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## FOR DEBATE AND GUIDANCE

### SIXTH ITEM ON THE AGENDA

## **Measures taken by the Government of Belarus to implement the recommendations of the Commission of Inquiry established to examine the 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)**

1. At its 297th (November 2006) Session, the Governing Body had before it a document <sup>1</sup> prepared by the Office concerning the measures taken by the Government of Belarus to implement the recommendations of the Commission of Inquiry established to examine the 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).
2. The document set out the background to this question and examined the measures to be considered by the Governing Body in the light of the conclusions of the Committee on the Application of Standards of the International Labour Conference in June 2006, in particular as to whether further measures should be recommended to the Conference under article 33 of the ILO Constitution. The Commission of Inquiry had given a deadline of 1 June 2005 for the Government of Belarus to implement a number of its recommendations. The Governing Body had referred the follow-up to the implementation of the Commission's recommendations to the Committee on Freedom of Association. The Conference Committee on the Application of Standards had, at the 95th Session (June 2006) of the International Labour Conference, adopted conclusions within the framework of its examination of Conventions Nos. 87 and 98. It had requested the Governing Body, if no progress had been noted, to begin to consider whether further measures under the ILO Constitution should be considered.
3. At its November 2006 session, the Governing Body, after a full discussion, adopted the following decision:

<sup>1</sup> GB.297/9.

The Governing Body decided to include on the agenda of its 298th Session (March 2007) an item entitled “Measures taken by the Government of Belarus to implement the recommendations of the Commission of Inquiry established to examine the 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)”. In the interim, the Governing Body wished to encourage the Government of Belarus, given the urgency of the case, to continue working in collaboration with the Office on implementation of the recommendations made by the Commission of Inquiry in 2004. It urged the Government of Belarus to follow strictly the advice that it had requested on trade union-related legislation and practice, including registration. The Governing Body requested the Office to collate all relevant information, including information supplied by the ILO’s supervisory bodies, in one document, thus enabling the Governing Body to examine the matter.

4. In the light of the decision taken by the Governing Body, the following paragraphs set out information on developments since its last session.
5. Following up on the meeting that took place in Geneva between a high-level mission of the Government of Belarus and the Office on 19–20 October 2006, the Government of Belarus requested the Office to provide comments and guidance on the Concept Note concerning a new trade union law which was to be drafted. The Office sent to the Government, on 20 November 2006, an informal opinion on the Concept Note for the draft law on trade unions.
6. The Committee of Experts on the Application of Conventions and Recommendations, at its 77th Session (November–December 2006), took note of the consultations held between the high-level delegation from Belarus and officials of the ILO, as well as with representatives of the International Trade Union Confederation (ITUC, formerly ICFTU) and the International Organisation of Employers (IOE). The Committee of Experts noted the conclusions of the Conference Committee, which had deplored the fact that nothing the Government had said in its report under article 22 of the ILO Constitution had demonstrated an understanding of the gravity of the situation investigated by the Commission of Inquiry or the necessity of rapid action to redress the effects of the severe violations of the most basic elements of the right to organize. The Committee of Experts had, however, noted with interest that, on 6 October 2006, the President of the Republic of Belarus had signed into force Presidential Decree No. 605 on certain State registrations of public associations and their unions which abolished the Republican Registration Commission, corresponding to one of the recommendations of the Commission of Inquiry.
7. The Committee of Experts also commented on the conceptual framework for a draft law on trade unions, which was referred to in the Government’s report to the Committee. It expressed a number of concerns relating to the conceptual framework. In particular, it raised the issue of the determination of representative capacity of trade unions, as referred to in the conceptual framework, and noted with deep concern a new approach being introduced, which was likely to have a serious impact on the existence of primary-level organizations and their corresponding republican-level organizations outside of the structure of the Federation of Trade Unions of Belarus (FPB), giving rise to a de facto monopoly of workers’ representation. These comments are contained in the report of the Committee of Experts and they were communicated to the Government of Belarus as soon as they were available.
8. From 15 to 17 January 2007, Mr Kari Tapiola, Executive Director, Standards and Fundamental Principles and Rights at Work, and Ms Cleopatra Doumbia-Henry, Director, International Labour Standards Department, undertook a mission to Minsk, Belarus. This mission was a specific follow-up to the consultations in Geneva in October 2006. Its main objective was to participate in a seminar for judges and prosecutors’ officers of the

Republic of Belarus. This seminar took place on 16 January 2007. It was attended by 84 judges and court prosecutors from all regions of Belarus. The seminar focused on explaining the principles of freedom of association and the recommendations of the Commission of Inquiry, and it provided an opportunity for a question and answer session. The Government of Belarus had requested this activity in response to recommendation No. 4 of the Commission of Inquiry, concerning the wide dissemination of its conclusions and recommendations.

