

INTERNATIONAL LABOUR
CONFERENCE

EIGHTY-NINTH SESSION
GENEVA, 2001

RECORD OF PROCEEDINGS

INTERNATIONAL LABOUR OFFICE
GENEVA

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

Belarus (ratification 1956). The Government supplied the following information: the right to organize, including the right to establish trade unions, is guaranteed by the basic law of the country — the Constitution of the Republic of Belarus. The trade unions' rights are provided for in detail in the Law of the Republic of Belarus "on Trade Unions". The following principles of ILO Conventions Nos. 87 and 98 are reflected in this Law: right to freely establish and join trade unions, subject to the rules of the organizations concerned; right to freely draw up and adopt their constitutions and rules, to define their structure, to elect their administrative bodies, to cease their activities.

The Law grants the trade unions wide powers to defend the rights and economic interests of workers of Belarus, secures their active participation in the life of the country and in the formulation of the Government's socio-economic policy.

According to the Constitution of the Republic of Belarus, relations between the state administrative bodies and employers' and workers' organizations are based on the principles of social partnership and cooperation.

There are various forms of the social partners' cooperation in the country, the most important among them being joint elaboration, adoption and implementation of the general tariff agreement, branch tariff agreements and local agreements, as well as collective agreements.

The General Agreement between the Government of the Republic of Belarus and republic associations of employers and workers for 2001-03 was signed and entered into force on 25 May 2001.

Although the current collective agreement campaign has not yet been terminated, at present there are more than 600 agreements of all kinds already concluded, including 27 at the republic level and about 100 at the local level; there are also more than 20,000 collective agreements.

There is a National Labour and Social Council in the Republic, as well as branch and territorial councils, all of them are tripartite bodies in which the Government, employers' and workers' representatives are appointed in equal numbers.

The Belarus society's transition to market-economy realities is accompanied by radical transformation of social and economic conditions. The nature and content of relations between the trade unions and the Government and employers are also changing. Certain trade union rights and privileges can no longer be automatically secured, as in the past based on the former socialist legality or the Party directives. At present, the most important guarantee to ensure their implementation is collective agreements.

Realizing the need to create, in fact, new socio-economic legislation, as well as the difficulties of this task, the Belarus Government is open to dialogue with the social partners and the ILO for the joint search of optimal solutions.

In the course of improving the national legislation, and following the recommendations of the ILO supervisory bodies, the Government has prepared amendments to the legislation concerning registration — Presidential Decree No. 2.

It is proposed to repeal provisions requiring the confirmation of legal address in the course of registration of unions' branches which have no legal personality.

It is also proposed to enlarge the possibilities of acquiring legal address by organizations which have legal personality. Thus, if necessary, the organizational units of one trade union situated in the same city, for example, 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 mother organization or trade union.

In drafting the modifications to Decree No. 2, the Government took account of the Committee of Experts' comments on provisions concerning creation of independent trade unions in undertakings. In particular, it is proposed to delete the provision requiring a minimum number of trade union members to reach at least 10 per cent of all employees of the undertaking. Consequently, these modifications would allow the creation of trade unions in undertakings already where there are ten members.

The general rules governing collective labour relations in Belarus, including the settlement of collective labour disputes, are laid down by the Labour Code of the Republic of Belarus which entered into force on 1 January 2000.

The Code provides for the creation at the initial stage of the conflict of a conciliation commission composed of the representatives of the parties concerned; the attainment of a quorum and the secret vote on declaring a strike; the advanced strike notification of the employer; the guarantee of minimum service during the strike; the prohibition to compel persons to take part in the strike or to abstain

from it. The parties are free to make use of mediators or to take the case to the labour arbitration. The legislation of Belarus does not provide for a compulsory arbitration of disputes or for compulsory mobilization. The decision to declare a strike illegal is taken by the court.

In preparing the Labour Code the Government has taken into account the comments formulated by the Committee of Experts and the Committee on Freedom of Association concerning the list of enterprises where strikes were prohibited, approved by the decision of the Cabinet of Ministers, No. 158 of 28 March 1995, which, in the opinion of the supervisory bodies, was not in line with the strict definition of the vital services.

With the technical and advisory assistance of the International Labour Office new approaches were elaborated in the Labour Code of the Republic of Belarus.

The Labour Code now limits the right to strike only to the extent that it is necessary in the interests of national security, public order, the health of the population, and the rights and liberties of other people.

In relation to the request of the Committee of Experts, the Government confirms its understanding that the provisions of the Labour Code to limit the right to strike (sections 388 and 393) should be used only in cases where the situations covered actually arise.

