



Governing Body

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SEVENTH ITEM ON THE AGENDA

Belarus: Follow-up given to the recommendations of the 2004 Commission of Inquiry

Purpose of the document

This document reviews the follow-up given to the recommendations of the Commission of Inquiry and the subsequent recommendations of the Committee on Freedom of Association. The Governing Body is invited to provide guidance on any further actions.

Relevant strategic objective: Promote and realize fundamental principles and rights at work.

Policy implications: None.

Legal implications: None.

Financial implications: None.

Follow-up action required: Depends on the Governing Body decision.

Author unit: International Labour Standards Department (NORMES).

Related documents: ILC.103/III(1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 103rd Session, Geneva, 2014.

1. A complaint under article 26 of the ILO Constitution against the Government of Belarus for non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), was submitted on 18 June 2003 by 14 Workers' delegates to the International Labour Conference.
2. At its 288th Session (November 2003), the Governing Body decided to refer the complaint to a Commission of Inquiry. The Commission issued a detailed report¹ containing 12 recommendations, which, for ease of reference, appear in Appendix I.
3. At its 291st Session (November 2004), the Governing Body took note of the report of the Commission of Inquiry, its recommendations and the deadline of 1 June 2005 for the implementation of recommendations 1–6, 9 and 11. It decided that the implementation of the Commission's recommendations should be followed up by the Committee on Freedom of Association. Subsequently, the Committee on Freedom of Association examined this matter on seven occasions.²
4. Within the framework of its regular supervision, the Committee of Experts on the Application of Conventions and Recommendations continued to examine the legislative aspects involved in respect of Conventions Nos 87 and 98. In its most recent report, the Committee requested the Government to supply full particulars to the Conference at its 103rd Session (June 2014) and to reply in detail to its comments on the application of Convention No. 87 in 2014.
5. The Committee on the Application of Standards of the International Labour Conference examined the measures taken by the Government of Belarus to give effect to the provisions of Conventions Nos 87 and 98 on eight occasions. At its 102nd Session (June 2013), the Committee, *inter alia*:

... recalled that the outstanding issues in this case concerned the need to ensure the right of workers to establish organizations of their own choosing and organize their activities and programmes free from interference by the public authorities in law and in practice. The Committee further highlighted the long outstanding recommendations from the Commission of Inquiry for amendments to be made to Presidential Decree No. 2 dealing with trade union registration, Decree No. 24 concerning the use of foreign gratuitous aid and the Law on Mass Activities.

The Committee noted the information provided by the Government on the work of the tripartite Council for the Improvement of Legislation on the Social and Labour Sphere and, in particular, its decision to support the amendment of Decree No. 2 by repealing the 10 per cent minimum membership requirement for the establishment of trade unions at the enterprise level. The Committee further noted the Government's stated commitment to social dialogue and cooperation with the ILO.

The Committee noted with regret new allegations of violations of freedom of association in the country, including allegations of interference in trade union activities, pressure and harassment. In particular, while observing that the Government stated that there were no registration refusals in 2012, the Committee took note of the allegations of the refusal to

¹ Trade union rights in Belarus: Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by the Government of the Republic of Belarus of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), July 2004. <http://www.ilo.org/public/english/standards/relm/gb/docs/gb291/pdf/ci-belarus.pdf>.

² See 339th Report (2005), 341st Report (2006), 345th Report (2007), 352nd Report (2008), 361st Report (2011), 366th Report (2012) and 369th Report (2013).

register the BITU primary organization at “Granit” enterprise and the subsequent indication by the Government that this matter was addressed by the tripartite Council.

The Committee observed with deep regret that no new information was provided by the Government nor had any tangible result been achieved in implementing the recommendations made by the Commission of Inquiry of 2004.

Recalling the intrinsic link between freedom of association, democracy, the respect for basic civil liberties and human rights, the Committee urged the Government to intensify its efforts to bring the law and practice into full conformity with the Convention, in close cooperation with all the social partners and with the assistance of the ILO. The Committee urged the Government to take immediately all measures necessary to ensure that all workers and employers in the country may fully exercise their rights to freedom of expression and of assembly. The Committee invited the Government to accept a direct contacts mission with a view to obtaining a full picture of the trade union rights situation in the country and assisting the Government in the rapid and effective implementation of all outstanding recommendations of the Commission of Inquiry. It expected that the Government would submit detailed information on proposed amendments to the abovementioned laws and decrees to the Committee of Experts at its meeting this year and trusted that it would be in a position to note significant progress with respect to all remaining matters at its next session.

The Committee decided to include its conclusions in a special paragraph of the report.

The Conference adopted the Committee’s report.