9. The mission held a series of meetings with senior government officials (in particular the Deputy Prime Minister, Deputy Head of the Presidential Administration, Minister of Foreign Affairs, Minister of Justice and Minister of Labour and Social Protection). Meetings were also held with representatives of trade union organizations in Belarus (both FPB and non-federation trade unions). The recommendations of the Commission of Inquiry had been published in the national newspaper *Respublika*, and the web site of the Ministry of Justice had issued a statement on 20 December 2006 that citizens had a right to join unions of their own choosing. The mission was given a certified copy of the decision of 17 August 2006 concerning the seat of the Belarusian Congress of Democratic Trade Unions (CDTU) on the tripartite National Council on Labour and Social Issues (NCLSI). The Government also informed the mission that two seats were allotted to the CDTU on the consultative body, the Council for the Improvement of Legislation in the Labour and Social Sphere.
10. In meetings the mission held with the CDTU and the Radio and Electronic Workers Union (REWU), the unions expressed serious continued concern about the trade union situation. According to them, they were experiencing little or no change on the ground. There were still refusals or significant delays to register trade unions and bureaucratic obstacles continued to be put in their way, thereby impeding registration. However, the CDTU affirmed that it would attend the NCLSI and the consultative body on legislation when invited to participate.
11. As a follow-up to the mission of January, a technical consultation meeting was held between the Office and the Government of Belarus on the draft of a new trade union law. This technical consultation took place in Geneva from 8 to 9 February 2007 between a delegation of the Republic of Belarus and the International Labour Standards Department. The delegation of the Republic of Belarus was made up of senior representatives from the Ministry of Labour and Social Protection and the Ministry of Justice and led by their respective Deputy Ministers, Ms E. Kolos and Mr I. Tushinskiy. The Government had communicated four chapters of the new legislation on which the technical consultations were based. These chapters dealt with the following issues: general provisions; rights and responsibilities of trade unions and federations; monitoring of trade unions' and federations' compliance with legislation; and ensuring that the unions' activities are in conformity with their own statutes and the liability of trade unions, federations and their organizational structures. The draft communicated did not include provisions on the issue of registration of trade unions.
12. During these consultations the Government provided explanations on the background to, and the rationale for, the specific provisions. The Government sought advice on the extent to which the new legislation would be in compliance with Convention No. 87. For the Office, the emphasis was on ensuring that the provisions responded to the recommendations of the Commission of Inquiry and took account of the informal opinion of the Office and the comments of the Committee of Experts. The Office noted that the chapters of the draft legislation examined during this technical meeting did not take into account either the comments it had made earlier or the comments of the Committee of Experts. The Office was particularly concerned that the new draft legislation focused on the issue of "representativeness" without addressing the first and most important issue,

which was the right of trade union organizations to be freely constituted and able to function. The various thresholds that trade unions had to meet either to have legal personality or be considered as representative gave rise to further concern. The Office hoped that account would be taken of its comments in further drafting of the legislation so that it would be in line with Convention No. 87 and thus respond to the recommendations of the Commission of Inquiry.

- 13.** A high-level mission, headed by Deputy Prime Minister Mr A. Kobyakov and the Deputy Head of the Presidential Administration, Ms N. Petkevich, held further consultations with the Office in Geneva on 16–17 February 2007. The Government informed the Office about recent developments concerning the registration of trade unions and other issues covered by the recommendations of the Commission of Inquiry. The Office suggested that the information from the Government could be included in an annex to the report to the Governing Body on recent developments (see Appendix I). A detailed discussion took place on the partial draft of the trade union law, including the comments made by the Office the previous week. Further comments were made by the representatives of the Office. The Government indicated that it would study the issues in the light of the discussions held, and further consultations could take place after the March 2007 meeting of the Governing Body.
- 14.** For ease of reference, the comments of the Committee of Experts are attached as Appendix II. The report of the Committee on Freedom of Association concerning this matter is also before the Governing Body at this session.

Geneva, 7 March 2007.

*Submitted for debate and guidance.*

## Appendix I

### Information from the Government of Belarus on the measures taken to implement the recommendations of the Commission of Inquiry (annex to ILO document)

Since the June 2006 session of the Conference, the Government of Belarus has taken various specific steps to implement the recommendations of the Commission of Inquiry. As a result, some of the recommendations have now been fully implemented and the Government has made significant progress in addressing a range of issues.

