people that the CDTU should participate.
- 575.** The next time that the FPB hosted the meeting, Mr. Kanakh, then the deputy chairperson of the CDTU, was again invited and came to the FPB premises about two hours before the meeting was due to start, talked with Mr. Kozik, and took the various papers. Mr. Kanakh did not return to the FPB building at the time that the meeting was due to start. While Mr. Yaroshuk did arrive, he too left five minutes before the NCLSI began. Mr. Kozik stated that he had advised the CDTU that all it needed to do was to send notification that Mr. Yaroshuk would represent it rather than Mr. Kanakh, but he believed that it did not want to send this notification nor did it wish to cooperate with the NCLSI.

²⁶⁷ Government representatives, formal hearings, session IV.

²⁶⁸ Mr. Yaroshuk and Mr. Fedynich, formal hearings, session IV.

IV. Delegates to the International Labour Conference

576. At the hearings, Mr. Yaroshuk stated that the CDTU had not been involved in the selection of the workers' delegates to the ILC, nor had its representatives been included.²⁶⁹ The Government stated that it held regular consultations with the most representative trade union organizations to discuss the appointment of workers' delegates to the ILC. The FPB had many more members than the CDTU, which was, in reality, just a minority union; delegations to the ILC should be determined on the basis of membership numbers.²⁷⁰ Mr. Yaroshuk disputed this, recalling that in 2002, prior to Mr. Kozik's election, the FPB had not been considered so clearly the most representative and, in fact, had not been included in the delegation to the ILC that year. The Government stated that there was no point in considering credentials when the Belarus delegation was actually not present at the 2002 ILC. In conclusion, however, the Government stated that the issues surrounding social partnership were being worked on.

V. Consultation on legislation

577. As was discussed in chapter 10, the complainants questioned the Government's commitment to consulting all trade unions on proposed legislation concerning trade union matters. They recalled in the hearings that certain legislative texts did exist to allow for consultation and dialogue, but the complainants found that these rarely worked in practice. It was suggested that this was an example of the lack of real social dialogue in Belarus.²⁷¹

578. During the hearings, the Government accepted that there were a number of questions that had not been fully resolved, such as tripartite consultations and the procedure for legislative development, which were currently being worked on. The Government believed that its commitment to social dialogue was obvious.²⁷²

579. The FPB advised the Commission that it was currently involved in the legislative process and, for that reason, it disputed the idea that consultation was a dead letter. In this regard, the Commission was given a copy of the FPB's summary of its latest proposed amendments to the Law on Trade Unions,²⁷³ submitted pursuant to s. 14 of Presidential Ordinance No. 359 (11 August 2003) on measures to improve

²⁶⁹ Mr. Yaroshuk, formal hearings, session IV.

²⁷⁰ Government representatives, formal hearings, session IV.

²⁷¹ Complainants' representatives, formal hearings, session IV.

²⁷² Government representatives, formal hearings, session IV.

²⁷³ The FPB proposed amendments to the Law on Trade Unions involved increased participation by trade unions in the drafting of normative legal acts; the extension of representativity of trade unions beyond the relationship with the Government to relationships with all social partners; increased labour inspection rights and rights of representation in court; decreased Ministerial control over the social control exerted by the trade unions in relation to violations of labour legislation; increased duties imposed on employers in relation to health and safety violations; more access to information; specified and differing guarantees for full-time trade union leaders as compared with voluntary leaders; provision of premises and facilities by employers to trade unions in accordance with the Collective Agreement and not the less favourable normal lease agreement; increased duties on employers in relation to improvements in the provision of premises and facilities to trade unions; and consistency in terminology throughout legislation.

legislative activity. This Ordinance allowed for comments from individuals and non-governmental bodies to be taken into account in the drafting process and s. 14 set out the procedure to be followed by those wishing to be involved in the drafting of laws.

- 580.** The FPB made it clear that no governmental body had consulted the FPB in relation to the adoption of laws or presidential ordinances; rather, the Federation submitted proposals under the normal procedure in the same way that was open to other trade unions. Mr. Kozik further advised the Commission that the right of legislative initiative had existed for trade unions in the past, but had been lost in the transition to a market economy before he had become chairperson of the FPB. Now, however, the FPB was fighting to regain this right for trade unions.

PART V

CONCLUSIONS AND RECOMMENDATIONS

Chapter 15

Conclusions and Recommendations

581. Having set out the arguments and information obtained from written communications, oral statements provided in Minsk and the testimony given at hearings in Geneva, it is now for the Commission to put forward its conclusions and recommendations on the complaint which the Governing Body referred to it for consideration.

I. Terms of reference of the Commission

582. Article 28 of the Constitution of the International Labour Organization provides that the Commission shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken and the time within which they should be taken.

583. After the Commission was appointed and before taking up its duties, its members made a solemn declaration undertaking to perform their duties and exercise their powers “honourably, faithfully, impartially and conscientiously”. It is in this capacity as an independent body called upon to make an objective evaluation of the issues in dispute that the Commission has sought to carry out its task. It is in this same spirit of independence and impartiality that it sets out below its conclusions and, with regard to points on which it does not consider the situation to be satisfactory, makes recommendations concerning the steps that should be taken to put them right.

584. It should be recalled here that the role of a Commission of Inquiry, under Article 26 of the Constitution of the ILO, is not confined to an examination of the information provided by the parties but, as has been indicated above, the Commission must itself take all necessary steps to obtain full and objective information on the questions at issue. As required by its terms of reference, the Commission must, in accordance with the Constitution of the ILO, record its findings and make recommendations on the substance of the case.

II. Preliminary matters

585. The Commission would at the outset put on record its appreciation to the Government of Belarus for the full cooperation it provided in respect of all aspects of the Commission’s work. The Commission was able to meet with almost all of the Government officials that it had indicated in its initial letter to the Government, with the exception of the President of the Republic and the Head of the Presidential Administration (although it did meet with the Deputy Head). The Government also

fully participated in the formal hearings that took place in Geneva with a cordial and open attitude. While such an attitude is indeed expected as the normal consequence of recognition of the constitutional obligations undertaken by a member State, the Commission is grateful to the Government for this spirit of cooperation, which has been of significant value to its ability to carry out its functions and task effectively.

- 586.** The Commission also wishes to thank all those it met in Minsk, and those who participated in the hearings, for assisting it in its work and its endeavours to collect the most complete information possible. The Commission wishes to acknowledge the enterprise-level trade union members and leaders many of whom devoted their non-work days to provide evidence. It further extends its special thanks to the representatives of the employers' organizations for their full cooperation. The Commission further wishes to express its appreciation to the United Nations Development Programme in Belarus, which kindly provided offices and facilities during its mission in Minsk.

