



# Governing Body

347th Session, Geneva, 13–23 March 2023

Institutional Section

INS

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## Options for measures under article 33 of the ILO Constitution, as well as other measures, to secure compliance by the Government of Belarus with the recommendations of the Commission of Inquiry in respect of Conventions Nos 87 and 98

### ▶ Background

1. At its 346th Session (October–November 2022), the Governing Body was invited to consider any further measures, including those foreseen in the ILO Constitution, to secure compliance by the Government of Belarus with the recommendations of the Commission of Inquiry.<sup>1</sup> On that occasion it:
  - (a) deplored that no progress had been made by the Government of Belarus in implementing the recommendations of the 2004 Commission of Inquiry;
  - (b) urged the Government to ensure full respect for freedom of association and, in particular, revoke all legislative and other measures directly or indirectly having the effect of outlawing independent trade unions or employers' organizations;

<sup>1</sup> GB.346/INS/13(Rev.1).

- (c) urged the Government to immediately release all trade union leaders and members arrested for participating in peaceful assemblies or arrested for exercising their civil liberties pursuant to their legitimate trade union activities and drop all related charges;
  - (d) urged the Government to allow the ILO, as a matter of urgency, to ascertain the conditions of arrest and detention and the welfare of the abovementioned trade unionists;
  - (e) noted that the Committee of Experts on the Application of Conventions and Recommendations will be reviewing the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in Belarus at its November–December 2022 meeting;
  - (f) urged the Government to submit all information regarding the measures taken to implement all outstanding recommendations of the Commission of Inquiry and in respect of the more recent developments forming part of the complaint to the Committee on Freedom of Association for its examination at its March 2023 meeting;
  - (g) requested the Director-General to submit to the Governing Body at its 347th Session (March 2023) a document detailing options for measures under article 33 of the ILO Constitution as well as other measures to secure compliance by the Government of Belarus with the recommendations of the Commission of Inquiry taking account of the views expressed;
  - (h) decided to place on the agenda of the 111th Session (2023) of the International Labour Conference an item concerning measures under article 33 of the ILO Constitution to secure compliance by the Government of Belarus with the recommendations of the Commission of Inquiry.<sup>2</sup>
- 2.** At its 93rd Session (November–December 2022), the Committee of Experts on the Application of Conventions and Recommendations examined the application of Convention No. 87 in Belarus and in this context, followed up on the implementation of the recommendations of the Commission of Inquiry and the 2022 conclusions of the Committee on the Application of Standards. On that occasion, the Committee of Experts on the Application of Conventions and Recommendations, *inter alia*, deplored that, 18 years since the recommendations of the Commission of Inquiry were issued, recent developments indicate continuing steps backward, as all space for the safe existence of an independent trade union movement in Belarus has virtually disappeared. The Committee urged the Government to abandon its policy of destroying the independent trade union movement and silencing the free voices of workers. It further urged the Government to engage with the ILO with a view to fully implementing all outstanding recommendations of the ILO supervisory bodies without further delay.
- 3.** The Committee on Freedom of Association, tasked by the Commission of Inquiry to follow up the implementation of its recommendation, is expected to examine the measures taken by the Government of Belarus to that effect at its meeting in March 2023. Its conclusions and recommendations will be published in its 402nd Report to be presented to the Governing Body at its current session.

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<sup>2</sup> GB.346/INS/PV, para. 494.

