



Governing Body

333rd Session, Geneva, 9 June 2018

GB.333/INS/6/2

Institutional Section

INS

Date: 18 May 2018

Original: English

SIXTH ITEM ON THE AGENDA

Reports of the Committee on Freedom of Association

385th Report of the Committee on Freedom of Association

The consideration of the attached document was deferred to the present session of the Governing Body from its 332nd Session (March 2018).



Governing Body

332nd Session, Geneva, 8–22 March 2018

GB.332/INS/11/2

Institutional Section

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ELEVENTH ITEM ON THE AGENDA

Reports of the Committee on Freedom of Association

385th Report of the Committee on Freedom of Association

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

A. Introduction

1. The Committee of Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 8 and 9 March 2018, under the chairmanship of Mr Takanobu Teramoto.
2. Subsequent to the decision of the Governing Body, at its 291st Session, that the implementation of the recommendations of the Commission of Inquiry established to examine the observance by the Government of Belarus of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), should be followed up by the Committee on Freedom of Association, the Committee last examined this matter in its 379th Report (May 2016), which was approved by the Governing Body at its 327th Session.
3. On that occasion, the Committee made the following recommendations:
 - (a) The Committee expects that the extended mandate of the tripartite Council will be of assistance in addressing the points that the Committee has been raising for a number of years and urges the Government to consider, within the framework of the tripartite Council, the measures necessary to ensure that the matter of legal address ceases to be an obstacle to the registration of trade unions in practice.
 - (b) The Committee expects that the Government, together with the social partners, as well as other stakeholders (for example, Ministry of Justice, Office of the Prosecutor-General, judiciary and Belarusian National Bar Association) will continue working together towards building a strong and efficient system of dispute resolution which could deal with labour disputes involving individual, collective and trade union matters.
 - (c) The Committee expects that a training and awareness-raising activity for the judiciary, lawyers, prosecutors and other members of the legal profession on international labour standards will be conducted in the near future.
 - (d) The Committee once again urges the Government, in consultation with the social partners, to amend Decree No. 24 and the Law on Mass Activities. The Committee considers that the amendments should be directed at abolishing the sanctions imposed on trade unions or trade unionists for a single violation of the respective legislation; setting out clear grounds for the denial of requests to hold trade union mass events, bearing in mind that any such restriction should be in conformity with freedom of association principles; and at widening the scope of activities for which foreign financial assistance can be used, in particular in view of the apparent (financial) burden that is placed on trade unions to ensure the law and order during a mass event.
 - (e) The Committee invites the Government to avail itself of ILO technical assistance in respect of the implementation of the recommendations above.
4. The Government submitted its reply in a communication dated 9 February 2018.
5. The Committee has examined the information contained in the Government's communication. The Committee submits for the approval of the Governing Body the conclusions it has reached concerning the measures taken to implement the recommendations of the Commission of Inquiry.

6. The International Trade Union Confederation (ITUC) sent new allegations relating to mass investigations of trade unionists and the seizure of trade union documents and material in a communication dated 6 March 2018.

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

7. In its communication dated 9 February 2018 the Government indicates that in the recent years, the country's social dialogue institutions and tripartism have seen positive developments. The National Council on Labour and Social Issues (NCLSI) – a tripartite advisory body – meets on a regular basis. Mr Yaroshuk, the Chairperson of the Congress of Democratic Trade Unions (BKDP), participated in its meetings which took place on 4 May and 11 October 2017. General accords and collective agreements continue to be concluded at all levels. As of 1 January 2018, there were 572 accords and 19,102 collective agreements in force in the country.
8. The Government further informs of the measures taken to implement the proposals of the 2014 Direct Contacts Mission (DCM), which revolved around the following areas: the functioning of tripartite social dialogue bodies; collective bargaining at the enterprise level; dispute settlement mechanism and mediation; and training of judges and lawyers on international labour standards. In this respect, the Government refers to the following activities carried out pursuant to the DCM proposals:
 - 9–10 July 2014: Seminar on the experience of tripartite consultative bodies with social partnership;
 - 13–14 May 2015: Seminar on collective bargaining at the enterprise level in the context of pluralism;
 - 25 February 2016: Seminar on dispute settlement mechanisms and mediation; and
 - 20–22 June 2017: Training course on international labour standards for judges and lawyers.