In the Government's opinion, the fact that the Labour Code contains certain provisions which have given rise to the comments by the Committee of Experts, could be explained in that the definition of the vital services is insufficiently developed in the Republic. This definition is open to different interpretations and has to be studied further with the technical assistance of the ILO.

The Government understands the need for constant improvement of the national legislation in the area of freedom of association and trade union rights.

The basis for the solution of the existing problems should be found in the enlargement of the dialogue with the social partners and the activation of the technical cooperation with the ILO.

Technical assistance of the ILO can become an additional factor to help effectively realize the recommendations of the Committee of Experts and other supervisory bodies.

In addition, before the Conference Committee, a **Government representative**, the Deputy Minister of Labour, stated that the Government of the Republic of Belarus considered matters of observance of the rights of workers, and the creation of necessary conditions for the free protection by workers of their rights as one of the priorities of its policy. The right to association, including association into trade unions, was guaranteed by the Constitution. The rights of trade unions were set out in greater detail in the law of the Republic of Belarus "on trade unions". This law directly reflected the principles of **Conventions Nos. 87 and 98** concerning voluntary creation of trade unions and their membership, the right to draft and approve their constitutions, to determine their structure, to elect executive committees, and to terminate their activities. The law gave broad authority to the trade unions in defending the rights and economic interests of the workers of Belarus, ensured their active participation in the life of the country and in the formation of socio-economic policy of the Government. In accordance with the Constitution of the Republic of Belarus, the relations in the social-labour sphere between the bodies of state administration, associations of employers and trade unions were conducted on the basis of principles of social partnership and cooperation of the parties. The example of such cooperation in the Republic was the work of the National Council for Labour and Social Matters, a tripartite body, where the Government, associations of employers and trade unions participated on an equal footing. The National Council considered the most important matters of socio-economic policy, the improvement of cooperation of social partners, and adopted decisions which afterwards were reflected in the collective agreements and other normative acts. During the meeting of the National Council on 24 May 2001, the disagreements concerning the Draft General Agreement between the Government of Belarus, all-republic associations of employers and trade unions for 2001-03 were resolved and, as a result, the Agreement was signed and had entered into force. The question concerning the proposed steps of the Government for complying with the recommendations of the Freedom of Association Committee, adopted by the Governing Body on 28 March 2001, were also considered at this meeting. Alongside other matters, the question of non-interference of state bodies in the activities of trade unions were discussed. The Minister of Justice had pointed out that the instruction referred to by the supervisory bodies of the ILO 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). The interaction of governing bodies, employers and trade

was of the view that Belarus constituted an anachronistic, shocking, and unacceptable case.

The Worker member of the Russian Federation expressed his concern at the continuous violations in Belarus of Convention No. 87, including interference in the internal affairs of trade unions and measures to limit their rights. Russian trade unions fully agreed with the conclusions of the Committee of Experts in respect of the violations of [Convention No. 87](#) because they maintained close connections with the trade unions of the neighbouring country and knew about the real situation. The trade unions of the Russian Federation, in cooperation with the trade unions of Belarus, conducted monitoring of the violations of trade union rights and cases of pressure on trade union officials in Belarus. Unfortunately, the violations of Conventions Nos. 87 and 98 occurred more and more frequently in other countries of the CIS, including the Russian Federation, and this situation was frequently developing in the same manner as in Belarus. This issue was discussed at the International Forum on the Freedom of Association which took place in Moscow on 26-27 May 2001, where the representatives of almost all trade unions of the countries of the CIS took part. These violations consisted of legislative efforts to significantly reduce the rights of trade unions, pressure by the authorities in the process of election of trade union leaders, attempts to seize trade union property, numerous attacks against trade unions and their leaders in the media, more frequent cases of intimidation and even assaults against trade union leaders and activists. These developments were considered by Russian trade unions as a campaign against trade union rights. Russian trade unions, on numerous occasions, brought their position to the attention of all first officials of the Republic of Belarus, including during personal meetings. Russian trade unions also drew the attention of the leaders of the Russian State to the situation of trade union rights in Belarus asking them, taking into account the signing between the Russian Federation and Belarus of the agreement on the creation of a union, to render assistance for the resolution of this problem. The Worker member wished to once again remind the Belarusian authorities that it was not permitted to violate Conventions Nos. 87 and 98 and asked them to urgently undertake necessary measures in order to rectify the situation. On their part, the Russian trade unions would continue to carefully watch over the development of the situation in the area of observance of trade union rights and freedom in Belarus and undertake necessary measures within their competence in order to give support to their fellow trade unionists in Belarus. Only the inclusion of a special paragraph in respect of Belarus could resolve the problem of trade union violations in this country.