6. From 27 to 31 January 2014, a direct contacts mission composed of Mr Halton Cheadle, member of the Committee of Experts on the Application of Conventions and Recommendations; Mr Kari Tapiola, Special Adviser to the Director-General of the ILO; Ms Oksana Wolfson, Senior Legal Officer of the International Labour Standards Department; and Mr Franco Amato, Legal Officer of the same Department, visited Minsk. The mission met with the social partners, the relevant governmental institutions (Ministry of Labour and Social Protection, Ministry of Justice, Ministry of Foreign Affairs, Council of Ministers, Presidential Administration and Prosecutor’s Office) and members of the tripartite Council for the Improvement of Legislation on the Social and Labour Sphere. The report of the mission is annexed to this document (Appendix II).
7. The Governing Body is invited to provide any guidance deemed appropriate in relation to the follow-up of measures taken by the Government of Belarus to implement the recommendations of the Commission of Inquiry and subsequent recommendations of the Committee on Freedom of Association.

Appendix I

Recommendations of the Commission of Inquiry

1. The Commission recommends that the Government take all necessary steps for the immediate registration of all those primary-level union organizations listed in the complaint, which have still not been registered, including, if necessary, by directing enterprise managers to provide premises to those organizations. These steps should be taken regardless of the supposed obstacles to their registration caused by Decree No. 2 and its rules and regulations.
2. The Commission recommends that the Government amend the relevant provisions of Decree No. 2 and its rules and regulations, so as to eliminate any further obstacles that might be caused either by the legal address requirement or by the 10 per cent minimum membership requirement at enterprise level and to ensure their transparency.
3. The Commission is of the belief that many of the difficulties posed by the application of Decree No. 2 are due to the lack of transparency in the decision-making authority represented by the Republican Registration Commission. Given that registration should be a routine procedure formalizing the existence of a freely formed workers' or employers' organization, the Commission recommends that the Republican Registration Commission should be disbanded and all registrations should be made as a matter of mere administrative formality at the corresponding local, regional or national level. If necessary, overseeing authority may be vested in the Minister of Justice.
4. In order to alleviate the damage that has already been done to the independence of the trade union movement in Belarus, the Commission recommends that all its conclusions and recommendations be made public by the Government through a wide dissemination and without delay. In order to ensure the prevention of further acts of interference, the Commission recommends that the Government declare publicly that such acts are unacceptable and will be sanctioned. To this end, it highly recommends that the Presidential Administration issue instructions to the Prosecutor-General, the Minister of Justice and court administrators that any complaints of external interference made by trade unions should be thoroughly investigated. This recommendation, similar to those made on numerous occasions by the Committee on Freedom of Association, but never implemented, should be carried out without any further delay.
5. All those organizations named in the conclusions as having suffered interference in their internal affairs should be guaranteed protection to carry out their activities freely. Any further complaints made by these organizations in this respect should be taken seriously and immediately investigated by an independent body having the confidence of all parties concerned.
6. In order to avoid acts of interference occurring at the level of the enterprise, the Commission recommends that a clear instruction be given to all enterprise managers and directors, in cases where they are still trade union members, not to participate in the process of trade union decision-making in as much as such participation might unduly influence internal trade union affairs and, in effect, bring these organizations under management domination.
7. The Commission recommends that immediate action be taken to institute independent investigations, having the confidence of all parties concerned, into outstanding complaints of anti-union discrimination, in particular as concerns bias and discriminatory use of fixed-term contracts, and that all damages suffered in this respect be redressed. Any complaints of anti-union discrimination or retaliatory acts as a consequence of cooperation with the Commission and the ILO should be given particular attention.

8. The Commission further recommends that the Government put into place effective procedures for protection against anti-union discrimination and other retaliatory acts. Adequate protection or even immunity against administrative detention should be guaranteed to trade union officials in the performance of their duties or when exercising their civil liberties (freedom of speech, freedom of assembly, etc.). In order to ensure that such protection is further guaranteed through an impartial and independent judiciary and justice administration, the Commission recommends that the Government implement the recommendations made by the United Nations Special Rapporteur on the independence of the judges and lawyers.
9. The Commission recommends amendment of Decree No. 24 concerning the use of foreign gratuitous aid along the lines previously suggested by the ILO supervisory bodies, so as to ensure that workers' and employers' organizations may effectively organize their administration and activities, and benefit from assistance from international organizations of workers and employers in conformity with Articles 5 and 6 of the Convention.
10. The Commission further recommends amendment of the Law on Mass Activities (as well as Decree No. 11, if it has not yet been repealed), as previously suggested by the ILO supervisory bodies, so as to bring it into line with the right of workers' and employers' organizations to organize their activities provided for in Article 3 of the Convention.
11. The Commission recommends that the Government ensure that the CDTU, which already has a seat on the National Council on Labour and Social Issues (NCLSI), is allowed to participate through whichever representative it designates and also that it take steps to ensure the right of all umbrella organizations representing trade unions in Belarus to participate in the NCLSI. The CDTU's participation on the NCLSI should be ensured with immediate effect.
12. The Commission recommends that the Government undertake a thorough review of its industrial relations system with the aim of ensuring a clear distinction between the role of the Government and that of the social partners and of promoting clearly independent structures of workers' and employers' organizations.

