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FOURTH ITEM ON THE AGENDA

Reports of the Committee on Freedom of Association

390th Report of the Committee on Freedom of Association

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

A. Introduction

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 6, 7 and 14 June 2019, under the chairmanship of Mr Evance Kalula.
2. Subsequent to the decision of the Governing Body, at its 291st Session, that the implementation of the recommendations of the Commission of Inquiry established to examine the observance by the Government of Belarus of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), should be followed up by the Committee on Freedom of Association, the Committee last examined this matter in its 385th Report (March 2018), which was approved by the Governing Body at its 333rd Session.
3. On that occasion, the Committee made the following recommendations:
 - (a) The Committee urges the Government to consider, within the framework of the tripartite Council, the measures necessary to ensure that the matter of legal address ceases to be an obstacle to the registration of trade unions in practice. It expects the Government to provide information on all progress made in this respect without further delay.
 - (b) The Committee strongly encourages the Government, together with the social partners, as well as other stakeholders (for example, Ministry of Justice, Office of the Prosecutor-General, judiciary and Belarusian National Bar Association) to continue working together towards building an efficient non-judicial dispute resolution mechanism which could deal with labour disputes involving individual, collective and trade union matters. It requests the Government to keep it informed of the measures taken or envisaged in this regard.
 - (c) The Committee once again urges the Government, in consultation with the social partners, to amend Decree No. 24 and the Law on Mass Activities. The Committee considers that the amendments should be directed at abolishing the sanctions imposed on trade unions or trade unionists for a single violation of the respective legislation; setting out clear grounds for the denial of requests to hold trade union mass events, bearing in mind that any such restriction should be in conformity with freedom of association principles; and at widening the scope of activities for which foreign financial assistance can be used, in particular in view of the apparent (financial) burden that is placed on trade unions to ensure law and order during a mass event.
 - (d) While noting with interest the proposals transmitted by the Government outlining areas of the desired future collaboration with the ILO, the Committee expects that priority will be given to addressing the Committee's conclusions and recommendations as well as the outstanding comments of the CEACR to fully implement the recommendations of the Commission of Inquiry.
 - (e) Given the time that has elapsed since it has been addressing the follow-up to the recommendations made by the Commission of Inquiry, the Committee requests the Government to provide detailed information on the measures taken in respect of all the above recommendations and expects to be in a position to note tangible progress in the near future.

- (f) The Committee requests the Government to provide its observations on the new allegations relating to mass investigations of trade unionists and the seizure of trade union documents and material submitted by the ITUC in a communication dated 6 March 2018.
- 4. The International Trade Union Confederation (ITUC) submitted new allegations in a communication dated 24 September 2018. By a communication dated 19 April 2019, the Congress of Democratic Trade Unions (BKDP) submitted its observations on the implementation by the Government of the recommendations of the Commission of Inquiry.
- 5. The Government submitted its reply in a communication dated 10 May 2019.
- 6. The Committee submits for the approval of the Governing Body the conclusions it has reached concerning the measures taken to implement the recommendations of the Commission of Inquiry.

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

- 7. In its communication dated 24 September 2018, the ITUC alleges that since the last examination of the situation of trade union rights in Belarus in March 2018, more repressive actions have been taken against trade unionists to have a chilling effect on their resolve to genuinely represent and defend the interests and rights of their members. It alleges, in particular, that on 24 August 2018 two trade union leaders, Messrs Gennady Fedynich and Igor Komlik, President and Chief Accountant of the Radio and Electronic Workers' Union (REP), respectively, were found guilty of tax evasion by a district court in Minsk and sentenced to four years of suspended imprisonment, restriction of movement, a ban on holding senior positions for five years and a fine of 47,560 Belarus rubles (BYN) (US\$ 22,500). In addition, both leaders have to pay court costs along with administrative fines.
- 8. The ITUC alleges that the persecution of trade union leaders commenced in retaliation for the criticism of Presidential Decree No. 3 imposing a fee on unemployed and partially employed persons and mobilization of protests against the Decree. According to the ITUC, the charges and investigations were tainted with illegalities and oppressive tactics which heavily undermined the credibility of the evidence gathered. This further worsened during the trial. Observers of the proceedings such as the IndustriALL Global Union and the Observatory for the Protection of Human Rights Defenders (OBS) noted major flaws. The ITUC alleges, in particular, that out of seven prosecution witnesses examined, only two reported that they had any direct knowledge of the events in question. In spite of objections by the defence counsel, such hearsay and prejudicial evidence was nevertheless allowed. Furthermore, according to the ITUC, during the hearing, five out of seven witnesses complained that their pre-trial statements against the defendants were obtained under threat, intimidation and other forms of coercive pressure exerted by agents of the Financial Investigation Department of the State Control Committee and by agents of the State Investigation Committee. It was observed that during the trial the judge allowed the prosecutors to badger and interrupt the witnesses on several occasions in spite of objections of the defence counsel.
- 9. The ITUC indicates that the Commission of Inquiry has found that the provisions under which Messrs Fedynich and Komlik were charged and prosecuted were contrary to the principles of freedom of association and the right of workers' and employers' organizations to benefit from the relations that may be established with international workers' or employers' organizations.