III. Summary of arguments presented by the parties

- 587.** The complainants referred to the systematic subjugation of unions to State control through a variety of means designed to eliminate any form of independent trade unionism in the country. The means referred to included, in particular, the systematic refusal to register primary level organizations affiliated for the most part to the Belarussian Free Trade Union (BFTU), attempts first to weaken and subsequently to gain control over the Federation of Trade Unions of Belarus (FPB) and, once such control was ensured, the methodical eradication of any dissenting voices within the FPB structure. With domination of the largest trade union in the country secure, the so-called social dialogue is said to be limited to a Government monologue.
- 588.** The Government, for its part, consistently denied any involvement in the developments of the Belarussian trade union movement over the past years. As regards registration procedures, it has argued that the requirements are quite simple and registration is only refused when insufficient documentation has been provided. All such cases have been or could have been made subject to review by the competent courts and, in any case, the law has been duly applied. On the question of State control over the FPB, the Government has denied any involvement either in the elections of the new chairperson in 2002 or in the inner workings of the Federation. It considered that all complaints received concerning attempts to dampen dissident voices or influence mass changes in trade union affiliation were solely questions of internal trade union affairs in which the Government had no right to interfere. As for social dialogue, the Government considered that this was an extremely strong part of its culture in which trade unions had a traditionally important role to play. The Government also wished to address, however, as a matter of priority, the question of representativeness. The Government was concerned by the fact that trade unions representing significant numbers of workers were not able to participate on national tripartite bodies, while

a seat was to be saved on these bodies for a considerably smaller union. The Government considered that taking into account the need to ensure alternative voices was an unconvincing criterion upon which to base representative status.

IV. Conclusions on the substance of the case

589. In order to draw a complete picture of the trade union rights' situation in Belarus and to assist in a clearer understanding of the issues at hand, the Commission has grouped its conclusions under the following topics: Decree No. 2: Registration of trade unions; External interference in trade union affairs; Anti-union discrimination, harassment and retaliatory acts; Legislation affecting trade unions; Social dialogue; and General considerations.

A. Decree No. 2: Registration of trade unions

590. Presidential Decree No. 2 on Some Measures for Regulation of Activities of Political Parties, Trade Unions and other Public Associations was promulgated in 1999 and lays down the procedures and requirements for all existing organizations and any newly created organizations to re-register or register, respectively. The complainants stated that the application of this Decree has rendered it particularly difficult for certain primary level organizations to be registered. Even the Belarussian Union of Employers and Entrepreneurs named after Professor M. S. Kunyavsky (BUEE) complained that, according to their experience, the registration process was quite long and complicated.

591. The Regulations issued pursuant to Decree No. 2 list the documents necessary for registration, including confirmation of the legal address of the association or organization in question. While on the face of it this would seem to be a perfectly simple and reasonable requirement, as the Government indeed claims, it does seem to be excessively complicated to obtain premises that may be used to establish a legal address. This complexity appears to be partially due to the need to refer to other pieces of legislation, such as the Housing and Civil Codes.

592. While the Government states that overall the registration process functions quite smoothly and the vast majority of trade unions and their organizational structures have been registered, the obstructive nature of the legal address requirement, as it is currently applied, becomes more apparent from the fact that difficulties in providing a legal address considered to be suitable by the registration authorities arise almost exclusively in respect of primary level trade union organizations that are outside the traditional structure of the FPB. Indeed, while the address of offices provided to a union by an employer or the manager of an enterprise on its premises is acceptable proof for a legal address, the provision of such premises is highly problematic when it comes to union structures that are outside the FPB. The Government stated that this is because employers, who are under no obligation to provide premises, consider that provision of offices to all unions in their enterprises might be too costly or too much of a burden. Yet the union that is forced to look to other premises for an appropriate location is informed that many premises, such as

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private residences and garages, are not acceptable for use as organizational headquarters due to the specificity of use set out in the Housing Code. This leaves unions with the sole choice of renting premises, which are often quite expensive and beyond the budget of not-for-profit organizations, particularly primary level organizations.

- 593.** During the hearings, additional light was brought to the manner in which registration is granted or denied. The Commission was particularly concerned by the fact that a procedure, which should normally be a routine matter, appeared to be determined by some of the highest officials in the country making up the Republican Registration Commission. During the hearings, the Government representatives acknowledged that the Registration Commission was chaired by the Deputy Head of the Presidential Administration, yet no one, including officials of the Ministry of Justice, was able to name the other members. While the Government stated that the conclusions of this Commission were only of a recommendatory nature, the Commission could see nothing in the text of the Decree or its rules and regulations that would confirm this. To the contrary, the Decree itself states that registration is performed by the various national and local bodies “on the basis of the conclusions of the Republican Registration Commission”. The complainants indicated that they knew of no case where the Registration Commission’s conclusions were not followed and the Government did not provide any information to the contrary.
- 594.** As for the practical application of Decree No. 2, the Commission has received evidence from numerous primary trade union organization members and leaders who have been unable to obtain registration of their organizations despite repeated requests, presentation of documents, endless efforts to acquire an acceptable legal address, and persistent appeals to the courts at all levels requesting a final resolution of their unrecognised status. While the Government has been diligent in its written communication, received by the Commission after the formal hearings in Geneva, to respond in respect of almost every non-registered organization that had been raised by the complainants, including those raised in Case No. 2090 examined by the Committee on Freedom of Association (CFA), most of its replies state that the organizations in question were not able to provide an acceptable address for registration. While taking due note of the Government’s opinion that the registration requirement is simply a routine procedure and nearly all trade unions and their structures have been re-registered or registered without impediment, the Commission observes that the difficulties encountered for registration in some 30 cases brought to its attention concern most especially the organizational structures of the BFTU. In contrast, the Commission heard evidence from the chairperson and members of the FPB that they had no difficulties in registering their primary level organizations. Thus, a simple procedure for some has become a highly complex procedure for others, only rarely resulting in registration.
- 595.** The Commission further observes that, in reply to the concerns first raised in this respect by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the CFA, the Government initially acknowledged that the legal address requirement posed obstacles to trade union registration and

demonstrated a clear willingness to address the problem. On numerous occasions, the Government stated to the various ILO supervisory bodies, including at the Conference Committee on the Application of Standards, that it was reviewing or had drafted amendments to the Decree and its accompanying rules and regulations so as to eliminate the remaining obstacles. Yet, four years later, during its mission to Minsk, the Commission saw no progress in this regard. The requirement for legal address has not been removed; the determination of what may be an appropriate location for an organization's legal address appears to have become more complex; no clear rules have been set out to facilitate this process; and organizations remain unregistered, primarily those within the BFTU structure, despite numerous attempts to satisfy the requirement, including resort to the courts.