The Worker member of Hungary, speaking on behalf of the Belarusian trade unions, asserted that, although the Government had declared that the situation, in respect of [Convention No. 87](#), would improve very soon, in fact it had deteriorated. The President of the Republic of Belarus had signed two new decrees, Decree No. 8 in March 2001 and Decree No. 11 in May 2001. Decree No. 11 made it virtually impossible to hold any meetings or demonstrations. The smallest irregularity in conducting such meetings would lead to the imposition of high financial penalties on the organizers or the dissolution of the entire trade union organization. In addition, high payments for conducting such meetings or demonstrations were requested by the State. Decree No. 8 prohibited unions from receiving any form of international financial assistance without the agreement of the President's administration. Any violation of these provisions could lead to the dissolution of the trade union organization concerned. With these two additional decrees, the Government had enacted more legislation to allow for independent trade union organizations to be easily dissolved. The speaker then referred to a few examples of violations in practice of Convention [No. 87](#). Until now, over 100 affiliates of the Congress of Independent Trade Unions had not been re-registered and newly founded trade union organizations could not be registered. The previous month, two trade union branches of independent organizations in Polodsk and Babruisk were prohibited from carrying out their activities. Membership fees were deducted from workers' salaries but not transferred to the trade unions in an attempt to put economic pressure on the latter. Last month, the authorities tried to install their representative as the head of the Minsk Trade Union Federation. By threatening workers with dismissal, employees of the Belarusian Metallurgical Plant and Integral Company were forced to leave their union and to join management-controlled company trade unions. Trade union leaders were refused access to enterprises where their members were working. The Belarusian trade unions did not trust the promise of the authorities that they wanted to normalize relations with the unions on the basis of social partnership and respect for ILO Conventions. The trade unions thought that Belarus deserved to be mentioned in a special paragraph. But, if this Committee took another decision, including the sending of a

mission to the country, the unions would like the mission to demand that: Decrees Nos. 2, 8 and 11 would be repealed; legislation concerning labour disputes would be brought in line with [Convention No. 87](#); state interference in trade union affairs would be stopped immediately and employees who had been dismissed because of trade union activities would be reinstated and compensated for lost wages.

The Worker member of Romania stressed that the situation in Belarus was serious and that the Committee of Experts had noted gross violations to freedom of association. In fact, Presidential Decree No. 2 was contrary to Article 2 of the Convention as it specified a long and complicated registration procedure for trade unions. Moreover, the relevant administrative authorities made bad usage of such a procedure. He added that the Labour Code authorized, in specific instances, legislative restrictions to the right to strike, and authorized the President of the Republic to delay, even to put an end to strikes, for a period of up to three months. Finally, he concluded that the instructions issued by the head of the presidential administration were contrary to the rights of workers' organizations to elect their representatives in full freedom.

The Worker member of Germany considered that the administrative regulations and practice in Belarus constituted systematic attempts by the Government to limit the freedom of trade unions. In fact, this had already been noted by the Worker members and other speakers, as well as by the Committee of Experts. In March 2001, the Government representative had informed the Governing Body that the Committee on Freedom of Association's conclusions and recommendations were constructive and would be implemented. However, subsequently, when the Belarus trade unions and the ICFTU held a meeting to discuss the conclusions and recommendations of the Committee on Freedom of Association, the Government authorities declined to allow the trade union to have any facilities for the meeting to take place. At the end of April, the Government instituted a new tactic in requiring the directors of state-owned enterprises to compel trade union members to leave their own unions and join those unions controlled by enterprise management. In sum, he had considerable doubts regarding the Government's intent to comply with the Convention, as he had seen no progress in this case to date and, during a visit of a German trade union to Belarus, discussions with the Government had been fruitless. Before further technical assistance would be provided, it would be necessary to see credible signals that the situation in Belarus was being brought into accordance with international law. Contrary to the position expressed by the Employer members regarding the right to strike, he considered this right to form an integral part of workers' fundamental rights. Otherwise, collective bargaining would become collective begging and it was necessary to equalize the balance and power between workers and employers. Referring to the written information submitted by the Government, it appeared that the Government was using the old Soviet Union concept of trade unions as its basis. It seemed that the Employer members were still attempting to use new arguments to support their position on the right to strike without following the comments made by the trade unions or the discussion in the Conference Committee. He recalled that, during the period of the cold war, the trade unions had played an essential part in restoring democracy and had not allowed themselves to be used as the tools of the employers. In the general discussion, the Employer members had stated that lip service was often paid to the market economy but, for the trade unions, the right to strike could not be separated from the market economy. He pointed out that, in Germany, while the right to strike was not expressly enshrined in the German Constitution, this right was nevertheless well established. He considered that attacks against the right to strike could serve as a pretext to compel workers to accept violations of international law.