10. By a communication dated 19 April 2019, the BKDP provides its comments on the implementation of the Committee's recommendations in respect of the outstanding recommendations of the Commission of Inquiry. The BKDP considers that the Government has failed to implement the main recommendations of the Commission of Inquiry. In particular, it points out that no changes have been made in the legislation with regard to the registration of trade unions and refers in this respect to an example of a trade union (affiliated to the Belarusian Independent Trade Union – BNP) at the Remmontazhstroi Company, whose registration took eight months. It further considers that no steps have been taken to create an effective mechanism for the non-judicial resolution of disputes and alleges continued interference in trade union affairs by employers, anti-union discrimination through the use of fixed-term contracts, and bans on protest actions. Furthermore, it regrets that other legislation affecting trade unions (Decree No. 24 on the use of gratuitous aid and the Law on Mass Activities) has not been amended. In this respect, the BKDP also refers to the criminal prosecution of the REP leaders for using the aid received from a Danish trade union and to the adoption by the Council of Ministers (pursuant to the Law on Mass Activities) of the Regulations on the procedure of payment for services provided by the internal affairs authorities in respect of protection of public order, expenses related to medical care and cleaning after holding a mass event (Ordinance No. 49).

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

11. In its communication dated 10 May 2019, the Government indicates that in recent years, the situation in the country as concerns the development of institutions of social dialogue and tripartism has been developing positively. The National Council for Labour and Social Issues (hereinafter, the National Council) met four times in 2018 and considered a number of important labour and social policy issues, including the implementation of the General Agreement for 2016–18; preparation of the General Agreement for 2019–21 and the proposals of the Federation of Trade Unions of Belarus (FPB) to finalize a draft law amending the Labour Code. Its meetings were attended, among others, by Mr A. Yaroshuk, the Chairperson of the BKDP.
12. The Government further informs that a General Agreement concluded for 2019–21 was drafted by a tripartite working group established by decision of the National Council, which included worker representatives of both the FPB and BKDP. As of 1 January 2019, there were 583 collective agreements in force (one General Agreement, 41 tariff (industry) agreements and 541 local agreements), as well as 19,102 enterprise-level collective agreements.
13. The Government recalls that the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere (hereinafter, the tripartite Council) is a key platform where the issues concerning the implementation of the Commission of Inquiry recommendations can be discussed. In December 2017, the tripartite Council approved proposals for cooperation with the ILO; these were communicated to the Office in February 2018; and their implementation began in 2019. One of such activities was a meeting of the tripartite Council on 26 February 2019 with the participation of ILO representatives to examine problematic issues that had arisen in the development and application of various level collective agreements. The parties agreed to continue reflecting on the matter in collaboration with the ILO and a further activity is expected to be organized in the second half of 2019 with ILO assistance to present proposals on ways to improve relevant legislation and practice. Furthermore, as part of the ILO Centenary celebrations, a tripartite conference on tripartism and social dialogue was convened in Minsk on 27 February 2019. Representatives of the Government, unions and employers' associations and ILO experts discussed issues

concerning the situation of social dialogue and tripartism in Belarus. The tripartite Council plays a key role in implementing the cooperation proposals previously noted by the Committee.