## ▶ Latest developments

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4. Despite the urgent calls made by the Governing Body to the Government of Belarus in November 2022, there has been no progress in respect of paragraphs (b), (c) and (d) of its decision. The Government of Belarus has not apprised of any step to revoke the legislative and other measures directly or indirectly having the effect of outlawing independent trade unions or employers' organizations. Moreover, to date, the Office has not been given access to the persons detained to ascertain the conditions of arrest and detention, despite repeated requests. The following trade union leaders and members have now been sentenced:
- Ms Zinaida Mikhniuk, an activist of the Belarusian Union of Radio and Electronic Workers (REP Union), sentenced on 18 May 2022 to two years of imprisonment (under section 368(1) of the Criminal Code for insulting the President of the country), with sentencing confirmed on 12 July 2022;
  - Mr Artyom Zhernak, chairperson of a primary trade union of the Free Metal Workers' Union (SPM) at MAZ enterprise, sentenced on 13 October 2022 to four years of imprisonment (for violating section 342(1) of the Criminal Code punishing actions that grossly violate public order, section 361<sup>1</sup> of the Criminal Code punishing actions against national security, such as formation of and participation in an extremist formation, and section 361(3) of the Criminal Code for calling for restrictive measures and other actions, such as sanctions, aimed at harming the national security of the Republic of Belarus);
  - Mr Aliaksandr Mishuk, Deputy Chairperson of the Belarusian Independent Trade Union (BNP), sentenced on 14 November 2022 to two-and-a-half years of imprisonment (under section 361<sup>1</sup> of the Criminal Code);
  - Ms Yanina Malash, an SPM activist, sentenced on 15 November 2022 to one-and-a-half years of imprisonment (under section 342 of the Criminal Code);
  - Mr Andrei Khanevitch, Chairperson of the BNP-affiliated primary trade union of the Grodno Azot enterprise, sentenced on 16 November 2022, to five years of imprisonment (for violating section 361(4) of the Criminal Code, for facilitating extremist activities and section 369(1) of the Criminal Code, for discrediting the Republic of Belarus);
  - Mr Siarhei Sliazhkov, a BNP activist, sentenced on 24 November 2022 to three years of imprisonment (for violating section 130(1) of the Criminal Code on incitement of social hatred and discord, and section 368(1) of the Criminal Code);
  - Mr Aliaksandr Yarashuk, Chairperson of the Belarusian Congress of Democratic Trade Unions (BKDP) and Governing Body member, sentenced on 26 December 2022 to four years of imprisonment (for violating section 342(1) of the Criminal Code);
  - Mr Siarhei Antusevich, BKDP Deputy Chairperson, sentenced on 26 December 2022 to two years of imprisonment (under section 342(1) of the Criminal Code);
  - Ms Iryna But-Husaim, BKDP accountant, sentenced on 26 December 2022 to one-and-a-half years of imprisonment (under section 342(1) of the Criminal Code);
  - Mr Vasil Berasneu, Acting Chairperson of the REP Union, sentenced on 5 January 2023 to nine years of imprisonment (for violating section 130(3) of the Criminal Code on incitement of social hatred, section 361<sup>1</sup> (1 and 3) of the Criminal Code and section 361(3) of the Criminal Code);

- Mr Hennadz Fiadynich, REP Union Deputy Chairperson, sentenced on 5 January 2023 to nine years of imprisonment (under sections 130(3) and 361<sup>1</sup> and 361<sup>1</sup> (3) of the Criminal Code);
  - Mr Vatslau Areshka, editor of a trade union newsletter, sentenced on 5 January 2023 to eight years of imprisonment (under sections 130(3) and 361<sup>1</sup> and 361<sup>1</sup> (3) of the Criminal Code).
5. It should be recalled, in this respect, that both the Committee of Experts on the Application of Conventions and Recommendations, and the Committee on Freedom of Association, have requested that several provisions of the Criminal Code, including the recently amended sections 342 and 369, which provided broad penalties for free expression or participation in peaceful demonstrations, be repealed in order to bring them into conformity with the Government's international obligations regarding freedom of association.

## ▶ Action that may be recommended by the Governing Body to the International Labour Conference for possible adoption under article 33 of the Constitution

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6. At its 346th Session (October–November 2022), the Governing Body decided to recommend action under article 33 of the Constitution to secure compliance with the recommendations of the Commission of Inquiry,<sup>3</sup> by placing an item to that effect on the agenda of the 111th Session (2023) of the Conference. Useful guidance regarding the purpose of the Governing Body's discussion at its current session, the scope of the measures to be recommended to the Conference and the corresponding process is provided by similar action recommended by the Governing Body in March 2000 to secure compliance by the Government of Myanmar with the recommendation of the Commission of Inquiry in relation to the Forced Labour Convention, 1930 (No. 29).<sup>4</sup>
7. Pursuant to article 33 of the Constitution, the purpose of the discussion of the Governing Body is to recommend action to the Conference to induce the Government of Belarus to comply with the recommendations of the Commission of Inquiry. The Governing Body is not invited to decide on the action but to formulate recommendations that would enable the Conference to take appropriate decisions at its next session in June 2023. The wording of the recommendations should be designed to give the Conference every latitude to retain one or other or even all the measures proposed, while also making it possible for the Conference to add further measures in the light of any developments that might occur in the meantime.
8. With regard to the scope of the measures to be proposed, the Office has already recalled that the only guidance is to be found in article 33 which provides that measures should be "wise" and "expedient", and that the rationale of article 33 is to leave the Governing Body full discretion to adapt its action to the circumstances of the particular case. Concretely, measures under article 33: (i) may be of an economic or other character; (ii) must lie within the competence of the Conference; and (iii) must satisfy to the principles of proportionality and

<sup>3</sup> It may be recalled that at its 346th Session (October–November 2022), the Governing Body was invited to consider measures to secure compliance with the recommendations of the Commission of Inquiry, either by deciding on a process of gradually escalating measures and recommending more drastic measures by the Conference at a later stage or by deciding directly the use of article 33; see GB.346/INS/13(Rev.1) para. 10.