The Government member of Norway, speaking on behalf of the Governments of [Denmark](#), [Finland](#), [Iceland](#), [Sweden](#), [the Netherlands](#) and [Norway](#), drew the Conference Committee's attention to the serious violations of trade union rights in Belarus. He placed particular emphasis on the Government's interference in the internal affairs of trade unions and on the restrictive trade union registration provisions in the national legislation. In this regard, he stressed that none of the practices denounced by the Belarus trade unions had been stopped. They therefore asked the Government of Belarus to address this serious situation in a constructive manner to ensure full compliance with the provisions of [Convention Nos. 87 and 98](#), both ratified by the Government of Belarus, and to fully respect freedom of association in law and practice. He called upon the Director-General to take, as soon as possible, all necessary measures to ensure the Government's compliance with the provisions of Convention Nos. 87 and 98 and to promote effective collective bargaining and social dialogue in the country.

The Government member of Germany noted that the comments of the Committee of Experts and the discussion in the Conference

Committee were clear that the restrictions placed on trade union activities in Belarus constituted a violation of the Convention. While the written information submitted by the Government indicated that it intended to make changes to the legislation, he considered that, reading between the lines, the Government representative remained unconvinced of the need to effect changes to the national legislation, although she had also acknowledged that this situation currently existed in the country. Referring to sections 388, 390 and 393 of the Labour Code, he noted that his own country, Germany, also had restrictions on the right to strike in essential public services, a situation which was contrary to the comments of the Committee of Experts. He considered that, contrary to the position taken by the Employer members, the right to strike was an essential component of freedom of association, despite the fact that it was not expressly covered under [Convention No. 87](#). Accordingly, it was the right of the Committee of Experts and the Conference Committee to address this issue, and the Committee should urge the Government to conduct a comprehensive review of the national legislation that unacceptably limited trade union activities.

The Employer member of South Africa noted that, as the Committee's discussion demonstrated, there were many aspects in which Belarus failed to comply with the Convention. However, other issues had been raised in the discussion that were not undisputed. The Workers' spokesperson had questioned the authority of the Employers' spokesperson and in particular his stance on the Committee of Experts' view of the wide extent of the right to strike arising from [Convention No. 87](#). He outlined the extensive and uncontested mandate for the Employers' spokesperson from the IOE members, the full employers' caucus and the Employer members of the Conference Committee on the Application of Standards. He also found it unfortunate that the inference was left in the air that the employers were somehow lesser custodians of core labour rights. This was not true. It was a matter of public record that in some countries, including his own, South Africa, the right to strike was enshrined in the Constitution. In others it was protected in national legislation. Employers did not contest this or try to overturn this. However, when Employers raised the issue as the Employers' spokesperson had done, then it was out of respect for the ILO's supervisory system which could be undermined if there was not a proper foundation for the wide interpretation and interpolations given by the Experts in this regard and which went beyond the scope of the Convention. Something that was wrong could not be said to be right merely because it happened to be convenient to some.

The Employer member of the United States hoped that the Worker members had not opened a Pandora's box in the Conference Committee. While the Worker members had accused the Employers of opportunism, he considered it opportunistic to level accusations at a group that, during the cold war, stood shoulder to shoulder with the Workers' group to support and defend the ILO supervisory machinery against attack. With regard to the Worker members' statements regarding the Employer members, he pointed out that, when [Convention No. 87](#) was up for adoption, some members of the Workers' group had recommended that Convention No. 87 not be adopted because it did not mention the right to strike. With regard to the right to strike in Belarus, the Employers' position was accused of being a double standard, but he noted that the Worker members had on numerous occasions questioned interpretations of the Experts. He suggested that the Conference Committee should be seen in context as it existed, noting that it had the constitutional duty in the light of the Standing Orders of the Conference to examine the application of ratified Conventions. He pointed out that the Committee of Experts was a tool of the Conference Committee and it worked for the Conference Committee. In conclusion, he stressed that it should be clear that the Employers' group supported the position expressed by the Employer spokesperson.