#### ***Measures taken prior to the 297th Session of the ILO Governing Body***

1. On 17 August 2006 the National Council on Labour and Social Issues (NCLSI) passed a resolution allocating one seat on the Council to a representative of the trade unions which make up the Belarusian Congress of Democratic Trade Unions (CDTU).
2. Recommendation No. 3 has been implemented. The Republican Registration Commission no longer has authority over the registration of trade unions. To this end, Decree No. 605 of the President of Belarus was adopted on 6 October 2006, abolishing the Commission. All authority for trade union registrations has been transferred to the Ministry of Justice and local executive and administrative authorities.
3. Two primary organizations of the Radio and Electronics Workers' Union (REWU), which does not belong to the Federation of Trade Unions of Belarus (FPB), have been registered: the Brest Municipal Primary Organization and the Minsk Municipal Primary Organization of Transport Workers.
4. At the instigation of the Government, consultations on implementing the Commission of Inquiry's recommendations were held at ILO headquarters in Geneva on 19–20 October 2006. The Belarusian side was represented at the talks by Mr Andrei Kobayakov, Deputy Prime Minister of Belarus, Ms Natalia Petkevich, Deputy Head of the Presidential Administration of Belarus, and other responsible officials. The ILO participants in the consultations were Mr Kari Tapiola, Executive Director, Standards and Fundamental Principles and Rights at Work, Ms Cleopatra Dombia-Henry, Director, International Labour Standards Department, ILO experts, staff from the Bureaux for Workers' and Employers' Activities, and staff from the secretariats of the ILO Governing Body Workers' and Employers' groups.

One of the key issues discussed was the Concept Note on the draft law of Belarus "On trade unions". The Belarus delegation clarified the basic approaches followed and provided the ILO with the Concept Note for expert examination. When the new version of the law on trade unions is passed it will regulate the formation and registration of trade unions, superseding the regulations contained in Decree No. 2 of the President of Belarus.

The new law will regulate two key matters raised by the Commission of Inquiry in its recommendations with regard to the formation and registration of trade unions (and their organizational structures):

- the 10 per cent minimum membership requirement in order to form a trade union will be abolished (three people will now be sufficient for the formation of a trade union without right of legal personality);

- the compulsory requirement for trade unions to provide a legal address in order to obtain registration will be lifted: for a union to be formed without right of legal personality, the legal address, which presupposes that the union occupies premises, will be replaced by the contact address (address for correspondence).
5. The Government has republished the recommendations of the Commission of Inquiry, in the newspaper *Respublika*, which has the largest circulation in the country (No. 209, 9 November 2006).

### **Measures taken since the 297th Session of the ILO Governing Body**

6. The Government and the ILO held a joint seminar on 16 January 2007 in Minsk, entitled “Defending trade union rights with regard to the activities of courts and prosecuting authorities in Belarus (in the light of the implementation of the recommendations contained in the ILO Commission of Inquiry report *Trade union rights in Belarus*)”. Participants in the seminar included judges from the Supreme Court of Belarus, regional (and Minsk municipal) courts and district (municipal) courts; staff from the Office of the Public Prosecutor of Belarus and the regional and Minsk prosecutors’ offices; and experts from the Ministry of Justice, the Ministry of Labour and Social Protection and the National Labour Arbitration Service. Along with representatives of the Belarusian side, Mr Tapiola, Executive Director, Standards and Fundamental Principles and Rights at Work and Ms Doumbia-Henry, Director, International Labour Standards Department, also addressed the participants.
7. During the consultations held on 19–20 October 2006 in Geneva, general agreement was reached that the role of an independent body having the confidence of all parties concerned, which, without duplicating legal procedures or the activities of the prosecution authorities or other state supervisory and monitoring bodies, would examine complaints of interference in trade union affairs, would be entrusted to the Council for the Improvement of Legislation in the Social and Labour Sphere established by the Ministry of Labour and Social Protection of Belarus. In addition to Government representatives, representatives of both the FPB and the CDTU have joined the Council on a voluntary basis.

At its meeting on 25 January 2007, the Council examined a complaint from the Belarusian Independent Trade Union, a member organization of the CDTU, concerning the situation at the enterprises *Grodno Azot* and *Belshina*. As a result, the Council adopted conclusions which were unanimously supported by the members of the Council, including CDTU Vice-President Mr Nikolai Kanakh and the legal inspector for the Belarusian Free Trade Union, Mr Aleksandr Korolev, who both participated in the meeting. Overall, the work of the Council has received a positive response both from representatives of the state authorities and from the unions. It has been noted that constructive discussions took place.

8. Recommendation No. 11 has now been fully implemented. At a meeting of the NCLSI held on 31 January 2007, changes to its composition were approved, among them the inclusion on the NCLSI of CDTU President Mr Aleksandr Yaroshuk.
9. The Government is urgently, constantly and systematically monitoring cooperation between enterprise administrations and trade unions. The Government’s position with regard to the inadmissibility of interference by enterprise managers in the activities of trade unions has been clearly stated. At its meeting on 31 January 2007, the NCLSI examined the issue of cooperation between employers’ and workers’ representatives at enterprise level.