Appendix II

Report of the direct contacts mission (DCM)

(Minsk, Belarus, 27–31 January 2014)

Background information

1. At its 102nd Session (2013), the Committee on the Application of Standards of the International Labour Conference discussed the case of Belarus with respect to the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the implementation of the Commission of Inquiry's recommendations. In its conclusions, the Committee "observed with deep regret that no new information was provided by the Government nor had any tangible result been achieved in implementing the recommendations made by the Commission of Inquiry of 2004" and "invited the Government to accept a direct contacts mission with a view to obtaining a full picture of the trade union rights situation in the country and assisting the Government in the rapid and effective implementation of all outstanding recommendations of the Commission of Inquiry". The Committee also decided to include its conclusions in a special paragraph of its report.
2. By a communication dated 2 October 2013, the Government of Belarus accepted a DCM. From 27 to 31 January 2014, a DCM consisting of Mr Halton Cheadle (member of the Committee of Experts on the Application of Conventions and Recommendations), Mr Kari Tapiola (Special Adviser to the Director-General of the ILO), Ms Oksana Wolfson (Senior Legal Officer of the International Labour Standards Department) and Mr Franco Amato (Legal Officer of the International Labour Standards Department) visited Minsk for the purposes of obtaining more complete information on the state of implementation of the recommendations of the Commission of Inquiry, as well as exploring ways to further assist the Government and the social partners in this task.
3. Prior to the DCM, the Office received communications from the Government and the Belarusian Congress of Democratic Trade Unions (CDTU) on the measures that have been taken to implement the recommendations of the Commission of Inquiry. These communications were shared with the members of the DCM.

Officials and others persons met by the DCM

4. During the mission in Minsk, the members of the DCM met with Ms Marianna Shchotkina, Minister of Labour and Social Protection; Mr Igor Starovoytov, Deputy-Minister of Labour and Social Protection; Mr Anatoly Tozik, Deputy Prime Minister; Mr Oleg Slizhevsky, Minister of Justice; Mr Alexander Lashin, Deputy Prosecutor-General; Mr Valentin Rybakov, Deputy-Minister of Foreign Affairs; Mr Valery Mitskevich, Deputy Head of the Administration of the President; and other representatives of the above ministries and institutions. The DCM also met with Mr Anatoly Kharlap, Chairperson of the Confederation of Industrialists and Entrepreneurs (Employers); Ms Zhanna Tarasevich and Mr Lev Karpach, co-Chairpersons of the Business Union of Entrepreneurs and Employers named after Prof. M. Kouniavski; Mr Leonid Kozik, Chairperson of the Federation of Trade Unions of Belarus (FPB); Mr Alexander Yaroshuk, Chairperson of the CDTU and several other representatives of the above organizations. The DCM attended a meeting of a tripartite Council for the Improvement of Legislation on the Social and Labour Sphere (hereafter "tripartite Council"). The mission also met with Mr Sanaka Samarasinha, UN Resident Coordinator/UNDP Resident Representative, and Ms Maira Mora, head of the European Union (EU) delegation to Belarus.

Conduct of the mission

Ministry of Labour and Social Protection (MLSP)

5. During their introductory meeting with the officials of the MLSP, the DCM obtained a confirmation that the Government would fully cooperate with the DCM. The Minister considered that it was necessary for her Government to look at all the issues pending before the ILO supervisory bodies for the past ten years from a different angle. She reminded the DCM of the Government's continued requests for a seminar, with ILO involvement, on the issue of collective bargaining and trade union pluralism at the enterprise level. She also said that all members of the tripartite Council, which she chairs, considered it a useful forum for further dealing with issues relevant to the recommendations of the Commission of Inquiry, including recent labour conflicts.