- 596.** In addition, the Commission is concerned over the information provided by the Belarussian Congress of Democratic Trade Unions (CDTU) at the end of April 2004 that the Soligorsk municipal executive committee has requested the Ministry of Justice to consider the dissolution of the Belarussian Independent Trade Union (BITU) and its organizational structure in Soligorsk, which had been duly registered in 1999 following the promulgation of Decree No. 2. In this case, the Soligorsk regional organization of the BITU had informed the registration authorities of a change in its legal address. As with the other cases raised before the Commission, the request to consider dissolution was based on the ground that the new legal address was unacceptable given that the "premises were built without design estimates and they were not put into commission in accordance with the established order". The Commission fears that this example represents yet a further attempt to weaken the trade unions outside of the FPB structure, especially as this case concerns not a primary organization, but rather a national level union and its regional organizational structures.
- 597.** The Commission also had before it the issue of the ten percent minimum membership required to form an autonomous union at enterprise level. While the Government stated that this requirement was not an obstacle to the creation of any unions, particularly as it applied to autonomous unions and not to primary organization structures created by national level unions, the Commission was made aware of the case of the BFTU organizational structure established at 'Khimvolokno' enterprise in Grodno, which was successively denied registration, including by the various courts to which it appealed, on the basis that it did not represent ten per cent of the workforce. This example, in addition to the examples noted in its findings of other BFTU primary organizations that had been denied registration due to the legal address requirement, lead the Commission to conclude that the problem is not simply one of an incapacity to meet reasonable requirements for registration. Moreover, there is reason to query whether Decree No. 2 has been arbitrarily applied not only by the registration bodies, but also by the courts, in a manner aimed at eliminating the representation of workers by organizations outside the FPB structure.
- 598.** Taking all of the above into account, the Commission cannot but conclude that Decree No. 2, in particular the legal address requirement obligatory for registration of a trade union or an organizational structure, operates in a manner that impedes the free formation of trade union organizations, and has impacted uniquely on those

which are outside the structures of the FPB or oppose its leadership. As such, it amounts to a condition of previous authorization for the formation of a union contrary to the right of workers to form and join organizations of their own choosing without previous authorization provided for in Article 2 of Convention No. 87.

B. External interference in trade union affairs

- 599.** The Commission received a great deal of evidence in Minsk and during the formal hearings in Geneva as to how Government, managers and directors have interfered in the free functioning of trade union organizations over a number of years. The Government, on the other hand, categorically denies ever being involved in the elections, functioning or activities of trade unions.
- 600.** The Commission considers that it cannot address the question of external interference without looking back at the Instructions said to have been issued by the Presidential Administration in 2000, which called upon: 1) the ministers and the chairpersons of government committees to propose candidates for election to the branch trade unions; 2) the Minister of Industry to participate more actively in these elections and; 3) the chairperson of the State Aviation Committee to examine the possibility of incorporating the Belarussian Trade Union of Air Traffic Controllers (BTUATC) into the branch trade union of aviation workers. Firstly, the Commission feels that the Government has not given a straightforward reply as to the existence of such Instructions. The Commission observes in this respect that a number of Government representatives had stated to the ILO supervisory bodies on the one hand, that the instruction was not a normative act, did not have legal force and did not have any practical influence on the result of trade union elections (thus implicitly recognising its existence, while denying it any legal importance) and on the other hand, that the copy provided was not in the format of a document issued by the Presidential Administration (thus implying that such instructions might exist, but since what was provided was not a direct copy there is no reason to confirm this). When asked by the ILO supervisory bodies to issue new Instructions clearly revoking these Instructions, the Government merely stated that they were no longer relevant as the elections had already taken place and the candidates who felt concerned by these Instructions were nevertheless duly elected. The Commission has received no clearer answers from the Government in this respect during the course of its work.
- 601.** Further, there was no denial that another set of instructions was issued by the Presidential Administration in 2001, calling, amongst other things, for the establishment of other worker representative bodies, the establishment of a municipal union council in Minsk and questioning the practice of direct transfer of union dues.
- 602.** The Commission notes that various actions have been taken either in conformity with the Instructions of 2000 and 2001 or with consequences consistent with their ostensible purpose. Thus, so far as concerns the 2000 Instructions, it has never been denied that there were governmental attempts to replace Mr. Yaroshuk, chairperson of the Agricultural Sector Workers' Union (ASWU), in 2000 with the then Minister

of Agriculture. Mr. Yaroshuk was ultimately discharged from his duties in September 2003, shortly after Mr. Kozik's election by the FPB Plenum.

- 603.** The Commission also heard evidence of various steps taken by the Chairperson of the State Aviation Committee to weaken the BTUATC and have its members form local unions affiliated with the Civil Aviation Union, a branch-level union of the FPB. Although the Chairperson denied any involvement in these actions, the Commission rejects his evidence to that effect. In this regard, the Commission notes that a letter subsequently written above his signature with respect to the possible deregistration of the BTUATC stated that free and independent trade unions posed a threat to “civil aviation tasks” and “contradict[ed] the President of the Republic’s requirement in relation to trade unions”.
- 604.** The BTUATC was deregistered at the national level in 2003. Regretfully, the difficulties for the air traffic controllers’ union have not subsided. Following its dissolution, the air traffic controllers created a local union as an organizational structure of the Democratic Union of Transport Workers (DUTW), a CDTU affiliate. While the union was duly registered in September 2003, it received a letter over six months later revoking its registration stating that, on the basis of its legal address, it had registered in the wrong district. No legal clarity was provided to the Commission as to which district a union should actually be registered in; the Commission was told that registration should take place where the union carries out its activities, but also where its headquarters are located. In the case of the air traffic controllers’ union, its headquarters are in a different district from the enterprise in which its members are located and thus where it is said to carry out its activities.
- 605.** With respect to the Instructions of 2001, shortly afterwards, the Council of Ministers ordered the withdrawal of check-off facilities by Ministerial Edict No. 1804. So, too, the Minsk City Union for employees in the cultural sphere was later formed. The Commission found the case of the Minsk Regional Trade Union of Employees in the Cultural Sphere (MRTUECS) difficult to follow. A number of serious allegations were made against the MRTUECS chairperson, Mr. Mamonko, and the Commission considers that it does not have sufficient information to judge the validity of such accusations. However, given that a decision was issued by the Steering Committee of the Ministry of Culture and of the Minsk municipal executive committee that a new Minsk municipal trade union of employees in the cultural sphere be created, the Commission does not exclude a link between Mr. Mamonko’s opposition to the creation of this city union and the subsequent events.
- 606.** In addition to the Instructions of 2000 and 2001, the Commission observes that the Government has not denied that a statement was made by the President of the Republic to an ideological seminar in March 2003 wherein he gave the Minister of Industry two months to deal with the problem of the chairpersons of the Radio and Electronic Workers’ Union (REWU), Mr. Fedynich, and the Automobile and Agricultural Machinery Workers’ Union (AAMWU), Mr. Bukhvostov. Indeed, it would appear quite difficult for the Government to deny this statement given that its text was placed on the President’s own website.