A number of Employer members, including of France, Argentina and Panama, referred to the statement made by the Worker members in protest at the terms used and expressed their support for the Employer spokesperson, whose statements always represented the opinion of the Employer members as a whole.

The spokesperson for the Worker members said that in his initial statement he had not cast doubt on the fact that the statements of the spokesperson for the Employer members represented the group as a whole. He was glad that the Government of Russia had asked for the reproduction of the full text of his statement in the report. This would clarify the point beyond any doubt.

The Government representative of Belarus noted that she had listened carefully to the comments made by the members of the Conference Committee. With regard to the issue of union registration, she pointed out that all trade unions in Belarus passed through the registration process. In fact, less than 0.2 per cent of the organi-

zational structures of trade unions in Belarus were non-registered. The Government believed that the requirement that trade unions confirm a legal address still posed an obstacle for this small number of the organizational structures of trade unions. She noted that a draft decree had been prepared in early 2001 to change the registration process. The Government representative recalled that, on 28 March 2001, the case of Belarus was examined by the Committee on Freedom of Association (CFA) and, at that time, the Government had expressed its willingness to comply with that Committee's recommendations and it had therefore decided to revise the draft decree. The draft, which would abolish the requirement that an organization have at least 10 per cent of the workers in the enterprise as members in order to be created, had already been submitted to the Presidential Administration when the Committee on Freedom of Association met in March. She also highlighted the fact that this was the first time that the Committee had discussed this case, although CFA Case No. 1849 had been brought against Belarus in 1995 relating to other aspects of legislation. Thanks to the technical assistance provided by the ILO, the Government had managed to comply with almost all of the recommendations made by the Committee on Freedom of Association in that case. She also stressed that the observations of the Committee of Experts had been received by the Government only in March 2001. Nevertheless, the Government had already begun preparing amendments to the legislation. She recalled that the new general agreement had been signed on 25 May 2001. In conclusion, in reply to the characterization of trade union rights in Belarus as a "choking situation", she cited the statement of the Vice-Chairman of the Federation of Trade Unions of Belarus, Mr. Vitco, that his opinion regarding the situation in Belarus had changed in light of the general status of trade union rights in the Commonwealth of Independent States since violations of trade union rights existed in all of these countries.

Another Government representative of Belarus expressed his gratitude to the Conference Committee for its patience and kindness. He nevertheless regretted that some of the workers, without having concrete information, had created confusion in the meeting. He stressed that the right to work was the most important right of all workers' rights. In Belarus, only 2.5 per cent of workers temporarily had no jobs. He therefore considered that, instead of levelling groundless accusations against Belarus, those Worker members would do better to pay attention to the plight of workers in their own countries. Moreover, 90 per cent of workers in Belarus were members of trade unions and he therefore did not understand what "grave" violations of the right to freedom of association those Worker members were referring to. He considered that trade unions in Belarus, especially trade union leaders, were not restricted in their trade union activities and enjoyed the fruits of international solidarity. While he welcomed the participation of workers in the discussion, he nevertheless wished that this participation be more constructive and not so openly confrontational and politicized, as he considered that such an approach was alien to trade union activity.

The Worker members stated that this was not a political debate but that it should follow the points raised by the Committee of Experts. Responding to the concluding remarks of the Government representative, they indicated that they would have preferred it if Mr. Vitco could have made the statement cited by the Government himself, as he was in fact present at the Conference Committee. Other members of the Federal Trade Union of Belarus were also present. Although the Government had declined to pay their fares, these had been paid by the ICFTU. However, regrettably, and for reasons he did not understand, the Worker delegate of Belarus had not been allowed to speak before the Committee. Regarding the statements made concerning the so-called empty accusations made by the Workers' group, the Worker members stated once again that the facts they had mentioned were based upon the reports of the Committee of Experts and the Committee on Freedom of Association as well as on the statements of their Worker colleagues, who had come to the Conference with relevant information. They therefore refused to accept that empty accusations had been made by the Workers' bench. While they respected the ingenuity of the arguments against the Experts' interpretations of the Convention made by the Employer members, they noted that Employer members had been repeating the same arguments for years, occasionally including some new elements. Therefore, the Worker members considered that they also could repeat their statements concerning their position on the right to strike, not because they were desiring to be original, but since they were concerned that an unfruitful opposition to the Experts' interpretations of Article 3(a) of the Convention as to the right to strike in the Employers' group was blocking the discussion of important issues in the case of Belarus, as well as many other cases. The Worker members considered that the argu-