Confederation of Industrialists and Entrepreneurs (Employers)

6. The largest employers' organization in terms of membership and their workforce provided the DCM with information on the economic situation of Belarus, with growth slowing down, and the mismatch between education and the needs of the labour market. The Confederation also informed the DCM on the current process of privatization; that is, the transition of state-owned enterprises to joint-stock companies.
7. Information was also provided on the General Agreement for the period 2014–19, signed by representatives of the Government, employers and workers on 30 December 2013. The representatives of the Confederation referred to the difficulties that arise in practice when negotiating with more than one workers' organization at the enterprise level. They have indicated that currently, at the enterprises where primary trade unions of both the FPB and the CDTU were present, employers negotiated with both trade unions but then the collective agreement was only signed by the most representative union (such was the case at "Naftan" enterprise). The Chairperson of the Confederation considered that it was important to have a seminar on the experience of employers in other countries in dealing with pluralism at the enterprise level.
8. The Confederation also informed the DCM that in 2014 it was chairing the National Council on Labour and Social Issues (NCLSI). It assured that all tripartite partners, including the CDTU, would be both invited and granted access to the NCLSI meetings.

Congress of Democratic Trade Unions (CDTU)

9. The discussion held with the CDTU and representatives of its member organizations enabled the DCM to obtain detailed information on the alleged discrimination, unfair dismissals, harassment and pressure from the Government and employers faced by members of independent trade unions. The CDTU considers that, at most, three to four of the recommendations of the Commission of Inquiry had been fulfilled. The CDTU provided information on cases of non-renewal of fixed-term employment contracts when workers chose to join an independent union or break away from the main union at the workplace. Information was provided on cases of discriminatory terms being included in collective agreements to the effect that workers who were not members of the majority union would not be entitled to bonus pay.
10. Representatives of the CDTU member organizations provided examples of situations in which independent trade unions had negotiated collective agreements, but then were unable to become a signing party to the agreement. They specified that legislation allows for each trade union to negotiate and sign collective agreements, but difficulties arise in practice.
11. The DCM obtained specific examples of the difficulties encountered by workers trying to form a union outside the existing trade union structure. The case of the enterprise "Granit"

has been examined at length by the ILO supervisory bodies, and the DCM held a meeting with a number of the workers who had unsuccessfully attempted to set up an alternative union organization.

12. On the question of registration and the legal address requirement, representatives of some of the CDTU's affiliates indicated they had ceased trying to register new unions due to administrative hurdles and the potential termination of their members' employment contracts.

Federation of Trade Unions of Belarus (FPB)

13. The Chairperson of the FPB recalled that, with over 4 million members, his organization represented the vast majority of workers in Belarus. Its main goal was to protect the rights of all workers regardless of their trade union affiliation. The FPB Chairperson considered that there had been a significant improvement in the situation of trade union rights in Belarus and that all the assertions to the contrary were false. In the FPB Chairperson's opinion, members of his organization suffered from anti-union discrimination no less than the members of the CDTU. However, his organization did not send complaints to the ILO; rather, it used various venues existing in the country, that is, courts, prosecutors and other authorities. He considered that the CDTU should make better use of the procedures available at the national level.
14. The FPB Chairperson considered that, out of 12 recommendations of the Commission of Inquiry, eight recommendations had been fully implemented, two were being implemented and the implementation of the remaining two did not depend on the FPB. Indeed, as concerns Decree No. 24, the FPB Chairperson considered that there was nothing wrong with the Government monitoring how and for what purposes the foreign financial aid was used. In his opinion, such aid should not be used for political activities or conducting strikes; on the other hand, it was important for the Government to ensure that there was no misappropriation of funds. His organization received foreign financial assistance for social and humanitarian activities. The FPB Chairperson indicated that, to his knowledge, recommendation No. 6, which refers to clear instructions that must be given to all enterprise managers and directors not to participate in the process of trade union decision-making, had been fully implemented.
15. Regarding collective bargaining at workplaces where more than one trade union exists, the FPB representatives considered that, if the union not affiliated to the FPB represents a sufficient number of workers, it should have the right to sign a collective agreement; however, in situations such as at the "Naftan" enterprise where the FPB represented 12,000 workers – whereas the other union represented just a few hundred workers – the collective agreement should only be signed by the most representative organization.
16. The FPB also indicated that workers enjoyed the right to establish and join organizations of their own choosing. If they were not happy with the functioning of the union of which they were members, they could either elect another leader or establish their own organization. The FPB was not afraid of pluralism and the competition it entailed.
17. Finally, the FPB confirmed that, while enterprise managers can be trade union members and were sometimes invited to trade union meetings, according to the legislation in force, they could not be trade union leaders and did not participate in decision-making.

Business Union of Entrepreneurs and Employers named after Prof. M. Kouniavski (BSPN)

18. The representatives of the BSPN, the employers' organization representing private enterprises and non-governmental organizations, stated that their organization maintains good relations with both the FPB and the CDTU, seeing them as partners. The DCM and BSPN discussed issues related to the establishment of trade unions and the legal address

requirement. The BSPN representatives indicated that this requirement indirectly burdened employers, as the newly created unions demanded to be provided with premises. It was difficult to allocate office space on the premises of their members' enterprises, as they were often small companies with little or no unused office space. At the same time, the BSPN representatives indicated that their members were inclined to provide certain facilities to the unions active at their enterprises, such as the use of a conference room or printing or telephone facilities.