The NCLSI drew the attention of employers' and workers' representatives to the need for strict adherence to the principles of social partnership enshrined in Belarus' legislation and those ILO Conventions which Belarus has ratified, noted the inadmissibility of interference by employers in the internal affairs of trade unions, and recommended that trade unions actively utilize the mechanism of social partnership to defend their rights and those of their members. In accordance with a decision taken by the NCLSI, during the first six months of 2007 current practice in cooperation between employers' and workers' representatives at enterprise level will be examined at meetings of branch, territorial, regional, municipal and district councils on labour and social issues. The minutes of the NCLSI meeting of 31 January 2007 have been forwarded to the ILO.

10. On 31 January 2007, the Ministry of Justice of Belarus sent a letter of instruction to the regional and Minsk executive committees highlighting the need for rigorous compliance with legal regulations in registering organizational structures of trade unions and stating that no decisions should be taken without appropriate grounds (copied to the ILO).
11. The Borisov Municipal Primary Organization of REWU has been registered (decision taken on 8 February 2007).
12. Mr Oleg Dolbik, mentioned as having been the victim of anti-union discrimination (his contract was not renewed), was recruited as an air traffic controller, first class by *Belaeronavigatsia* on 5 January 2007.
13. The Government of Belarus has suggested to the ILO that the possibility of organizing a joint seminar in Minsk on discrimination in labour relations based on trade union membership be explored.
14. The Government has taken a number of specific steps to foster dialogue and cooperation with the ILO with regard to the preparation of the draft trade unions law.

In December 2006 the Government received the ILO's conclusions on the Concept Note. Further work by the Government on the preparation of the draft law will take account of the conclusions received from the ILO and the observations of the ILO Committee of Experts, which were transmitted to the Government in January 2007.

In February 2007, at the Government's request, two rounds of consultations on the draft law were held at the ILO.

The first round of consultations took place on 8–9 February 2007 and included collaboration on the draft law with experts: representatives of the Ministry of Labour and Social Protection and the Ministry of Justice held detailed discussions with experts from the International Labour Standards Department on the provisions of the draft law.

In the course of the consultations, the experts highlighted several areas which were further examined during the visit to Geneva on 14–15 February 2007 of a high-level delegation from Belarus, including Deputy Prime Minister Mr Kobayakov, and the Deputy Head of the Presidential Administration, Ms Petkevich.

15. The Belarusian side proposed that joint work with the ILO on the draft law be continued and that further consultations be held after it had been revised (sometime around May 2007).

In addition, the Government announced its intention for the draft law to be examined by bodies within the social partnership system, to include the FPB and CDTU: in May 2007 the draft law of Belarus "On trade unions" will be examined by the Council for the Improvement of Legislation in the Social and Labour Sphere, and in July–August 2007 by the NCLSI.

## Appendix II

### Comments of the Committee of Experts

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

##### *Observation 2006/77*

#### **Belarus** (ratification: 1956)

The Committee notes the information contained in the Government's reports, the conclusions of the Committee on Freedom of Association in its review of the measures taken by the Government to implement the recommendations made by the Commission of Inquiry (341st Report, approved by the Governing Body at its 295th Session), including the report of the mission carried out in Belarus in January 2006 in response to the requests made by the Conference Committee on the Application of Standards in June 2005, and the discussion that took place in the Conference Committee on the Application of Standards in June 2006. The Committee further notes the comments made by the International Confederation of Free Trade Unions (ICFTU) on the application of the Convention in law and in practice. Finally, the Committee notes from the Government's report that consultations relating to the recommendations of the Commission of Inquiry were held in Geneva in October 2006 between a high-level delegation from Belarus (including the Deputy Prime Minister) and officials of the ILO (including the Executive Director for Fundamental Principles and Rights at Work, the Director and Deputy Director of the Standards Department) and representatives from the International Confederation of Free Trade Unions (ICFTU) and the International Organisation of Employers (IOE).

The Committee recalls that all of its outstanding comments have raised issues directly relating to the recommendations of the Commission of Inquiry. It further observes the conclusions of the Conference Committee wherein it deplored the fact that nothing the Government had said demonstrated an understanding of the gravity of the situation investigated by the Commission of Inquiry or the necessity of rapid action to redress the effects of these severe violations of the most basic elements of the right to organize.

*Article 2 of the Convention.* The Committee recalls that in its previous comments it had urged the Government to take the necessary measures to amend Presidential Decree No. 2 on some measures for the regulation of activities of political parties, trade unions and other public associations and its accompanying rules and regulations, as concerns the legal address requirement and the minimum membership requirement of 10 per cent of workers at enterprise level for enterprise trade unions, and to disband the Republican Registration Commission, so as to bring the Decree and its application into conformity with the provisions of the Convention.