- 14.** Regarding trade union registration issues, the Government indicates that as of 1 January 2019, there were 28 unions registered in the country (23 republic-wide, one regional and four enterprise unions) and 24,952 union structures (including primary organizations). On 15 January 2019, the Soligorsk District Executive Committee registered a primary organization of the “Trest Remmontazhstroy” Construction Enterprise, a structure of the BKDP-affiliated Belarussian Independent Union of Miners, Chemical Workers, Refinery Workers, Power Workers, Transport Workers, Construction and Other Workers (BNP). There were no refusals to register other union organizations.
- 15.** Concerning the ITUC allegations concerning Messrs Fedynich and Komlik, the Government explains that on 1 August 2017, the Financial Inquiry Department of the State Control Committee for the Region and City of Minsk brought criminal charges under article 243 of the Criminal Code against the Chairperson of the REP, Mr Fedynich and the chief accountant of the union, Mr Komlik. The charges followed a financial audit of the REP, which found that these persons had concealed income received outside the Republic of Belarus without due authorization issued by the National Bank and that they had failed to report it in the REP’s tax returns. The investigators found that between January 2011 and March 2012, Messrs Fedynich and Komlik and other persons had violated the law by evading payment of the income tax for 2011 amounting at least to BYN22,867.10 (at that time, equivalent to 6,533 base values). That being so, particularly large-scale damage was done to the State. A large-scale damage is defined as evading payment of taxes or duties 1,000 times or more of the base value, and particularly large-scale damage as 2,500 times or more of the base value. In this regard, article 243 of the Criminal Code establishes a liability for evading payment of taxes and duties by concealing or deliberately understating the tax base or by failing to submit a tax return or provide deliberately false information, with a result of causing a large-scale damage. Part II of this provision establishes liability for the said behaviour which causes a large-scale damage.
- 16.** Messrs Fedynich and Komlik were arrested on 2 August 2017. That same day, Mr Fedynich was set free. For the purpose of criminal investigation, the offices of the REP and the BNP, as well as homes of Messrs Fedynich, Komlik and other persons were searched and relevant accounting documents and computer equipment were made part of the inquiry materials (not confiscated); in addition more than 800 REP members were interviewed. The criminal case was handed to the Minsk Investigation Committee on 8 August 2017 for preliminary investigation. Mr Komlik was indicted of a crime under Part II of article 243 of the Criminal Code on 10 August 2017 and Mr Fedynich on 11 August 2017. On 11 August 2017, the following preventive measures were applied: with regard to Mr Fedynich – commitment not to leave and remain on good behaviour; and with regard to Mr Komlik – preventive detention. On 24 August 2018, the Sovetsky District Court of Minsk found Messrs Fedynich and Komlik guilty of tax evasion by concealing the tax base and failing to file a tax return, which resulted in a particularly large-scale damage. Pursuant to Part II of article 243 of the Criminal Code, the said persons were sentenced to four years of restriction of liberty without imprisonment and without confiscation of property, but with a prohibition to hold management and administration positions for five years. Messrs Fedynich and Komlik were found guilty, as officials responsible for correctly calculating taxes and duties payable to the budget, of opening a foreign currency account for the union at AE SEB Bankas (Vilnius, Lithuanian Republic), to which non-residents of Belarus were transferring funds between January 2011 and March 2012. Subsequently, Mr Komlik withdrew cash totalling US\$17,467.85 and €140,000 from the said account and moved it to the territory of the Republic of Belarus without recording the income received on union books or reporting it as gratuitous foreign aid to the Humanitarian Activities Department of the Administration

of the President of the Republic of Belarus. The Government indicates that the criminal investigation authority carried out the preliminary investigation of the criminal case in accordance with the criminal procedure law and the Investigation Committee did not bring any pressure to bear on witnesses in the course of the investigation. The court ruling disposed of the physical evidence. The accounting and legal files of the REP were returned to the union. Personal belongings of the accused persons (including computer equipment) that had been kept in custody during the criminal proceedings were released as well. Under the criminal case, no arrest was imposed on other property of the REP.

17. The Government emphasizes that the conviction was based on evidence obtained pursuant to legal procedure and objectively examined during the court hearings. According to a search protocol dated 2 August 2017, the following items were found and taken from the REP office: an access key and documentary proof of an agreement between the REP and the 3F Union (Denmark). According to the National Bank of the Republic of Belarus, neither the REP, nor Messrs Fedynich or Komlik applied to the National Bank for permission to open accounts in a non-resident bank between 1 January 2010 and 26 June 2017. The receipt of funds in the REP's account between 1 January and 31 December 2011 is confirmed by a copy of a bank statement from Lithuania's AE SEB Bankas. Mr Komlik is named as the person who withdrew the funds. The Passenger Traffic database contains data indicating that the accused persons, Messrs Fedynich and Komlik, crossed the Belorussian–Lithuanian border in 2011; the same is confirmed by witnesses. The REP's accounting books contain no information about gratuitous foreign assistance received in 2011. According to the Humanitarian Activities Department of the Presidential Administration, the REP did not apply to have gratuitous foreign aid registered between 1 January 2010 and 27 April 2018.
18. The accused persons and their lawyers filed appeals against the sentence of the Sovetsky District Court of Minsk. On 9 November 2018, the Criminal Board of the Minsk City Court upheld the sentence and dismissed the appeals. That same day the sentence came into force. The Government emphasizes criminal charges were brought against Messrs Fedynich and Komlik solely because they had committed a crime (tax evasion) and had nothing to do with protest actions by the REP. The Government transmits a copy of an interview with the BKDP Chairperson, Mr Yaroshuk, which was posted on the Web on the day Messrs Fedynich and Komlik were detained on 2 August 2017.