19. The BSPN member of the tripartite Council stressed its importance as a forum where controversial issues were discussed and parties had learned to listen to one another. Measures should be taken through training, workshops or information-sharing sessions to improve tripartite dialogue and collective bargaining at all levels. They wished that trade union representatives of the FPB and the CDTU at the tripartite Council had sufficient authority to make binding decisions on behalf of their organizations. They also hoped that both the FPB and the CDTU would work better together.

Ministry of Justice

20. The Minister of Justice informed the mission of the recent judicial reforms which had an impact on his Ministry. As of 1 January 2014, general jurisdiction courts and economic courts of the country were merged into a universal court system. This system is headed by the Supreme Court, a single supreme judicial body for civil, criminal, administrative and economic matters. Thus, all functions of organizational, logistical and personnel support of courts of general jurisdiction have been transferred from the Ministry of Justice to the Supreme Court. It is expected that the merging of the Supreme Court and the Supreme Economic Court will eliminate the difficulties in determining the jurisdiction of the cases, ensure the uniformity of the judicial practice of law and the interpretation of the substantive law, create an effective and comprehensive system of specialized courts, headed by a single judicial body, and subsequently harmonize procedural law. The responsibility for the enforcement of court decisions will now lie with the Ministry of Justice. The DCM was also informed of the amendments to the Law on Notarial Practice which now provides for private notaries, in addition to public notaries.
21. On the question of jurisdiction, the DCM noted that it was not always clear which body was competent to deal with the alleged violations of trade union rights. In this respect, the Minister and other officials of his Ministry present at the meeting explained, by way of examples, that the Labour Court was competent to examine cases of dismissals based on trade union membership and cases concerning denial of trade union registration; the Prosecutor's Office oversaw the application of legislation (including labour legislation) and was competent to deal with cases of violations of human rights in general and to review decisions of various executive bodies; all matters related to working conditions could be reviewed by either the State Labour Inspectorate or the Prosecutor's Office; and, finally, disputes were also dealt with at the enterprise level through labour dispute commissions. The Minister pointed out that the tripartite Council was a good platform where social partners could freely and openly discuss and exchange opinions on all matters raised by the unions, including cases of dismissals. The Ministry of Justice participates in that Council.
22. With regard to the recommendations of the Commission of Inquiry, the Minister considered that, whereas ten years ago the issues raised in the complaint and, especially, the relationship between the Government and the trade union movement (outside the FPB structures) were rather acute, the situation has changed today. He considered that the assessment of the situation of trade union rights in Belarus by the ILO no longer reflected reality. In his opinion, workers in Belarus could freely exercise their freedom of association rights and establish organizations of their own choosing; however, some trade union leaders had politicized their work.

23. The Minister confirmed that the proposal to amend Presidential Decree No. 2 with respect to the 10 per cent requirement for the establishment of (stand-alone) trade unions at the enterprise level had been discussed by the tripartite Council. However, this was not an urgent matter now because, in practice, at the enterprise level no stand-alone unions were created but rather primary trade union organizations, that is, organizational structures established within the existing trade unions. The Minister stated that this particular clause of the Decree could be revised in the future. The DCM was provided with a copy of the Ministry of Justice communication dated 29 May 2009 addressed to the regional and Minsk city executive committees (responsible for trade union registration), explaining that: (1) the 10 per cent requirement applied only to the stand-alone trade unions and not to the organizational structures of existing unions; and (2) that the legislation did not provide for a minimum membership requirement for the establishment of primary trade union organizations (determined in accordance with the by-laws of the relevant trade union).
24. With regard to the legal address requirement, the Minister stated that, at this stage, there were no concrete proposals to amend Presidential Decree No. 2. The “legal address” was an address of the union’s governing body. Most often, the union’s committee was located in an office space allocated to the union at the enterprise premises. If no agreement was reached in this respect with the enterprise management, the union had an option of renting office space outside of the enterprise premises. The Minister also explained that it had issued, in 2008, a legal opinion on the possibility of using private residences for the purpose of having a legal address. The DCM was provided with a copy of the Ministry of Justice communication, dated 2 December 2008, addressed to the regional and Minsk city executive committees, explaining that subject to certain conditions, a private dwelling could be used as the legal address. This information was also published on the Ministry’s website and several newspapers (copies of which were provided to the DCM). In this regard, the DCM noted that decisions as to whether or not a single-family, residential house or parts thereof could be used for the purpose of trade union legal address were taken by the respective local executive committees, which had an obligation to verify the compliance with the construction, sanitary and fire safety norms. The DCM noted the allegations of continued difficulties experienced by new organizations wanting to obtain a legal address.
25. The DCM inquired what constituted the “set of documents” needed to register a trade union. In reply, the Ministry referred to the exhaustive information published on its website and provided the DCM with a copy of the relevant Instruction (Ministerial Edict No. 48 of 30 August 2005), which provided a list of all the documents required for registration. The DCM noted that the Instruction listed no less than 15 documents to be provided.
26. The Minister informed the DCM that no need had arisen to amend Presidential Decree No. 24, concerning the use of foreign aid as there were no cases of trade unions not being able to receive foreign financial assistance. He also added that the Law on Mass Activities had not been amended; however, in practice, workers enjoyed the right to strike.