According to the Government, the approaches developed at the seminars became the basis for the dialogue and decision-making processes of national tripartite bodies.

9. The Government further points out that its efforts aimed at the application of international labour standards received a positive evaluation from the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and refers in this respect to paragraph 57 of the CEACR report presented at the 106th Session of the International Labour Conference where it states Belarus is included in the section “Cases of progress” as measures taken by the Government regarding the application of Conventions Nos 87 and 98 were noted with interest.
10. Noting that the last activity (training course for judges and lawyers) out of the activities proposed by the DCM has now been completed, the Government expresses its interest in continuing to interact with the International Labour Office (ILO) towards further promotion and development of social dialogue and implementation of the outstanding recommendations of the Commission of Inquiry. It informs in this respect that a meeting of the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere (the tripartite Council), attended by representatives of the ILO, took place on 22 June 2017, to discuss further collaboration with the ILO. The members of the tripartite Council have

unanimously supported the proposal for collaboration with the ILO on the issues of advancement of social dialogue, tripartism and observance of ILO Conventions. In view of the parties' interest in improving regulations concerning collective bargaining and in promoting the ratification of ILO Conventions, the tripartite Council was tasked, in collaboration with the Office, to work on a set of possible activities. The proposals were approved during a meeting of the tripartite Council held on 14 December 2017. By a communication dated 6 February 2018, the following proposals were sent to the ILO.

Activity 1: Meeting of the tripartite Council with the participation of ILO experts

Dates: 1st quarter of 2018

Objectives: to discuss collective bargaining issues that raise problems in practice and get acquainted with the international experience concerning collective bargaining at various levels.

Activity 2: Tripartite seminar on collective bargaining (negotiation of sectoral and regional accords)

Dates: 2nd–3rd quarter of 2018

Objectives: to discuss issues that may arise in relation to the negotiation and implementation of sectoral and regional accords, including regarding the determination of the parties entitled to negotiate; the content and scope of the accords; hierarchy of norms established by various accords; and the role of trade unions, employers' organizations and public authorities in the process, with a view to developing a set of proposals for the improvement of the current situation.

Activity 3: Meeting of the tripartite Council with the participation of ILO experts

Dates: 2nd quarter of 2018

Objectives: to familiarize members of the Council with the objectives and content of the Holidays with Pay Convention (Revised), 1970 (No. 132), and Safety and Health in Mines Convention, 1995 (No. 176), and best international practice of their application, and to discuss the prospects of their ratification.

Activity 4: Meeting of the tripartite Council with the participation of ILO experts

Dates: 3rd–4th quarter of 2018

Objectives: to familiarize members of the Council with the objectives of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and best international practice of its application with a view to proposing measures to improve the effectiveness of the Council.

Activity 5: Tripartite workshop on the development of labour legislation in the context of increasing use of flexible (non-standard) forms of employment

Dates: 1st quarter of 2019

Objectives: to discuss current trends in the field of regulation of labour relations, innovations in labour legislation, the role of the social partners in protecting the rights of workers in the context of increasing use of flexible (non-standard) forms employment.