D. The Committee's conclusions

19. *The Committee recalls that it had previously noted the Government's desire to continue its collaboration with the ILO. It welcomes the involvement of the social partners, through the tripartite Council in addressing the challenges of collective bargaining at sectoral and territorial levels as part of the ongoing technical assistance of the Office and the information provided by the Government as to the continuing cooperation in this regard. It must emphasize, however, that any outcome of that work will undoubtedly be linked to the overall situation of trade union rights in the country and that sound industrial relations require trust between the partners and respect and observance, in law and in practice, of freedom of association. The Committee therefore urges the Government to strengthen its efforts in addressing the Committee's conclusions and recommendations, as well as the outstanding comments of the Committee of Experts on the Application of Conventions and Recommendations to fully implement the recommendations of the Commission of Inquiry. The Committee expects that the Government, with the assistance of the ILO and in consultation with the social partners will take the necessary steps in this regard.*
20. *As concerns the recommendations made over nearly two decades that the Government take the measures necessary to ensure that the matter of legal address (the obligation set out in Presidential Decree No. 2, its rules and regulations) ceases to be an obstacle to the*

registration of trade unions in practice, the Committee observes that while the Government insists that this requirement is not an obstacle to registration, the BKDP continues to raise concerns and refers to a recent registration process that took eight months before the organization could be registered. The Committee once again urges the Government to consider, within the framework of the tripartite Council, the necessary measures to eliminate the obstacles to trade union registration and to provide information on all progress made in this respect.

21. In relation to Decree No. 24 concerning the use of foreign gratuitous aid, the Committee recalls that foreign gratuitous aid can only be used for specific purposes and, specifically, cannot 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”. 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”.
22. The Committee notes with concern the information submitted by the complainants regarding the cases of Messrs Fedynich and Komlik found guilty of tax evasion and use of foreign funds without officially registering them with the authorities as per Decree No. 24. They were sentenced to four years of suspended imprisonment, restriction of movement, a ban on holding senior positions for five years and a fine of BYN47,560 (over US\$22,500). The Committee notes that according to the Government, both trade union leaders were convicted for tax evasion and use of foreign funds without officially registering them with the authorities as per the legislation in force. The Committee requests the Government to submit a copy of the judicial decisions, as well as all other relevant information as a matter of urgency so that it can examine this aspect of the case in full knowledge of the facts.
23. Under the Law on Mass Activities, which 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, the application to hold the event must be made to the local executive and administrative body. While the decision of that body can be appealed in court, the Law does not set out clear grounds on which a request may be denied. 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. 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. The Committee notes with deep regret that despite numerous requests from the ILO supervisory bodies to that effect, no information has been provided to indicate any steps taken to amend these pieces of legislation.
24. The Committee further notes with regret the adoption by the Council of Ministers (pursuant to the Law on Mass Activities) of the Regulations on the procedure of payment for services provided by the internal affairs authorities in respect of protection of public order, expenses related to medical care and cleaning after holding a mass event (Ordinance No. 49, which has entered into force on 26 January 2019). The Committee notes that according to the Regulations, once a mass event is authorized (or is not banned), and not later than two days before the scheduled date of the event, the organizer must conclude contracts with the relevant territory internal affairs bodies, health services facilities and cleaning facilities regarding, respectively, protection of public order, medical and cleaning services. The Regulations provide for the fees in relation of protection of public services as follows:

- *three base units – for an event with the participation of up to ten people;*
- *25 base units – for an event with the participation of 11 to 100 people;*
- *150 base units – for an event with the participation of 101 to 1,000 people;*
- *250 base units – for an event with the participation of more than 1,000 people.*

If the event is to take place in an area, which is not a permanent designated to that effect areas, the above fees are to be multiplied by a coefficient of 1.5.