Ministry of Foreign Affairs

27. The Deputy-Minister of Foreign Affairs confirmed the Government of Belarus’ openness and commitment to continue its dialogue with the ILO, with respect to the implementation of the Commission of Inquiry’s recommendations. The Ministry’s officials proposed that the DCM took a more holistic view of the current trade union situation in the country, taking into account the Government’s socially oriented policy aimed at ensuring decent life and working conditions for its citizens. The Deputy-Minister considered that the special attention that the ILO paid to the situation of trade union rights in the country was not warranted. The situation in his country should be seen against the background of the financial and economic crisis, high unemployment rates in several countries of the EU, etc. He referred to the UNDP Human Development Report of 2013 in which Belarus ranked

50th, which was 12 ranks (Human Development Index rank) higher than in 2007. In his opinion, the alleged violations of trade union rights in the country were no worse than in other countries. The Ministry's officials emphasized that, while the Government was aware of its international obligations, including the obligation to implement the Commission of Inquiry's recommendations, any effect given to them should take into account the interests of the country. Furthermore, the recommendations were ten years old and had therefore lost their relevance. The Deputy-Minister proposed to "reboot" the ILO–Belarus relations with a view to searching new avenues for cooperation, and he called upon the DCM to provide an objective assessment of the situation in the country. ILO technical assistance could be made use of for dealing with certain outstanding matters.

Office of the Prosecutor-General

28. The Deputy Prosecutor-General explained to the DCM that his Office and the subordinate prosecutors had the responsibility for supervising the application of the legislation in force by various ministries, local organs, enterprises, public associations and officials, and ensuring the rule of law and the safeguarding of the rights of citizens.
29. A written communication was provided to the DCM, indicating that 43 complaints from trade unions concerning violations of labour rights were received in 2012–13 from workers' organizations and, out of these, 13 ended with a decision in favour of the workers concerned. During this period, his office had received thousands of complaints. The DCM was informed that there were no outstanding cases regarding trade union rights. It was emphasized that all complaints, including complaints filed by trade unions, were thoroughly and timely investigated. The Deputy Prosecutor-General therefore considered that recommendation No. 4 of the Commission of Inquiry has been implemented.
30. The DCM inquired about the summoning of the Chairperson of the CDTU, Mr Yaroshuk, to the Office of the Prosecutor-General on 14 February 2012 to give explanations with regard to his statement on the possibility for the EU to boycott Belarusian goods due to continuing violations of trade union rights in the country.¹ An official of the Office of the Prosecutor-General explained that Mr Yaroshuk was not detained, but was only asked questions concerning the statements he made in the media, as these could be considered as discrediting Belarus. However, no accusations were brought against him.
31. The DCM also inquired about the situation at the "Granit" enterprise and was informed that no complaints had been received in the Prosecutor's Office with respect to that specific case. One representative of the Prosecutor-General's Office, a member of the tripartite Council, stated that she first became aware of the situation at the "Granit" enterprise at a meeting of the Council. She pointed out that the Prosecutor's Office had no competence to investigate a situation without a complaint being lodged with it.

Tripartite Council for the Improvement of Legislation on the Social and Labour Sphere

32. The members of the DCM had a discussion with the members of the tripartite Council to explore the Council's strengths, weaknesses and needs. It is to be remembered that, in its current form, the Council was established following a tripartite seminar in January 2009 with involvement from the ILO and the international employers' and workers' organizations. All representatives stated the importance of the tripartite Council in providing a platform for voicing their opinions, and they did not question its usefulness. However, some members noted that the Council did not have the competence to discuss all the matters its members wished to discuss; neither did it have the competence to make

¹ 366th Report of the Committee on Freedom of Association, 316th Session, November 2012 (GB.316/INS/9/2).

binding decisions. Furthermore, there was a conflict within the trade union movement which added to the above difficulties. In this respect, there was a need for clearer rules on how to deal with trade union pluralism in practice. All members agreed that information and knowledge on the functioning of tripartite bodies in other countries was essential. The DCM took note of the interest expressed in obtaining technical assistance to enable the Council to function in a more effective manner, including through seminars on the international experience and training of members of the Council.