The Committee notes with interest that, on 6 October 2006, the President of the Republic of Belarus signed into force Presidential Decree No. 605 on certain issues of state registration of public associations and their unions (confederations), which abolishes the Republican Registration Commission. It further notes that responsibility for registration now lies with the Ministry of Justice, Departments of Justice of the regional executive councils and the Minsk City Executive Committee. The Committee trusts that the process of registration before such bodies is a mere formality and that the manner in which these bodies carry out their duties does not amount, in practice, to a requirement of previous



authorization contrary to *Article 2* of the Convention. ***The Committee therefore requests the Government to keep it informed of the manner in which registration is carried out by these authorities, as well as any practical obstacles noted in relation to the right of workers to form and join organizations of their own choosing.***

The Committee further notes that Presidential Decree No. 605 refers to the preparation by the Council of Ministers of a draft law aimed at implementing the provisions of the Decree. In particular, the Government has referred in its reports to the preparation of a conceptual framework for a draft law on trade unions. This conceptual framework refers to the possibility of establishing two types of trade unions, those with legal personality and those without. The requirement of obtaining a legal address and the 10 per cent minimum membership requirement would not have to be fulfilled by trade unions without legal personality. According to the Government, drafting of this law and its submission is planned for 2007. The Committee recalls in this regard that, in its previous comments under Convention No. 98, it had noted that trade union representatives had been invited from both the Federation of Trade Unions of Belarus (FPB) and the Congress of Democratic Trade Unions (CDTU) to participate in an expert advisory group, the Council for the Improvement of Legislation in Social/Labour Spheres created to consider the following questions: what form of contract should be used for workers in Belarus and conceptual approaches for improving the Law on Trade Unions. The Committee had noted at the time comments made by the CDTU with respect to a number of proposed amendments to the Law on Trade Unions, which it considered would lead to the dissolution of independent trade unions and the establishment of a state-controlled trade union monopoly. ***The Committee expresses the firm hope that the conceptual framework and the future proposed Bill on trade unions will be further developed in full consultation with all the trade unions concerned and that the final Law will be in full conformity with the provisions of the Convention.***

While noting that the Government now proposes the elimination of the above two obstacles to trade union registration for unions without legal personality, which would simply be placed in the register, the practical distinction in Belarus between trade unions with and those without legal personality is not sufficiently clear to the Committee. The Committee recalls that, when legislation makes the acquisition of legal personality a prerequisite for the existence and functioning of organizations, the conditions for acquiring legal personality must not be such that they amount to a de facto requirement for previous authorization to establish an organization, which would be tantamount to calling into question the application of *Article 2* (see 1994 General Survey on freedom of association and collective bargaining, paragraph 76). ***The Committee therefore requests the Government to provide full details on the envisaged distinction between unions with legal personality and those without, as well as on the impact that this distinction would have upon the functioning of trade unions.***

The Committee further notes with deep concern from the conceptual framework that the Government is envisaging an approach in the draft law on trade unions to provide that, where a trade union or a primary-level organization established at an enterprise represents 75 per cent of the workers at the enterprise and has already signed a collective agreement with the employer, no other primary-level organization shall be included in the register. The Committee recalls that, at present, primary-level organizations (unions created at the enterprise level by a higher level trade union organization in accordance with the by-laws of that organization) may be established without submitting a legal address or meeting a minimum membership requirement other than that stipulated in the higher level organization. The new approach being introduced is likely to have a serious impact not only on the existence of these primary-level organizations, but also on the ultimate existence of their corresponding republican-level organization, giving rise to a de facto monopoly of workers' representation. ***The Committee therefore urges the Government to abandon this approach and to ensure that the new law on trade unions will fully and***

*truly ensure freedom of association and the rights of all workers to form and join the organization of their own choosing, whether through the traditional primary-level organizations or enterprise level unions.*

In addition, the Committee notes that the conceptual framework refers to the determination of representative capacity of trade unions which will further enable those unions to acquire additional rights in respect of collective bargaining, control over observance of labour legislation, social protection, housing relations, environmental protection, receiving and disseminating information, participation in decision-making and protection of labour rights, as well as facilities, including the free use of premises, equipment, means of transportation and communication necessary for their activities and transfer of buildings, etc., for the organization of leisure, cultural, educational and recreational activities. The Committee considers that the extent of such privileges to representative unions could unduly influence the choice of organization by workers and compromise the right of workers to establish and join organizations of their own choosing (see 1994 General Survey, paragraphs 98 and 104). The Committee further considers that the granting of such extensive privileges to representative unions combined with the uncertainty around the status that may be obtained by unions without legal personality could give rise to undue influence on the choice made by workers of the organization they wish to join. *The Committee therefore requests the Government to ensure that the privileges provided to representative trade unions do not give them an unfair advantage over other trade unions such as to render the right to form and join organizations of one's own choosing meaningless.*