- 607.** Following the Presidential statement in March 2003, Mr. Bukhvostov and Mr. Fedynich experienced significant and repeated attempts to discharge them from their union posts. In addition to the orders coming from the President of the Republic himself that the problems created by these two persons should be addressed, it is clear that Mr. Kozik placed on an early agenda of the FPB the question of discharging these two union chairpersons. Subsequently, the Belarussian Industry Workers' Union (BIWU) was created and a considerable number of organizational structures from the AAMWU and the REWU transferred their affiliation to this new organization.
- 608.** Evidence was presented to the Commission concerning the close involvement of the Ministry of Industry in the creation of the BIWU. In particular, the Commission was provided with a telephonogram²⁷⁴ bearing the telephone number of the Ministry of Industry and containing an invitation to attend the founding congress of the BIWU. That evidence directs the conclusion that the Ministry was closely involved in its formation. So, too, the application forms to resign from the AAMWU and to join a company union that subsequently affiliated to the BIWU, as well as other such evidence provided by the REWU to the Commission in Minsk,²⁷⁵ confirm that enterprise managers were, indeed, involved in steps to bring about a decline in membership of the AAMWU and the REWU.
- 609.** The complainants claimed that the interference that initially came directly from the Government has become even more pervasive and destructive since the former Deputy Head of the Presidential Administration, Mr. Kozik, became chairperson of the FPB. Since his arrival, many of the full-time union officers of the Federation have been replaced with government officials. Thus, the complainants allege that the FPB has come under complete Government control and is now manipulated from within, making it virtually impossible for the branch trade unions and their organizational structures to act independently. The Government replies that the election of Mr. Kozik was conducted in accordance with the relevant laws and union rules. However, it has not instituted any measures for an independent investigation into the pressure allegedly placed on the members of the FPB Plenum by the Presidential Administration and others to vote for Mr. Kozik or into the overall situation of intimidation said to exist, despite the repeated calls previously made by the CFA to this effect. Moreover, Mr. Kozik has made no effort to examine the allegations made by his own branch unions in respect of their elections so as to ensure the fair and proper functioning of the Federation as a whole. Indeed, during his talks with the Commission, Mr. Kozik has dismissed each and every claim of interference made, without any apparent attempt to ascertain their validity.
- 610.** Several important issues have also not been the subject of independent investigation by the Government, nor apparently considered by the FPB. They include: the supposedly coincidental discharge of Mr. Bukhvostov and Mr. Yaroshuk as branch trade union leaders whilst their complaints were before the CFA, despite their claims of serious procedural irregularities and violations of their union statutes; the claims that members of the REWU and the AAMWU primary

²⁷⁴ Referred to in chapter 12, para. 33.

²⁷⁵ Referred to in chapter 12, para. 37.

level organizations were pressured by managers and the Ministry of Industry into transferring their affiliation and that these decisions were taken undemocratically and contrary to the union statutes; the claims that FPB amendments to Procedural Instructions on the transfer of branch local unions facilitated the mass exodus of primary level organizations from the REWU and the AAMWU; and the cause of the significant decline in membership of the AAMWU and the REWU and the possibility that that may have been linked to the Presidential speech of March 2003.

- 611.** The Commission further observes that, despite calls by the CFA to conduct an independent investigation into the allegations of interference, harassment and intimidation brought by the BTUATC, no such investigation was ever instituted. To the contrary, not only the Prosecutor-General, but even the Supreme Court itself appears to have ignored the concerns raised by the BTUATC and based its decision to dissolve the national level trade union solely on the basis of a determination of the number of its members, without any investigation into the reason for the rapid and significant decline in membership. Indeed, in reply to BTUATC's statement that some of its members had left the trade union under pressure from the employer, the Supreme Court held that "the reasons for leaving the trade union do not carry legal weight in the settlement of the dispute, given that according to the BTUATC's by-laws members have the right to leave the union freely at their own request, without giving reasons".
- 612.** The Commission cannot comprehend that no inquiry was conducted into the decline in BTUATC's membership having regard to the letter from the chairperson of the State Aviation Committee to the Minister of Justice which set the deregistration process into motion. This letter, as earlier noted, states that an earlier reply from the Ministry which confirmed the validity of BTUATC's registration constituted an "approach to the problem by the Ministry of Justice [which] creates conditions for the establishment of free and independent trade unions in all undertakings in this sector, which will jeopardize the ability of the civil aviation sector to do its job, as well as going against the demands made of the trade unions by President Lukashenko". The Commission finds that the failure to consider these important elements in a case entailing the dissolution of a trade union constitutes a failure to ensure the full protection of trade unions and their members from acts of anti-union discrimination and interference that is required by Conventions Nos. 87 and 98. Moreover, the subsequent and puzzling deregistration of the primary level organization of air traffic controllers can only be regarded as external interference aimed at eliminating their prospects of representing any workers at all.
- 613.** Finally, the Commission notes, overall, the accelerating decline of the membership of the trade unions at the heart of this complaint, which have been faced with repeated attacks on their structures and their trade union officers. There has been no investigation at all on the part of the Government to determine whether there has been interference. This inaction is compounded by the Government's refusal to issue clear instructions, as requested by the CFA, that external interference in trade union affairs will not be tolerated on the basis that, in its view, there was and is no such interference. The Commission considers that, at the very least, the Government owed it to its own credibility in the matter at hand to have these

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numerous allegations of interference thoroughly and impartially investigated and to recall that such interference was unacceptable and would be sanctioned.

- 614.** The failure of the Government to provide a clear denial that instructions were issued by the Presidential Administration in 2000 to interfere in the internal affairs of trade unions, the fact that Instructions were issued in 2001 and that, in March 2003, the President of the Republic gave the Minister of Industry two months to deal with Mr. Fedynich and Mr. Bukhvostov, the involvement of the Ministry of Industry and enterprise managers and the subsequent creation of the BIWU, and the involvement by the Chairperson of the State Aviation Committee in the decline and deregistration of the BTUATC, taken in conjunction with the changed affiliation of primary level organizations previously affiliated to the REWU or the AAMWU together with the actions taken against Mr. Fedynich and Mr. Bukhvostov give rise to the inescapable conclusion that the trade union movement has been and continues to be the subject of significant interference on the part of Government authorities. That conclusion is reinforced by the failure of the Government to investigate the serious allegations made by the complainants or to take steps to guarantee the basic rights of freedom and independence of trade unions as repeatedly requested by the supervisory bodies of the ILO. The Commission concludes that this interference has resulted in undermining one of the most essential prerequisites of freedom of association: trade union independence.
- 615.** The Commission further concludes that the independence of the FPB under the leadership of Mr. Kozik has been seriously compromised. There can be no doubt that, under his leadership, the FPB has acquiesced in the various steps that have weakened the independent trade union movement, particularly the REWU and the AAMWU. It is not possible to conclude whether or not the various acts or omissions by the FPB occurred at the behest of the Government. Indeed, they may well have been motivated by no more than a desire to consolidate power and influence in the FPB. However, the result has been that, at the very least, those acts and omissions have had the effect of placing serious obstacles in the path of those unionists who wish to exercise their right to associate freely in independent trade unions.