C. The Committee's conclusions

11. *The Committee notes the information transmitted by the Government. It notes, in particular, that since its last examination of this case in May–June 2016, a training activity on international labour standards for judges and prosecutors was held in Minsk in June 2017. While welcoming the Government's collaboration with the ILO and the expressed desire to do so in the future with a view to fully implementing the outstanding recommendations of the Commission of Inquiry, the Committee regrets that no information has been provided by the Government on the measures taken to address the substantive part of its previous recommendations.*
12. *The Committee takes note of the 2016 comments of the CEACR on the application of Conventions Nos 87 and 98 referred to by the Government. Observing that while the CEACR, just like this Committee in its previous examination of the case [see 379th Report, para. 27], had noted with interest that a tripartite activity on collective labour dispute resolution mechanisms organized by the ILO in Minsk in February 2016 allowed for an open discussion on the existing arrangements and possible new mechanisms, including in the framework of the tripartite Council, the Committee notes that the CEACR had expressed its deep regret that no concrete measures had been taken by the Government to give effect to the outstanding recommendations of the ILO supervisory bodies.*
13. *As concerns the recommendation that the tripartite constituents ensure that the legal address is not an obstacle to registration, the Committee notes that the CEACR had noted the Government's indication that there had been no cases of refusal to register trade unions or their organizational structures, but had deeply regretted that the Government did not report on any measures taken to assess the issue of legal address requirement within the framework of the tripartite Council, including through the amendment of Presidential Decree No. 2, its rules and regulations, as recommended by the Commission of Inquiry. The Committee deeply regrets that the Government has still not provided any information in this respect and therefore reiterates its recommendation in this regard and expects the Government to provide information on all progress made in this respect without further delay.*
14. *As regards recommendations (b) and (c), the Committee notes with interest that a training course on international labour standards for judges and lawyers took place in Minsk in June 2017. The Committee notes from the report on the activity that it involved 24 participants (14 judges or municipal and regional courts, one judge of the Supreme Court, one deputy chairperson of the court of Minsk region, two representatives of the Ministry of Labour and Social Protection, two representatives of the Ministry of Justice, two representatives of the General Prosecutor's Office, one representative of the Office of Public Prosecutor of Minsk region and one representative of the Office of Public Prosecutor of Minsk) and focused on the following topics: international labour standards system; ILO supervisory bodies; international labour standards on forced labour, freedom of association and collective bargaining; and the judicial use of international labour law. The Committee observes that judges' participants thought that a training of that kind would be important for labour lawyers. In addition, they pointed out that labour disputes were always better dealt with at the pre-court stage and it was therefore important to maintain and develop further nonjudicial forms of dispute settlement. While the Labour Code provided for dispute settlement commissions at the enterprise-level, extending mediation services to labour matters would only strengthen labour disputes settlement system. The Committee notes that the above recommendations from the participants echo the finding of the DCM which considered 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", the opinions exchanged during the abovementioned February 2016 tripartite seminar on mechanisms for dispute resolution and mediation and the Committee's recommendation (b). The Committee regrets that since*

February 2016, the Government has not reported on any further efforts made or expressed the intention to build an efficient nonjudicial dispute resolution mechanism which could deal with labour disputes involving individual, collective and trade union matters. The Committee strongly encourages the Government to continue working towards this end and to keep it informed of the measures taken or envisaged in this regard.