<sup>4</sup> GB.276/6, GB.276/PV, pp. II/6–II/11; GB.277/6, GB.277/6(Add.1); GB.277/PV, pp. I/4–I/13; International Labour Conference, 88th Session, 2000: *Provisional Record No. 4*, *Provisional Record No. 6-4* and *Provisional Record No. 26*, pp. 26/20–26/30.

necessity, meaning that they should not exceed what is practically necessary for ensuring effective and timely compliance with the recommendations of the Commission of Inquiry. Drawing upon the experience of the action recommended by the Governing Body to the Conference in the case of Myanmar in March 2000, three broad categories of measures could be considered: (i) measures involving the bodies of the Organization; (ii) measures involving the constituents; and (iii) measures involving other international organizations acting within their own terms of reference.

## Measures involving the bodies of the Organization

9. The Conference might decide that the question of the implementation of the Commission of Inquiry's recommendations and of the application of Conventions Nos 87 and 98 by Belarus should be discussed at future sessions of the International Labour Conference, at a sitting of the Committee on the Application of Standards specially set aside for the purpose, so long as this Member has not been shown to have fulfilled its obligations.
10. The Conference might invite the Director-General to prepare an annual report with a view to ensuring that the Committee on the Application of Standards, in addition to the comments of the Committee of Experts on the Application of Conventions and Recommendations and reports of the Committee on Freedom of Association, has at its disposal up-to-date information on the situation of trade union rights in Belarus. The Conference might request the Government of Belarus to receive an ILO mission with a view to gathering information to form the basis of the said annual report and invite the Director-General to submit it to the Governing Body, in the appropriate manner and at suitable intervals until it is able to note that the recommendations of the Commission of Inquiry are observed by the Government.

## Measures involving the constituents

11. The Conference might recommend to the Organization's constituents as a whole – governments, employers and workers – that they review, in the light of the conclusions of the Commission of Inquiry, the relations (economic, cultural, sport and so forth) that they may have with the Member State concerned and take appropriate measures to ensure that the said Member cannot take advantage of such relations to perpetuate or extend the violations of workers' rights in respect of freedom of association, and to contribute as far as possible to the implementation of its recommendations, including the creation of a climate promoting freedom of association. The constituents could be encouraged to report back to the ILO in this respect.

## Measures involving other international organizations and the United Nations

12. As regards international organizations, the Director-General might be invited: (i) to inform the international organizations referred to in article 12, paragraph 1, of the Constitution of the Member's failure to comply; and (ii) to call on the relevant bodies of these organizations to reconsider, within their terms of reference and in the light of the conclusions of the Commission of Inquiry, any cooperation they may be engaged in with the Member concerned and, if appropriate, to cease as soon as possible any activity that could have the effect of directly or indirectly justifying the absence of actions to redress the situation of trade union rights in the country.

13. In addition, it should be recalled that the Human Rights Council established the mandate of the Special Rapporteur on the situation of human rights in Belarus in 2012 by its [resolution 20/13](#) and has since renewed the mandate annually. As in previous years, the latest [resolution 50/20](#), requests the Special Rapporteur, inter alia, to monitor the situation of human rights in Belarus and make recommendations for its improvement and report annually to the Human Rights Council and the General Assembly. There are also other mechanisms that are relevant to the implementation of the recommendations of the Commission of Inquiry. The Conference might thus decide to invite the Director-General to engage with the Special Rapporteur on the situation of human rights in Belarus, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association, as well as with the Special Rapporteur on the independence of judges and lawyers with a view to ensuring coordinated action on recommendation No. 8 of the Commission of Inquiry concerning the need to guarantee impartiality and independence of the judiciary and justice administration.

## Process

14. In line with the course of action followed by the Governing Body at its 277th Session (March 2000) with respect to Myanmar, it is proposed that the Governing Body adopt a resolution that would include its recommended action under article 33 of the Constitution to be transmitted to the 111st Session of the Conference for possible adoption.
15. In preparation of the Conference discussion, the Governing Body could invite the Government of Belarus to submit an updated report on the implementation of the recommendations of the Commission of Inquiry and the latest developments reported in the present document.