C. Anti-union discrimination, harassment and retaliatory acts

- 616.** The Commission heard many witnesses give evidence of various means used to frighten workers into changing union membership or to refrain from trade union activities, as well as of retaliatory acts taken against those who refused to be intimidated. At the local level, such action took the form of demotions, transfers, shift to fixed-term contracts and ultimately, non-renewal of contracts. According to the complainants, at its extreme, this pressure found expression in physical assault, arrest and detention.
- 617.** The Commission will not consider the case involving the serious assault of Mr. Roman, which it understands is now the subject of investigation. Nor will it go into the details of each case brought before it of anti-union discrimination and harassment in the workplace. It considers nevertheless that the number of cases of workplace harassment and discrimination brought to its attention, the details

provided by the individuals concerned, their systematic link to either the CDTU and its national affiliates (in particular the Belarussian Independent Trade Union (BITU), the BFTU and the Free Metal Workers' Union (FMWU)) or the dissident branch trade unions in the FPB (the AAMWU and the REWU), lead to the conclusion that there is sufficient evidence available to call for a thorough investigation of all these matters. The Commission regrets that the Government has not taken any steps in this regard, nor does it seem to take any of these allegations seriously. The Commission is particularly concerned that a number of these cases concern the actual livelihood of entire families, where trade union activists appear to have not only lost their jobs, but find it impossible to obtain any further employment. In these circumstances, the Commission considers that the Government has not complied with its obligation under Convention No. 98 to ensure effective measures of protection against anti-union discrimination, accompanied by sufficient and dissuasive sanctions, nor has it properly ensured the right of all workers to form and join organizations of their own choosing as provided in Article 2 of Convention No. 87.

- 618.** As concerns the specific cases of arrests and detention (Mr. Bukhvostov, Mr. Yaroshuk and Mr. Odynets), the Commission is of the view that the penalties imposed on each of these persons were so inappropriate that their involvement in the activities of independent trade unions must have been a motivating factor. Moreover, at least in the cases involving Mr. Yaroshuk and Mr. Odynets, the imposition of administrative detention was out of line with the penalties ordinarily imposed in such cases.
- 619.** The “offence” which resulted in Mr. Bukhvostov being sentenced to ten days administrative detention consisted solely of his unauthorised presence in Oktyabrskaya Square between 4:05 and 4:10 p.m. on 30 October 2003 while carrying a poster bearing the words “We protest against violations of workers’ rights” and his failure to respond to police orders to desist. The presence of a single person at that time and place could not possibly pose any threat to public health or safety nor, even, to the free flow of traffic. Indeed, the Commission can find nothing in the Court decision to suggest otherwise.
- 620.** So far as concerns Mr. Yaroshuk, officials from the Ministry of Justice and, even, the Deputy Prosecutor-General expressed surprise that he was punished by other than a fine. Moreover, the Commission notes that the argument that he presented to the effect that he criticized the law enforcement system generally and not the judge who presided over the proceeding for the deregistration of BTUATC appears not to have been the subject of any detailed analysis. So far as concerns Mr. Odynets, it has already been noted that, normally, only a fine is imposed for the failure of a lawyer to attend court.
- 621.** Whilst the cases against Mr. Bukhvostov, Mr. Yaroshuk and Mr. Odynets are now part of the past, the Commission considers that they reflect the Government’s failure to protect the rights of trade unionists and, in particular, to protect them from discrimination on the basis of their trade union membership or activities. Such discrimination is not only incompatible with, but is also destructive of freedom of association.

D. Legislation affecting trade unions

- 622.** Having addressed Decree No. 2 in the first section of its conclusions, the Commission will here address the matters raised in respect of Decree No. 24 concerning the use of foreign gratuitous aid (which replaced Decree No. 8) and the Law on Mass Activities (which substantially incorporated Decree No. 11).
- 623.** Decree No. 24 retains the previous restrictions placed on the use of foreign gratuitous aid by organizations, including workers' and employers' organizations, that were the subject of previous examination by the ILO supervisory bodies in respect of Decree No. 8. The Commission observes that the Decree still prohibits the use of foreign gratuitous aid for, among others, carrying out public meetings, rallies, street processions, demonstrations, pickets, strikes and the running of seminars and other forms of mass campaigning among the population. Violation of this provision can result in the imposition of heavy fines, as well as the possible termination of an organization's activities. While the Government stated that Decree No. 24 was only aimed at rendering the previous situation transparent and created a simple and rapid procedure for the registration of foreign aid, the Commission heard from one of the employers' organizations that, to the contrary, the process was costly and time-consuming.
- 624.** The Commission recalls from the principles elaborated by the ILO supervisory bodies that the right recognized in Articles 5 and 6 of Convention No. 87 implies the right to benefit from the relations that may be established with an international workers' or employers' organization. Legislation which prohibits the acceptance by a national trade union or employers' organization of financial assistance from an international workers' or employers' organization, unless approved by the Government, and provides for the banning of any organization where there is evidence that it has received such assistance, is not in conformity with this right. Although there were no specific allegations as to the practical application of this Decree, the Commission reiterates the conclusions made by these supervisory bodies that the previous authorization required for foreign gratuitous aid and the restricted use for such aid set forth in Decree No. 24 is incompatible with the right of workers' and employers' organizations to organize their own activities and to benefit from assistance that might be provided by international workers' and employers' organizations.
- 625.** As regards the Law on Mass Activities, the Commission recalls that this Law sets out the procedure for requesting previous authorization for any mass activity, gathering, open air meeting, street rally, demonstration or picket. A certain number of restrictions are laid down in the Law, including the prohibition of mass events aimed at changing the constitutional order by force or propaganda of war, social, national, religious, or race hostility. Further restrictions are set out concerning the proximity of mass events in respect of certain government buildings and metro stations. When a request for a mass event has been received, the local executive and administrative body has the power, with the event organizer's agreement, to change the date, place and time of the event to safeguard the rights and freedoms of citizens, public safety and the normal functioning of transport and organizations.

Organizations in violation may be dissolved and organizers may be charged with a violation of the Administrative Code.