*The Committee requests the Government to transmit a copy of the draft trade union law as soon as it has been finalized so that it may assess its conformity with the Convention.*

Finally, the Committee recalls from the conclusions of the Committee on Freedom of Association that no progress had been made in respect of the Commission's recommendations to register the primary-level organizations that were the subject of the complaint. In its previous comments under Convention No. 98, the Committee had further noted from the 339th Report of the Committee on Freedom of Association with concern that the spillover of non-registration of these primary organizations had led to the denial of registration of three regional organizations of the Belarusian Free Trade Union (BFTU) (organizations in Mogilev, Baranovichi and Novopolotsk-Polotsk) and had impacted upon their collective bargaining rights. Now, the Committee must further note with concern that the Radio and Electronic Workers' Union (REWU) had suffered additional refusals to register its primary-level organizations (see 341st Report, paragraph 49). *The Committee therefore expresses the firm hope that the Government will take all necessary measures for the immediate re-registration of these organizations both at the primary and the regional level so that these workers may exercise their right to form and join organizations of their own choosing without previous authorization.*

*Article 3 of the Convention.* The Committee recalls that, in its previous comments, it had urged the Government to take the necessary measures to amend the Law on Mass Activities (as well as Decree No. 11 if it had not yet been repealed), so as to bring it into line with the right of workers' and employers' organizations to organize their activities. It further requested the Government to indicate the measures taken to amend sections 388, 390, 392 and 399 of the Labour Code and to ensure that National Bank employees may have recourse to industrial action, without penalty. Finally, the Committee urged the Government to provide full particulars on the steps taken, in accordance with the Commission's recommendations, to declare publicly that acts of interference in internal trade union affairs are unacceptable and will be sanctioned and to issue instructions to the Prosecutor-General, the Minister of Justice and court administrators so that any complaints of external interference made by trade unions are thoroughly investigated.

The Committee notes with regret the Government's indication that no amendment has been adopted in respect of the Law on Mass Activities. It further regrets that, rather than indicating the measures envisaged in this respect, the Government has called into question the relevance and clarity of the recommendations of the Commission of Inquiry. In this regard, the Committee must recall that it has been asking for the amendment of relevant provisions on mass activities since 2001. At that time, the Committee had asked the Government to amend Presidential Decree No. 11, a Decree that was superseded by the present Law on Mass Activities, in respect of the possibility of 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 establishment's activities or disruption of transport, given the extreme gravity of such measures and recalling that restrictions on pickets should be limited to cases where the picketing ceases to be peaceful. While noting the Government's reiteration that the sanction of dissolution can only occur by court order and that it may be appealed, as well as the fact that this section has never been used to this end, the Committee must recall that the provisions of the Law on Mass Activities that allow for a decision for the dissolution of a trade union if the gathering, meeting, demonstration or picket causes important damage or substantial harm (defined to include temporal termination of activity of establishments or violation of transport traffic) is not in conformity with the right of workers to organize their activities and programmes free from interference by the public authorities. In addition, in its previous comments, the Committee had noted with concern the Commission's findings on the practical application of the Law on Mass Activities, in particular that the authorities routinely and unilaterally changed the venue requested for a demonstration to an obscure and unfrequented location, thus rendering meaningless any right to demonstrate. ***The Committee therefore once again asks the Government to take the necessary measures to ensure that the Law is amended, including by the deletion of any references to dissolution, so that restrictions on pickets are limited to cases where the action ceases to be peaceful or results in a serious disturbance of public order and that any sanctions imposed in such cases be proportionate to the gravity of the violation. The Committee also asks once again the Government to indicate the measures taken to amend sections 388, 390, 392 and 399 of the Labour Code and to ensure that National Bank employees may have recourse to industrial action, without penalty.***

As regards the issuance of a public declaration clearly indicating that acts of interference in internal trade union affairs would not be tolerated and instructions to be given to the Prosecutor-General, the Minister of Justice and court administrators to thoroughly investigate complaints by trade unions, the Committee notes the Government's references to the separation of powers and the existence of adequate legislation in this regard. The Government adds, however, that such issues are raised within the framework of the inter-departmental group established to coordinate the work on implementation of the recommendations, which includes the President of the Supreme Court and the Deputy General Prosecutor. Finally, the Government refers to specific planned activities, including a seminar for judiciary and prosecution employees aimed at acquainting them with ILO standards on freedom of association, to which the ILO is invited to participate. ***The Committee notes this information and expresses the firm hope that all measures will be taken to publicly condemn any acts of interference by the public authorities in the internal activities of trade unions and that full dissemination of information relating to the Commission of Inquiry recommendations and the provisions of the freedom of association Conventions will take place through all possible means, including seminars for the judiciary and prosecution employees with the participation of the ILO.***