In addition to the above fees, the Regulations provide for the expenses of the specialized bodies (medical and cleaning services) that must be paid by the organizer of the event. According to the Regulation, these shall include:

- *salary of employees engaged in the provision of services taking into account their category, number and time spent in the mass event;*
- *mandatory insurance contributions;*
- *the cost of supplies and materials, including medicine, medical products, detergents;*
- *indirect expenses of specialized bodies;*
- *taxes, fees, other obligatory payments to the republican and local budgets provided by law.*

25. *The Committee notes that the current base unit is set at BYN25.5 (€12).¹ Reading these recent provisions alongside those of Decree No. 24 forbidding the use of foreign gratuitous aid for the conduct of mass events, the capacity for carrying out mass actions would appear to be extremely limited if not impossible in practice. The Committee therefore once again urges the Government, in consultation with the social partners, to amend the Law on Mass Activities and Decree No. 24 and requests the Government to provide information on all measures taken in this respect. The Committee recalls that the amendments should be directed at abolishing the sanctions imposed on trade unions or trade unionists for a single violation of the respective legislation; at setting out clear grounds for the denial of requests to hold trade union mass events, bearing in mind that any such restriction should be in conformity with freedom of association principles; and at widening the scope of activities for which foreign financial assistance can be used, in particular, in view of the apparent (financial) burden that is placed on trade unions to ensure law and order during a mass event. Furthermore, considering that the right to organize public meetings and demonstrations constitutes an important aspect of trade union rights, the Committee requests the Government to take the necessary steps in order to repeal the Ordinance of the Council of Ministers No. 49, which makes the exercise of this right nearly impossible in practice.*

26. *The Committee furthermore strongly encourages the Government, together with the social partners, as well as other stakeholders (for example, Ministry of Justice, Office of the Prosecutor-General, judiciary and Belarusian National Bar Association) to continue working together towards building an efficient non-judicial dispute resolution mechanism which could deal with labour disputes involving individual, collective and trade union*

¹ Ordinance of the Council of Ministers No. 956 of 27 December 2018, in force as from 1 January 2019. The current minimum monthly wage is BYN330 (US\$155), as set by Ordinance of the Council of Ministers No. 870 of 5 December 2018.

matters. It requests the Government to keep it informed of the measures taken or envisaged in this regard.

27. *The Committee recalls that by a communication dated 6 March 2018, the ITUC submitted allegations relating to mass investigations of trade unionists and the seizure of trade union documents and material. The Committee urges the Government to provide its observations thereon without delay.*
28. *The Committee notes the allegations submitted by the BKDP in its communication dated 19 April 2019 and requests the Government to provide its detailed observations thereon.*

The Committee's recommendations

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

- (a) *The Committee urges the Government to strengthen its efforts in addressing the Committee's conclusions and recommendations, as well as the outstanding comments of the Committee of Experts on the Application of Conventions and Recommendations to fully implement the recommendations of the Commission of Inquiry. The Committee expects that the Government, with the assistance of the ILO and in consultation with the social partners, will take the necessary steps in this regard.*
- (b) *The Committee urges the Government to consider, within the framework of the tripartite Council, the measures necessary to ensure that the matter of legal address ceases to be an obstacle to the registration of trade unions in practice.*
- (c) *The Committee strongly encourages the Government, together with the social partners, as well as other stakeholders (for example, Ministry of Justice, Office of the Prosecutor-General, judiciary and Belarusian National Bar Association) to continue working together towards building an efficient non-judicial dispute resolution mechanism which could deal with labour disputes involving individual, collective and trade union matters.*
- (d) *The Committee once again urges the Government, in consultation with the social partners, to amend Decree No. 24 and the Law on Mass Activities. The Committee considers that the amendments should be directed at abolishing the sanctions imposed on trade unions or trade unionists for a single violation of the respective legislation; setting out clear grounds for the denial of requests to hold trade union mass events, bearing in mind that any such restriction should be in conformity with freedom of association principles; and at widening the scope of activities for which foreign financial assistance can be used, in particular in view of the apparent (financial) burden that is placed on trade unions to ensure law and order during a mass event. The Committee further requests the Government to take the necessary steps in order to repeal the Ordinance of the Council of Ministers No. 49 setting out the Regulations on the procedure of payment for services provided by the internal affairs authorities in respect of protection of public order, expenses related to medical care and cleaning after holding a mass event.*

- (e) The Committee requests the Government to provide its observations on the allegations relating to mass investigations of trade unionists and the seizure of trade union documents and material.*
- (f) The Committee requests the Government to submit a copy of the relevant judicial decisions in the alleged tax evasion cases of Messrs Fedynich and Komlik, as well as all other relevant information as a matter of urgency so that it can examine this aspect of the case in full knowledge of the facts.*
- (g) The Committee requests the Government to provide detailed observations on the allegations submitted by the Congress of Democratic Trade Unions (BKDP) in a communication dated 19 April 2019.*
- (h) The Committee urges the Government to provide detailed information on the measures taken in respect of all the above recommendations and expects to be in a position to note tangible progress in the near future.*

Geneva, 14 June 2019

(Signed) Professor Evance Kalula
Chairperson

Point for decision: paragraph 29