- 626.** The Government explained that the Law establishes a procedure for mass events that is necessary for the protection of the rights of the wider community and to ensure law and order. While the legislation does permit dissolution, no trade unions have been liquidated under the Law. The Commission recalls, however, the case of Mr. Bukhvostov referred to above, who was sentenced to ten days of administrative detention for having undertaken a picket on his own, which is also punishable under the Law, in an unauthorised venue. While the Government explained that such action in the absence of appropriate permission is a breach of the Administrative Code, Mr. Bukhvostov clarified for the Commission that requests for permission to demonstrate in central public squares were systematically denied and that the authorities routinely and unilaterally changed the venue to an obscure and unfrequented location. This was what had happened in October when he had made a request to protest against violations of workers' and trade union rights in Belarus. Following his decision to protest on his own in the square for which permission had been denied, he was immediately arrested, charged and convicted. The decision was not subject to appeal.
- 627.** Given this information, the Commission endorses the comments of the ILO supervisory bodies that several provisions of the Law on Mass Activities constitute a violation of the right of workers' organizations to organize their activities freely, without interference by the public authorities, as provided for in Article 3 of Convention No. 87. As concerns the action taken in respect of Mr. Bukhvostov pursuant to the Law, read in combination with the Administrative Code, the Commission considers that there was a serious breach of Mr. Bukhvostov's civil liberties. In this respect, the Commission recalls the International Labour Conference (ILC) 1970 Resolution concerning trade union rights and their relation to civil liberties, which emphasises that the rights conferred upon workers' and employers' organizations must be based on respect for civil liberties, as their absence removes all meaning from the concept of trade union rights. Among those liberties essential for the normal exercise of trade union rights are freedom of opinion and expression, freedom of assembly, freedom from arbitrary arrest and detention and the right to a fair trial by an independent and impartial tribunal.

E. Social dialogue

- 628.** Firstly, the Commission observes that many of the acts of interference and anti-union discrimination, as well as the consequences of non-registration caused by Decree No. 2, have resulted in a denial of the collective bargaining rights of a number of primary level trade unions. Primary level trade unions that have not been registered have no right to carry out trade union activities and, consequently, to enter into negotiations with their employer so as to find a solution to their difficulties in providing an acceptable legal address. Further, the primary-level trade union of air traffic controllers was denied all collective bargaining rights with immediate effect following the decision for its deregistration noted above. Finally, the AAMWU primary level organizations whose registration was recalled by the FPB following its new Procedural Instructions to this effect were also denied any

Conclusions and recommendations

right to bargain collectively. The Commission considers, therefore, that these various acts of interference already examined above have further hindered the rights of these organizations to enter into negotiations with their employer.

- 629.** Moreover, the Commission considers that there has been a significant deficit in the functioning of social dialogue within the country overall. While the Government has made references to relevant ordinances establishing the National Council for Labour and Social Issues (NCLSI) and setting forth measures to improve cooperation between state administrative bodies and trade unions, it is very difficult for the Commission to accept that these texts actually reflect any current practice. Indeed, while the NCLSI was revitalized following the arrival of Mr. Kozik to the FPB, the representatives of the other national trade union central, the CDTU, have only been invited to two meetings. The second invitation appeared to be nominal and when the CDTU chairperson, Mr. Yaroshuk, arrived, he was not allowed to participate. The Commission strongly believes that social dialogue cannot be based upon stipulations as to which individual should represent a given trade union; these are matters that are inherent to the trade union itself.
- 630.** In addition, the Commission observes with concern the indications made by the Government that it was reconsidering the representative nature of unions such as the CDTU on the NCLSI. In the Government's opinion, there was no reason to allow this union to be represented on the Council when there were numerous FPB branch unions with significantly higher membership. The Government did not consider that ensuring a place for differing views was a convincing criterion for representation in the social dialogue of the country. 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.

F. General considerations

- 631.** The Commission further observes that the industrial relations system in Belarus and the practice of trade unions still retain many of the characteristics of the Soviet period, particularly as to the participation of managers and government representatives, including ministers and deputy ministers, directly in the decision-making of trade union bodies. The Commission believes that the incomplete development of the industrial relations system in a manner better adapted to a system of Government where social partners are separate and distinct entities has facilitated interference in trade union affairs. The Commission believes that social dialogue would be enhanced by further efforts to delineate the boundaries between the Government and the social partners, as well as between workers and enterprise directors.
- 632.** Finally, the Commission considers it important to respond to the frequently raised assertion by the Government that the labour legislation in the country provides

adequate protection to workers and their organizations from acts of interference, anti-union discrimination and other violations of trade union rights. The Government contends that any organization can turn to the courts to have any violation of these rights condemned and the situation redressed. After having seen the cases that these organizations have repeatedly brought before the courts and the apparent lack of consideration given to the substantive issues in those cases and the apparently systematic way in which these cases have been denied, the Commission is obliged to query whether access to the courts in the current circumstances is indeed an adequate recourse for redressing trade union rights violations. Similarly, the Commission finds from the evidence available to it that the Prosecutor's Office does not appear to investigate systematically, thoroughly and independently the complaints brought to it by the independent trade unions, thus leaving the alleged violations either totally ignored or routinely dismissed. In this respect, the Commission observes from the Report on Belarus by the United Nations Special Rapporteur on the independence of judges and lawyers issued in 2001 that the administration of justice, together with all its institutions, namely the judiciary, the prosecutorial service and the legal profession, were undermined by excessive executive control and not perceived as separate and independent.²⁷⁶

V. Recommendations

633. Having recorded its findings on the questions submitted to it and with a view to Government action to remedy the unsatisfactory application of Conventions Nos. 87 and 98 noted in its conclusions, the Commission now proceeds to make its recommendations.

634. 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. Considering, furthermore, that the degree of independence enjoyed by the trade union organizations depends largely on the recognition and observance in law and practice of basic civil liberties and genuine rule of law, the Commission considers that it must also include some recommendations concerning these aspects.

- 1. *The Commission recommends that the Government take all necessary steps for the immediate registration of all those primary level union organizations listed in the complaint, which have still not been registered, including, if necessary, by directing enterprise managers to provide premises to those organizations. These steps should be taken regardless of the supposed obstacles to their registration caused by Decree No. 2 and its rules and regulations.***

²⁷⁶ *Civil and Political Rights, including questions of: Independence of the Judiciary, Administration of Justice, Impunity*, document to the United Nations Economic and Social Council E/CN.4/2001/65/Add.1.