Deputy Prime Minister

33. The Deputy Prime Minister reaffirmed his Government's respect for the ILO and international labour standards. While his Government paid careful attention to the requests made by the ILO supervisory bodies, it had to assess how such recommendations would benefit the country and how they addressed the current priorities – the right to work, decent wages, safety, health care, affordable housing and education. He affirmed that all trade unions in the country could carry out their work without interference. With regard to Decree No. 24 more specifically, he stated that trade unions were able to receive foreign financial assistance as long as the activities for which financial assistance was provided were not politically motivated or involved strikes. He also pointed out that, while Belarus will continue engaging with the ILO, it was important for the ILO to understand his country's specific realities and needs. He further assured the DCM that all recommendations deemed beneficial to the country would be accepted. If needed, the status and the powers of the tripartite Council could be formally enhanced. Finally, he requested the DCM to call upon the ILO to provide technical assistance to the country in the form of seminars and information-sharing sessions for the Government and its social partners.

Administration of the President

34. The Deputy Head of the Administration of the President reaffirmed his Government's commitment to cooperate with the ILO. He expressed the hope that the DCM's report would sufficiently take into account the opinion of the FPB, because it was the largest trade union organization. He assured the DCM that all proposals it would make in its report would be examined and accepted, if considered to be in the interest of the country.

Concluding meeting with the MLSP

35. During the concluding meeting with the MLSP, the Minister invited the DCM to elaborate on possible conclusions it would make in its report. In the light of the discussions held during the DCM visit, the Minister agreed that future work with ILO support and involvement could focus on the following areas: (1) trade union pluralism and collective bargaining at the enterprise level; (2) the work of the tripartite Council; and (3) different ways to resolve future disputes through fact-finding, mediation and facilitation. She considered that all the social partners could agree that the above issues constituted priorities. The meetings of the DCM had demonstrated that the whole Government, and not only the MLSP, was aware of the issues at hand, and that all agreed that there was a need for more training and information sharing on the international experience. She considered that the recommendations of the Commission of Inquiry should be revisited through today's realities and called upon the DCM to shift the focus from the past to the present, taking into account the specificities of the country. The Minister called upon the ILO to assist the Government in implementing the remaining recommendations.
36. Taking note of the Government's position, the DCM members acknowledged that a certain number of the recommendations had been implemented and that a number of specific cases were outdated. They noted, however, that the main underlying issues raised by the Commission of Inquiry ten years ago apparently were not resolved. It was important to

keep in mind the intent of the recommendations, which was to ensure that free and independent trade union activity could be established and take place in the country without hindrance of any kind; that workers could join such organizations without fearing for the loss of their jobs or being subject to discrimination; and that such organizations were given space and possibility to adequately represent their members' interests and rights at all levels. Unless these underlying issues were resolved and conflicts were satisfactorily resolved at the local and national level, disputes were liable to continue to be referred to the ILO's supervisory bodies. The DCM members gave a general overview of its observations and conclusions, detailed below, and made proposals as to how the work of the Government and the social partners could be directed towards the full implementation of the outstanding recommendations and ensuring that, in the future, cases of violation of freedom of association could be adequately addressed at the national level. These proposals concerned the need to improve the work of the tripartite Council, the process of collective bargaining, particularly at the enterprise level, and dispute resolution mechanisms; and to provide the training of judges, prosecutors and other members of the legal profession on the international labour standards.

Observations and conclusions

37. In the light of the information it received, the DCM was able to conclude that, while the situation of trade union rights has evolved, there has been no fundamental change or significant progress in implementing the Commission of Inquiry's recommendations to amend the legislation in force. Furthermore, while some previously raised problems have become less acute, new problems have arisen.
38. The DCM looked at the state of relevance of each recommendation and noted that the following had been implemented: the Republican Registration Commission had been disbanded (recommendation No. 3); the recommendations of the Commission of Inquiry had been published (recommendation No. 4); and the CDTU was now a member of the NCLSI and the tripartite Council, which meant that, at least at the national level, trade union pluralism was recognized and accepted (recommendation No. 11). With regard to the latter point, the DCM regretted that the CDTU was not invited to attend the NCLSI meetings last year while this body was under the FPB chairmanship. The DCM was assured by the Confederation of Industrialists and Entrepreneurs (Employers), this year's chair, that there would be no obstacles to the CDTU's participation. The DCM notes that, in any case, participation in the NCLSI should not be dependent on who holds the rotating position of chairperson.
39. The DCM also received information to the effect that all complaints of violations of trade union rights, like all other violations of the legislation, were properly and timely investigated either by the prosecutors or dealt with by the courts (recommendations Nos 4 and 8). The DCM also discussed with the Ministry of Justice the recent reform of the judiciary. While its impact is yet to be assessed, all Government representatives appeared to agree on the need to conduct a training and awareness-raising activity for the judiciary, lawyers, prosecutors and other members of the legal profession on international labour standards, and they requested ILO assistance in this regard. The DCM considered that such activity could positively impact on the examination by the courts of alleged violations of freedom of association rights.
40. The DCM understood that while there was currently no intention to amend Decree No. 24 (recommendation No. 9), in practice, trade unions have not been prevented from using foreign financial assistance. There was no stated intent to amend the Law on Mass Activities (recommendation No. 10).
41. The DCM noted that many of the primary trade union organizations mentioned in the Commission of Inquiry's report no longer existed (recommendation No. 1). The DCM heard allegations of continued difficulties experienced by new organizations with obtaining legal address, despite the widening of the possibilities as to the kind of premises