## ▶ Other measures

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16. So long as the Governing Body – or its officers acting on its behalf – has not noted the implementation of the Commission of Inquiry's recommendations, the Governing Body may wish to instruct the Director-General to: (i) ensure that no technical cooperation or assistance to the Government of Belarus, except for the purpose of direct assistance to implement immediately the recommendations of the Commission of Inquiry, be considered or undertaken by the Office; and (ii) take the necessary steps to ensure that no proposal to invite or invitation to attend meetings, symposia or seminars organized by the ILO is extended to the Government of Belarus, except for meetings that have the sole purpose of securing immediate and full compliance with the Commission of Inquiry's recommendations. Such meetings include sessions of the Governing Body devoted to the examination of questions relating to the implementation by Belarus of the Commission of Inquiry's recommendations and the participation in the Conference which ensues from membership.

## ▶ Draft decision

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17. **The Governing Body, on the recommendation of its Officers:**
  - (a) requested the Director-General to:

- (i) **ensure that no technical cooperation or assistance to the Government of Belarus is considered or undertaken by the Office, except for the purpose of direct assistance to implement immediately the recommendations of the Commission of Inquiry;**
  - (ii) **take the necessary steps to ensure that no invitation to attend meetings, symposia or seminars organized by the ILO is extended to the Government of Belarus, except for meetings that have the sole purpose of securing immediate and full compliance with the recommendations of the Commission of Inquiry;**
- (b) **recommended to the International Labour Conference to consider at its 111th Session (2023), the measures under article 33 of the Constitution outlined in the following draft resolution;**
- (c) **invited the Government of Belarus to submit to the Director-General by 1 May 2023 any relevant information.**

## Draft resolution

The General Conference of the International Labour Organization; Meeting in Geneva at its 111th Session, 2023;

Considering the proposals by the Governing Body of the International Labour Office, under the ninth item of its agenda, with a view to the adoption, under article 33 of the ILO Constitution, of actions to secure compliance with 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);

[Having taken note of the additional information provided by the Government of Belarus ...];

- (a) decides to hold at its future sessions a special sitting of the Committee on the Application of Standards for the purpose of discussing the application of Conventions Nos 87 and 98 by the Government of Belarus and the implementation of the recommendations of the Commission of Inquiry, so long as this Member has not been shown to have fulfilled its obligations;
- (b) invites the Organization's constituents – governments, employers and workers – to:
  - (i) review, in the light of the conclusions of the Commission of Inquiry, the relations that they may have with the Government of Belarus and take appropriate measures to ensure that the Government of Belarus cannot take advantage of such relations to perpetuate or extend the violations of workers' rights in respect of freedom of association, and to contribute as far as possible to the implementation of its recommendations, including the creation of a climate promoting freedom of association;
  - (ii) ensure that the principle of non-refoulement is respected in line with international humanitarian law, given that trade union and human rights defenders are at risk of persecution in Belarus;
  - (iii) report back to the Director-General for transmission to the Governing Body;

- (c) invites the Director-General to:
- (i) inform the international organizations referred to in article 12(1) of the ILO Constitution of the Government of Belarus' failure to comply with recommendations of the Commission of Inquiry, as well as of any developments in the implementation by the Government of Belarus of the recommendations of the Commission of Inquiry;
  - (ii) call on the relevant bodies of these organizations to reconsider, within their terms of reference and in the light of the conclusions of the Commission of Inquiry, any cooperation they may be engaged in with the Government of Belarus and, if appropriate, to cease as soon as possible any activity that could have the effect of directly or indirectly justifying the absence of actions to redress the situation concerning the non-respect of trade union rights in the country;
  - (iii) engage with the United Nations (UN) Special Rapporteur on the situation of human rights in Belarus, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the UN Special Rapporteur on the independence of judges and lawyers with a view to ensuring coordinated action on recommendation No. 8 of the Commission of Inquiry concerning the need to guarantee impartiality and independence of the judiciary and justice administration;
  - (iv) engage with the Office of the UN High Commissioner for Refugees (UNHCR) and other relevant agencies and organizations with a request to also support Belarusian independent trade union activists and their families and inform UNHCR country guidelines;
  - (v) submit to the Governing Body a periodic report on the outcome of the measures set out in paragraphs (c)(i), (ii) and (iii) above;
- (d) urges the Government of Belarus to receive as a matter of urgency an ILO tripartite mission with a view to gather information on the implementation of the recommendations of the Commission of Inquiry and subsequent recommendations of the supervisory bodies of the ILO, including a visit to the independent trade union leaders and activists in prison or detention.