2. *The Commission recommends that the Government amend the relevant provisions of Decree No. 2 and its rules and regulations so as to eliminate any further obstacles that might be caused either by the legal address requirement or by the ten per cent minimum membership requirement at enterprise level and to ensure their transparency.*
3. *The Commission is of the belief that many of the difficulties posed by the application of Decree No. 2 are due to the lack of transparency in the decision-making authority represented by the Republican Registration Commission. Given that registration should be a routine procedure formalising the existence of a freely-formed workers' or employers' organization, the Commission recommends that the Republican Registration Commission should be disbanded and all registrations should be made as a matter of mere administrative formality at the corresponding local, regional or national level. If necessary, overseeing authority may be vested in the Minister of Justice.*
4. *In order to alleviate the damage that has already been done to the independence of the trade union movement in Belarus, the Commission recommends that all its conclusions and recommendations be made public by the Government through a wide dissemination and without delay. In order to ensure the prevention of further acts of interference, the Commission recommends that the Government declare publicly that such acts are unacceptable and will be sanctioned. To this end, it highly recommends that the Presidential Administration issue instructions to the Prosecutor-General, the Minister of Justice and court administrators that any complaints of external interference made by trade unions should be thoroughly investigated. This recommendation, similar to those made on numerous occasions by the Committee on Freedom of Association, but never implemented, should be carried out without any further delay.*
5. *All those organizations named in the conclusions as having suffered interference in their internal affairs should be guaranteed protection to carry out their activities freely. Any further complaints made by these organizations in this respect should be taken seriously and immediately investigated by an independent body having the confidence of all parties concerned.*
6. *In order to avoid acts of interference occurring at the level of the enterprise, the Commission recommends that a clear instruction be given to all enterprise managers and directors, in cases where they are still trade union members, not to participate in the process of trade union decision-making in as much as such participation might unduly influence internal trade union affairs and, in effect, bring these organizations under management domination.*

7. *The Commission recommends that immediate action be taken to institute independent investigations, having the confidence of all parties concerned, into outstanding complaints of anti-union discrimination, in particular as concerns bias and discriminatory use of fixed-term contracts, and that all damages suffered in this respect be redressed. Any complaints of anti-union discrimination or retaliatory acts as a consequence of cooperation with the Commission and the ILO should be given particular attention.*
8. *The Commission further recommends that the Government put into place effective procedures for protection against anti-union discrimination and other retaliatory acts. Adequate protection or even immunity against administrative detention should be guaranteed to trade union officials in the performance of their duties or when exercising their civil liberties (freedom of speech, freedom of assembly, etc.). In order to ensure that such protection is further guaranteed through an impartial and independent judiciary and justice administration, the Commission recommends that the Government implement the recommendations made by the United Nations Special Rapporteur on the independence of the judges and lawyers.*
9. *The Commission recommends amendment of Decree No. 24 concerning the use of foreign gratuitous aid along the lines previously suggested by the ILO supervisory bodies, so as to ensure that workers' and employers' organizations may effectively organize their administration and activities and benefit from assistance from international organizations of workers and employers in conformity with Articles 5 and 6 of the Convention.*
10. *The Commission further recommends amendment of the Law on Mass Activities (as well as Decree No. 11 if it has not yet been repealed), as previously suggested by the ILO supervisory bodies, so as to bring it into line with the right of workers' and employers' organizations to organize their activities provided for in Article 3 of the Convention.*
11. *The Commission recommends that the Government ensure that the CDTU, which already has a seat on the National Council on Labour and Social Issues (NCLSI), is allowed to participate through whichever representative it designates and also that it take steps to ensure the right of all umbrella organizations representing trade unions in Belarus to participate in the NCLSI. The CDTU's participation on the NCLSI should be ensured with immediate effect.*

12. The Commission recommends that the Government undertake a thorough review of its industrial relations system with the aim of ensuring a clear distinction between the role of the Government and that of the social partners and of promoting clearly independent structures of workers' and employers' organizations.

635. Recalling that the Commission also has a mandate to set out the time frame within which it considers that its recommendations should be implemented and bearing in mind that recommendations similar to those above have already been made for several years now by the ILO supervisory bodies, the Commission is of the opinion that all its recommendations can and should be carried out without further delay. Recommendations 1-6, 9 and 11 should be completed at the latest by 1 June 2005.
636. Finally, the Commission considers that, given the long history of complaints and the many recommendations that have hitherto gone unheeded, it is important that the implementation of its recommendations be followed up by the Committee on Freedom of Association. The Commission believes that this is the best way that concrete and tangible action on the part of the Government in response to its recommendations can be effectively evaluated. The Commission further observes that, within the framework of its regular supervision, the Committee of Experts on the Application of Conventions and Recommendations will continue to examine the legislative aspects involved in respect of Conventions Nos. 87 and 98.

VI. Concluding observations

637. The Commission took due note of the Government's insistence on the need to take into account the historical traditions and socio-economic realities characteristic of the country. The Government places particular emphasis on the fact that Belarus is still a country in transition, which renders the socio-economic conditions difficult, but that it is making great strides in improving the living and working conditions of its citizens. While the Commission acknowledges the special circumstances of Belarus, the application of these fundamental ILO Conventions cannot be made contingent upon its level of economic development or its policy priorities. Indeed, the Commission considers that free and independent workers' and employers' organizations are indispensable partners in economic development and the advancement of social justice.
638. In this regard, the Resolution on the independence of the trade union movement, adopted by the International Labour Conference in 1952, emphasises that it is essential for the trade union movement in each country, whose fundamental mission is the economic and social advancement of workers, to preserve its freedom and independence so as to be in a position to carry forward this mission irrespective of political changes. As the resolution makes clear, Governments, when seeking cooperation from trade unions to carry out economic and social policies, should recognize that the value of that cooperation rests to a large extent on the freedom and independence of the trade union movement. The Commission, therefore, considers it is in the Government's own interest not to attempt to control

trade unions. The Commission truly believes that a concerted effort on the part of the Government to allow trade union independence to flourish will be beneficial to the Belarussian society as a whole.

- 639.** The Commission stresses the importance of ensuring full respect for the basic civil liberties of trade union members and leaders. Without such respect, independent trade unions cannot survive. The Commission considers that many of their basic civil liberties, in particular, the right to freely express one's opinion and to freely seek and impart information and ideas through the media, as well as freedom of assembly, have been seriously infringed in Belarus. If these basic freedoms are not guaranteed and protected by an independent judiciary, then there is little prospect for the full realization of trade union rights.
- 640.** The recommendations above were made with the entire Belarussian society in mind so that free and independent trade unions may take their rightful place as vital players in the social and economic development of the country.

Geneva, 23 July 2004

(signed) *Budislav Vukas*
Chairperson
Niklas Bruun
Mary G. Gaudron

The members of the Commission wish to thank the members of the Secretariat, Ms. Karen Curtis, Ms. Lisa Tortell, Ms. Oksana Wolfson and Ms. Diane Crawford for their invaluable assistance in the Commission's work. In particular, we wish to acknowledge the high quality of their research, administrative, organizational and secretarial support from which the members of the Commission, both individually and collectively, have benefited in the preparation of this report.

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Lastly, the Commission wishes to thank Mr. Nikolai Tolmachev, ILO National Correspondent in Belarus, for his hospitality and assistance in Minsk.

B.V.

N.B.

M.G.

Annex 1

Provisions of the Constitution of the ILO Relating to Complaints Concerning the Observance of Ratified ILO Conventions

Article 26

1. Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any Convention which both have ratified in accordance with the foregoing Articles.
2. The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Inquiry, as hereinafter provided for, communicate with the government in question in the manner described in Article 24.
3. If the Governing Body does not think it necessary to communicate the complaint to the government in question, or if, when it has made such communication, no statement in reply has been received within a reasonable time which the Governing Body considers to be satisfactory, the Governing Body may appoint a Commission of Inquiry to consider the complaint and to report thereon.
4. The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a delegate to the Conference.
5. When any matter arising out of Article 25 or 26 is being considered by the Governing Body, the government in question shall if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the government in question.