As regards its previous request to the Government not to interfere in the choice of union representatives on trade union bodies, the Committee firstly notes with regret from the 341st Report of the Committee on Freedom of Association that, rather than refraining from such interference, the Government took no steps to restrain a FPB initiative to establish a minimum membership requirement for the National Council on Labour and

Social Issues (NCLSI) that resulted in eliminating the seat that had existed for the CDTU, and even voted for the proposed change to the Rules of the National Council in November 2005 (see 341st Report, paragraph 44). The Committee notes from the Government's reports that measures had also been taken in the Rules to ensure that non-representative unions could participate in the discussions and receive documents, but considers that the situation created by the Rules gives rise to further reinforcing the monopoly voice of the FPB contrary to the considerations of the Commission of Inquiry 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" (see *Trade Union Rights in Belarus: Report of the Commission of Inquiry appointed under article 26 of the ILO Constitution*, paragraph 634). The Committee does note, however, from the latest information provided by the Government that the FPB put forward a proposal to offer one of its 11 seats to the CDTU and that, according to the Government this proposal was endorsed by the Government, and employer sides and formalized in a resolution of the NCLSI. ***The Committee requests the Government to transmit a copy of this resolution with its next report.***

*Articles 3, 5 and 6 of the Convention.* In its previous comments, the Committee once again urged the Government to amend section 388 of the Labour Code, which prohibits strikers from receiving financial assistance from foreign persons, and Decree No. 24 concerning the use of foreign gratuitous aid, so that workers' and employers' organizations may effectively organize their administration and activities and benefit from assistance from international organizations of workers and employers. The Committee notes the Government's indication that these restrictions are a matter of principle since the Government considers that strikes are used for political aims and that they are an extreme means of action, which are disruptive for workers and the economy in general. The Government adds that the receipt of such financial assistance from abroad places the other party in an unequal position and could be used as a means of unfair competition in a globalized economy. The Government adds that the provision in the Decree for dissolution of a trade union in case of violation has never been used and thus it cannot be claimed that the Decree hinders legal trade union activities. Finally, the Government states that it needs clarification as to the difficulties in application of the Convention arising from Decree No. 24.

In this respect, the Committee regrets that it is obliged to recall that it has been raising the problems of conformity of section 388 of the Labour Code and Decree No. 8 (superseded by similar provisions in Decree No. 24) since 2000 and 2001, respectively. While taking due note of the Government's arguments that it fears that, allowing the use of financial assistance from abroad for industrial action would upset the balance of power and could be used for political aims, the Committee must recall that the right to strike is an intrinsic corollary of the right to organize protected by Convention No. 87 and, as regards the concerns raised over possible political aims, that organizations defending workers' socio-economic and occupational interests should, in principle, be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general (see 1994 General Survey, *op. cit.*, paragraphs 151 and 165). In addition, the Committee does not consider that the fact that the dissolution provision has not been used can lead to the conclusion that trade union activities have not been hindered, as the mere existence of this prohibition and its legal consequences are sufficient to hinder trade unions from using financial assistance in this manner. ***The Committee must therefore reiterate that restrictions on the use of foreign aid for legitimate trade union activities is contrary to the right of national workers' and employers' organizations to receive financial assistance from international workers' and employers' organizations in pursuit of these aims and once again request the Government to take the necessary measures to amend both Decree No. 24 and section 388 of the Labour Code so that workers' organizations***

*are not prohibited to use such aid to support industrial action or any other legitimate activity.*

The Committee considers that the current situation in Belarus remains far from ensuring full respect for freedom of association and the application of the provisions of the Convention and is particularly concerned about the impact that the proposed law on trade unions may have on the possibility of trade union pluralism. *Noting the indications made by the Government in its report that it would like to receive technical assistance from the Office, the Committee expresses the firm hope that the Government will use such assistance so as to take the necessary steps for the full implementation of the recommendations of the Commission of Inquiry and to ensure that any new legislation in the field of trade union rights is in full conformity with the provisions of the Convention.*

*The Committee further requests the Government to respond to the comments made by the International Trade Union Confederation (ITUC) dated 9 November 2006.*

[The Government is asked to supply full particulars to the Conference at its 96th Session.]