15. Regarding recommendation (d) in relation to the exercise of trade union rights under the Law on Mass Activities and Decree No. 24 concerning the use of foreign gratuitous aid, the Committee recalls that pursuant to Decree No. 24, foreign gratuitous aid could only be used for specific purposes and, specifically, could not be used “for carrying out public meetings, rallies, street processions, demonstrations, pickets, strikes, designing and disseminating campaigning materials, as well as running seminars and other forms of mass campaigning among the population”. Failure to comply with the requirement to register foreign aid would result in substantial fines and confiscation of the aid, as well as possible termination of the trade union’s activities, “including for a single incident of such violations”. Under the Law on Mass Activities, which establishes a procedure for mass events that is necessary for the protection of the rights of the wider community and to ensure law and order, the application to hold the event must be made to the local executive and administrative body. While the decision of that body can be appealed in court, the Law does not set out clear grounds on which a request may be denied. A trade union that violates the procedure for organizing and holding mass events may, in the case of serious damage or substantial harm to the rights and legal interests of other citizens and organizations, be liquidated for a single violation. In this context, “violation” includes a temporary cessation of organizational activity or the disruption of traffic, death or physical injury to one or more individuals, or damage exceeding 10,000 times a value to be established on the date in question.
16. The Committee notes with deep regret that there is currently no intention to amend these pieces of legislation. It further notes with regret from the latest CEACR observation that there have been allegations of repeated refusals to authorize the BKDP, the Belarusian Independent Trade Union (BNP), the Radio and Electronic Workers’ Union (REP) and the Independent Union of Miners (NPG) to hold demonstrations and meetings. The Committee therefore once again urges the Government, in consultation with the social partners, to amend the Law on Mass Activities and Decree No. 24 and requests the Government to provide information on all measures taken in this respect. The Committee recalls that the amendments should be directed at abolishing the sanctions imposed on trade unions or trade unionists for a single violation of the respective legislation; at setting out clear grounds for the denial of requests to hold trade union mass events, bearing in mind that any such restriction should be in conformity with freedom of association principles; and at widening the scope of activities for which foreign financial assistance can be used, in particular, in view of the apparent (financial) burden that is placed on trade unions to ensure the law and order during a mass event.
17. While noting with interest the proposals transmitted by the Government outlining areas of the desired future collaboration with the ILO, the Committee expects that priority will be given to addressing its conclusions and recommendations with a view to fully implementing the recommendations of the Commission of Inquiry.
18. The Committee encourages the Government to pursue its efforts along the lines highlighted in this report to implement in full all of the Commission of Inquiry’s recommendations. The Committee expects that the Government, with the assistance of the ILO and in consultation with the social partners, will take the necessary steps to fully implement all outstanding recommendations without further delay. It requests the Government to provide detailed information in this regard.

19. *The Committee notes that by a communication dated 6 March 2018 the ITUC submitted new allegations relating to mass investigations of trade unionists and the seizure of trade union documents and material, and requests the Government to provide its observations thereon.*

The Committee's recommendations

20. *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) *The Committee urges the Government to consider, within the framework of the tripartite Council, the measures necessary to ensure that the matter of legal address ceases to be an obstacle to the registration of trade unions in practice. It expects the Government to provide information on all progress made in this respect without further delay.*
 - (b) *The Committee strongly encourages the Government, together with the social partners, as well as other stakeholders (for example, Ministry of Justice, Office of the Prosecutor-General, judiciary and Belarusian National Bar Association) to continue working together towards building an efficient nonjudicial dispute resolution mechanism which could deal with labour disputes involving individual, collective and trade union matters. It requests the Government to keep it informed of the measures taken or envisaged in this regard.*
 - (c) *The Committee once again urges the Government, in consultation with the social partners, to amend Decree No. 24 and the Law on Mass Activities. The Committee considers that the amendments should be directed at abolishing the sanctions imposed on trade unions or trade unionists for a single violation of the respective legislation; setting out clear grounds for the denial of requests to hold trade union mass events, bearing in mind that any such restriction should be in conformity with freedom of association principles; and at widening the scope of activities for which foreign financial assistance can be used, in particular in view of the apparent (financial) burden that is placed on trade unions to ensure law and order during a mass event.*
 - (d) *While noting with interest the proposals transmitted by the Government outlining areas of the desired future collaboration with the ILO, the Committee expects that priority will be given to addressing the Committee's conclusions and recommendations as well as the outstanding comments of the CEACR to fully implement the recommendations of the Commission of Inquiry.*
 - (e) *Given the time that has elapsed since it has been addressing the follow-up to the recommendations made by the Commission of Inquiry, the Committee requests the Government to provide detailed information on the measures taken in respect of all the above recommendations and expects to be in a position to note tangible progress in the near future.*

(f) The Committee requests the Government to provide its observations on the new allegations relating to mass investigations of trade unionists and the seizure of trade union documents and material submitted by the ITUC in a communication dated 6 March 2018.

Geneva, 16 March 2018

(Signed) Mr Takanobu Teramoto
Chairperson

Point for decision: paragraph 20