Article 27

The Members agree that, in the event of the reference of a complaint to a Commission of Inquiry under Article 26, they will each, whether directly concerned in the complaint or not, place at the disposal of the Commission all the information in their possession which bears upon the subject-matter of the complaint.

Article 28

When the Commission of Inquiry has fully considered the complaint it shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken.

Article 29

1. The Director-General of the International Labour Office shall communicate the report of the Commission of Inquiry to the Governing Body and to each of the governments concerned in the complaint, and shall cause it to be published.
2. Each of these governments shall within three months inform the Director-General of the International Labour Office whether or not it accepts the recommendations contained in the report of the Commission; and if not, whether it proposes to refer the complaint to the International Court of Justice.

.....

Article 31

The decision of the International Court of Justice in regard to a complaint or matter which has been referred to it in pursuance of Article 29 shall be final.

Article 32

The International Court of Justice may affirm, vary or reverse any of the findings or recommendations of the Commission of Inquiry, if any.

Article 33

In the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith.

Article 34

The defaulting government may at any time inform the Governing Body that it has taken the steps necessary to comply with the recommendations of the Commission of Inquiry or with those in the decision of the International Court of Justice, as the case may be and may request it to constitute a Commission of Inquiry to verify its contention. In this case the provisions of Articles 27, 28, 29, 31 and 32 shall apply, and if the report of the Commission of Inquiry or the decision of the International Court of Justice is in favour of the defaulting government, the Governing Body shall forthwith recommend the discontinuance of any action taken in pursuance of Article 33.

Annex 2

ILO Conventions Nos. 87 and 98

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.

Article 3

1. Workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.
2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers' and employers' organizations shall have the right to establish and join federations and confederations and any such organization, federation or confederation shall have the right to affiliate with international organizations of workers and employers.

Article 6

The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organizations.

Article 7

The acquisition of legal personality by workers' and employers' organizations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

Article 8

1. In exercising the rights provided for in this Convention workers and employers and their respective organizations, like other persons or organised collectivities, shall respect the law of the land.
2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

Article 9

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.
2. In accordance with the principle set forth in paragraph 8 of article 19 of the Constitution of the International Labour Organization the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 10

In this Convention the term *organization* means any organization of workers or of employers for furthering and defending the interests of workers or of employers.

Article 11

Each Member of the International Labour Organization for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Article 1

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
2. Such protection shall apply more particularly in respect of acts calculated to--
 - (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
 - (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Article 2

1. Workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.
2. In particular, acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations, shall be deemed to constitute acts of interference within the meaning of this Article.

Article 3

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.

Article 4

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Article 5

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.
2. In accordance with the principle set forth in paragraph 8 of article 19 of the Constitution of the International Labour Organization the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 6

This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.

Annex 3

Rules of the Commission for the Formal Hearing in Geneva

I. Procedure of the Commission for the hearing of representatives

1. The Commission will hear the representatives of the parties, on the one hand, and, on the other, the representatives of any complainant to Case No. 2090 before the Committee on Freedom of Association regarding this matter, if given leave to intervene, in private sittings. The information and evidence presented to the Commission therein will be treated as fully confidential by such representatives.
2. The Government of Belarus will be invited to appoint a representative to act on its behalf before the Commission. This representative, as well as the representatives of the complainants under article 26 of the Constitution, or their respective substitutes, will be expected to be present throughout the hearings and will be responsible for the general presentation of their case.
3. The purpose of the Commission is to verify the information necessary to ascertain the matters submitted to it for investigation by the Governing Body of the International Labour Office. It is not, however, competent to deal with unrelated issues and it will therefore only accept information and statements referring to the exercise of trade union rights and the standards laid down in Conventions Nos. 87 and 98. The Commission will not authorize statements on matters outside its terms of reference.
4. The Commission or any member of the Commission may question the representatives of the parties or of the organisations referred to in paragraph (1) at any stage in the hearing.
5. The Commission may authorize representatives to question one another.

II. Rules for the hearing of witnesses

6. Each representative may, if it so chooses, designate witnesses to present evidence to the Commission at its formal hearing.
7. Witnesses may not be present except when giving evidence.
8. The Commission will require each witness to make a solemn declaration identical to that provided for in the Rules of the International Court of Justice. This declaration reads: “I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth”.

9. Any witness will be given an opportunity to make a statement before questions are put before him or her. If a witness reads his or her statement, the Commission would appreciate receiving six copies in English.
10. The Commission or any member of the Commission may put questions to witnesses at any stage.
11. The representatives or their substitutes will be permitted to put questions to the witnesses, in an order to be determined by the Commission.
12. All statements and questioning of witnesses will be subject to control by the Commission.
13. The Commission reserves the right to recall any witness, if necessary.

Annex 4

BFTU List of Non-Registered Organizations

The list submitted by the BFTU in September 2003 concerning still non-registered primary level organizations at the following workplaces and the specified regional level organizations:

1. Mogilev Automobile Plant;
2. Mogilev Construction Trust No. 12;
3. Mogilev 'private entrepreneurs';
4. 'Kristina' hairdressing salon (Mogilev);
5. 'Aleksandrina' hairdressing salon (Mogilev);
6. 'Uspekh' hairdressing salon (Mogilev);
7. 'Pavlinka' hairdressing salon (Mogilev);
8. Artificial Fibre Production Plant named after V. V. Kuibyshev (Mogilev);
9. BFTU regional organization (Mogilev);
10. 'Khimvolokno' enterprise (Grodno);
11. 'Samana Plus' enterprise (Mosty);
12. Orsha Flax Processing Factory;
13. 'Orsha-Zhilfond' enterprise;
14. 'Orshateploseti' enterprise;
15. 'Avtogydrousilitel' Plant (Borisov);
16. 'Steklovolokno' enterprise (Polotsk);
17. Novopolotsk Housing and Communal Services enterprise;
18. Novopolotsk Heat and Power Generation Plant;
19. 'Naftan' enterprise (Novopolotsk);

Annex 4 - BFTU list of non-registered organizations

20. Secondary School No. 7 (Novopolotsk);
21. Secondary School No. 4 (Novopolotsk);
22. Secondary School No. 10 (Polotsk);
23. BFTU regional organization (Novopolotsk-Polotsk);
24. Gantsevichi central district hospital;
25. Automated Lines Plant (Baranovichi);
26. Baranovichi Technical College of the Belkoopsoyuz;
27. BFTU regional organization (Baranovichi);
28. Minsk Automobile Plant;
29. Minsk Tractor Plant;
30. Minsk Electro-Technical Plant;
31. Minsk Motor Plant.