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

### Observation 2006/77

#### Belarus (ratification: 1956)

The Committee notes the information contained in the Government's reports, the conclusions of the Committee on Freedom of Association in its review of the measures taken by the Government to implement the recommendations made by the Commission of Inquiry (341st Report, approved by the Governing Body at its 295th Session), including the report of the mission carried out in Belarus in January 2006 in response to the requests made by the Conference Committee on the Application of Standards in June 2005, and the discussion that took place in the Conference Committee on the Application of Standards in June 2006. The Committee further notes the comments made by the International Confederation of Free Trade Unions (ICFTU) on the application of the Convention in law and in practice. Finally, the Committee notes from the Government's report that consultations relating to the recommendations of the Commission of Inquiry were held in Geneva between a high-level delegation from Belarus (including the Deputy Prime Minister) and officials of the ILO (including the Executive Director for Fundamental Principles and Rights at Work, the Director and Deputy Director of the Standards Department) and representatives from the ICFTU and the International Organisation of Employers (IOE).

*Articles 1 and 3 of the Convention.* In its previous comments, the Committee requested the Government to indicate the measures taken to review and redress all complaints of anti-union discrimination that had been raised in the article 26 complaint or had recently come to light in the examination of the follow-up given by the Government to the Commission's recommendations. It further urged the Government rapidly to adopt new, improved mechanisms and procedures to ensure effective protection against all types of anti-union discrimination and to indicate the progress made in this regard.

The Committee notes that the Government once again indicates that there is already sufficient protection against acts of anti-union discrimination in the labour legislation and that workers have the possibility of recourse to the judicial system if they consider their rights have been violated. The Government further provides statistics on the number of labour inspections carried out and the number of violations of the labour legislation that were found, yet has not indicated whether any of these related to anti-union discrimination. Finally, the Government refers to the tripartite General Agreement for 2006-08 wherein it was recommended that collective agreements include provisions setting out additional guarantees for workers elected to trade union bodies.

As for the investigation of complaints concerning anti-union discrimination and retaliation, the Committee notes the Government's indication that, following the consultations held in Geneva, it understands that the Council for the Improvement of Legislation in Social/Labour Spheres, which includes representatives from the Government, trade unions and employers' organizations, NGOs and academic experts, could be an appropriate place to review such complaints, as could be the NCLSI. The Government also referred to the use of the judicial system by the unions outside the structure of the Federation of Trade Unions of Belarus (FPB), the various investigations carried out and the conclusions, including one case where the Belarusian Free Trade Union (BFTU) was found to have cause for its complaint and the enterprise officials received warnings and another three cases where members of the Radio and Electronic Workers'

Union (REWU) had won their court cases, although no details were provided as to the subject of the complaints.

The Committee nevertheless notes with regret that the Government has not been able to provide any statistics relating to the cases of complaint of anti-union discrimination and the decisions rendered. *In addition, the Committee considers that the issuing of warnings in the one case of the BFTU is not likely to serve as a sufficiently dissuasive sanction for the violation committed and requests the Government to confirm whether, following the warning, the BFTU has actually been allowed access to the premises of the enterprise concerned.*

The Committee further notes with regret that in none of the cases of anti-union discrimination and retaliation which were the subject of the Commission of Inquiry, nor in respect of the non-renewal of contracts of certain persons who had testified before the Commission, has there been any action to redress the situation or to seriously and independently investigate the claims (see 341st Report, paragraph 48). *The Committee does not consider that it is in a position to judge whether either of the national councils referred to by the Government could adequately provide the impartiality necessary to undertake an independent investigation of the complaints raised and thus urges the Government to discuss this matter with the trade unions most directly concerned so as to determine the most appropriate mechanisms and procedures to ensure effective protection against all types of anti-union discrimination and to keep it informed of the progress made in thoroughly reviewing the outstanding complaints and the results achieved.*

*Article 2.* In its previous comments, the Committee requested the Government to transmit a copy of a letter sent to directors of enterprises explaining the norms set by current national legislation and international labour standards. In its reports, the Government indicates that the letter was sent to 47 national government bodies and other state-run establishments. These state bodies then took the necessary steps to ensure that the letter from the Ministry of Labour and Social Protection reached the actual enterprises within their system. The Government adds that the Ministry of Industry forwarded the letter to the establishments under its remit and held a meeting on the issue with management representatives at the largest industrial enterprises. The Government transmitted a copy of the letter and the minutes of meetings showing how the matter was studied at some 57 enterprises. *Noting that the information provided by the Government reiterates that which was provided to the Committee on Freedom of Association (see 341st Report, paragraph 47), the Committee, like the Committee on Freedom of Association, asks the Government to pursue these instructions in a more systematic and accelerated manner so as to ensure that enterprise managers and directors do not interfere in the internal affairs of trade unions and that they will respect the autonomy of trade unions.*