which could satisfy the legal address requirement to include private houses and apartments. In this regard, the DCM was disappointed that, despite a proposal by the tripartite Council, Decree No. 2 had not been amended and there were currently no proposals to amend it (recommendation No. 2). The DCM noted that, although the legal address requirement was expanded, there were still considerable impediments for registration of new organizations.

42. The DCM noted that, while the Government stated that there were currently no outstanding requests for registration, the CDTU representatives indicated registration impediments still existed and that independent trade unions generally had been discouraged from seeking to register because of the obstacles they had met. Moreover, the DCM heard detailed allegations of serious difficulties faced by workers wishing to organize outside of the FPB structure. In this respect, the DCM had discussed at length the conflict which had arisen at the “Granit” enterprise which, although it was eventually examined, could not be resolved by the tripartite Council. The contradictory information received by the DCM strengthened its conviction that it was necessary to develop mechanisms to find an acceptable resolution of these kinds of disputes in the future, through fact finding, facilitation and mediation, with full respect of freedom of association principles.
43. With respect to the tripartite Council, established following the ILO-facilitated tripartite seminar held in 2009 in Minsk to promote cooperation between the Government and the social partners, the DCM noted that members of the Council viewed it as a useful platform for discussion and exchange of opinions on the matters brought before it. However, the Council did not operate on an agreed workplan, its meetings were not regular (they often took place only prior to the meetings of the ILO supervisory bodies), its members had frequent disagreements on the agenda of the meetings, there were no agreed methods of work, and it was difficult to solve specific conflicts which were brought to its attention.
44. To improve its work, and with a view to transforming it into a forum where solutions could be found at the national level, the DCM considered that the following could be undertaken: (a) information and training for the members of the tripartite Council on the international experience of tripartite bodies, the establishment of their programme and methods of work, as well as a review of the functioning and strengthening of the mandate of the tripartite Council; (b) training for representatives of employers’ and workers’ organizations with a view to exploring the international experience of addressing collective bargaining issues, particularly at the enterprise level, and the role of majority and minority unions in this regard; and (c) with the assistance of an invigorated tripartite Council, the development of a dispute resolution mechanism which would contain fact-finding and mediation functions. The ILO could provide the necessary technical assistance for these processes.
45. The DCM is well aware that work along the lines of the above recommendations will not provide a complete solution to the complicated situation of trade union rights in Belarus. However, it considers that if all sides engage in good faith, and make use of the tripartite Council, potentially significant advances can be made to enable the workers in practice to claim and realize their fundamental rights. At the same time, diminished tension as well as better-established modes of cooperation at all levels, including that of the workplace, will benefit the employers and the economy and society in general. It is of utmost importance that in this process, all partners – and especially the different public authorities involved – see their role as enabling solutions to conflicts and divergences which arise out of legitimate action for realizing fundamental principles and rights at work, especially those embodied in Conventions Nos 87 and 98.

Concluding remarks

46. The DCM would like to thank the Government and the social partners for the cooperation it received during its visit. The DCM was able to conduct its meetings and obtain all the information it requested in order to assess the current situation. The DCM appreciated the openness and transparency demonstrated by the Government in discussing the issues raised by the ILO supervisory bodies. It equally appreciated the frank and open manner in which

the different workers' and employers' organizations described and discussed the current situation. Moreover, the DCM appreciated that information on the mission was made easily available to the public, notably through government websites and national television.

47. The DCM wishes to express its special gratitude to the ILO National Coordinator for Belarus, Mr Nikolai Tolmachev, for his administrative and organizational support, and his assistance prior to and during the mission.

Geneva, 19 February 2014

(Signed) Halton Cheadle

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