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398th 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 on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, from 10 to 12 and on 17 March 2022, under the chairmanship of Mr Evance Kalula.
2. Subsequent to the decision of the Governing Body, at its 291st Session (November 2004), 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 394th Report (March 2021), which was approved by the Governing Body at its 341st Session.
3. On that occasion, the Committee made the following recommendations:
 - (a) The Committee urges the Government to take all necessary measures to implement the recommendations of the Commission of Inquiry, to prevent the occurrence of human rights violations and ensure full respect for workers' rights and freedoms. The Committee further urges the Government to take measures for the release of all of trade unionists who remain in detention and the dropping of all charges related to participation in peaceful protests and industrial actions. The Committee requests the Government to take the necessary measures to ensure that the affected persons are adequately compensated for damages suffered. It requests the Government to indicate all measures taken to that end. The Committee also requests the Government to supply copies of the relevant court decisions upholding detention and imprisonment of workers and trade unionists and to provide a list of the affected persons.
 - (b) The Committee refers to recommendation No. 8 of the Commission of Inquiry on Belarus, which considered that 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.). The Committee urges the Government to investigate without delay all alleged instances of intimidation or physical violence through an independent judicial inquiry, in order to shed light on the facts and circumstances surrounding these acts, and to identify those responsible, punish the guilty parties and thus prevent the repetition of similar events. The Committee requests the Government to provide information on all measures taken to this end. Further in this respect, the Committee, with reference to the recommendations of the Commission of Inquiry, stresses the need to ensure an impartial and independent judiciary and justice administration in general in order to guarantee that investigations into these grave allegations are truly independent, neutral, objective and impartial. The Committee recalls the Commission of Inquiry recommendation calling upon the Government to implement the recommendations made by the United Nations Special Rapporteur on the independence of judges and lawyers and requests the Government to indicate the steps it has taken to ensure that the above allegations are investigated by an independent body.

- (c) The Committee requests the Government to amend its legislation, in consultation with the social partners, to ensure that workers are protected against any acts of discrimination for simply having peacefully exercised their right to strike to defend their occupational and economic interests, which do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions. The Committee requests the Government to provide information on all measures taken or envisaged to that end.
- (d) The Committee requests the Government to take the necessary measures to ensure that no person is detained in connection with his or her participation in a peaceful strike. The Committee further requests the Government to take the necessary measures to ensure that all persons who have been arrested and/or detained for their participation in a peaceful strike are adequately compensated for the damages suffered. It requests the Government to indicate all measures taken to that end.
- (e) The Committee requests the Government to reply to the ITUC allegations regarding dismissals and withdrawal of bonuses and to ensure that those workers who suffered these measures as a result of participation in a peaceful strike are reinstated. It requests the Government to provide information on the measures taken in this respect.
- (f) The Committee urges the Government to refrain from showing favouritism towards any given trade union and to put an immediate stop to the interference in the establishment of trade union organizations. The Committee requests the Government to provide information on all measures taken to that end.
- (g) The Committee requests the Government to take, in consultation with the social partners, the necessary measures in order to adopt specific legislative provisions affording an adequate protection against cases of non-renewal of contracts for anti-union reasons. It requests the Government to provide information on all steps taken to that end. The Committee further requests the Government to provide its observations to the ITUC of other detailed allegations of anti-union discrimination.
- (h) The Committee urges the Government, as a member of the tripartite Council, to submit the Committee's comments on the issue of registration for the Council's consideration at one of its meetings as soon as possible. The Committee expects the Government to inform it of the outcome of the discussion.
- (i) The Committee once again urges the Government, in consultation with the social partners, to amend the Law on Mass Activities and the accompanying Regulation, as well as Decree No 3 on the registration and use of foreign gratuitous aid in the very near future and requests the Government to provide information on all measures taken in this respect as soon as possible. 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; and at widening the scope of activities for which foreign financial assistance can be used. The Committee requests the Government to provide information on all measures taken to that end and invites the Government to avail itself of ILO technical assistance in this respect.
- (j) The Committee requests the Government to take all necessary steps, including legislative, if necessary, to ensure the right to a fair trial. The Committee once again requests the Government to provide copies of judgments in the cases of Messrs Fedynich and Komlik so that it may examine the allegations in full knowledge of the facts and further requests it to provide information on the outcome of the new investigations into these trade union leaders.
- (k) 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, non-judicial 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.

- (l) The Committee urges the Government to pursue its efforts and 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.
4. By communications dated 10 and 17 June 2021, and 17 January 2022, the Congress of Democratic Trade Unions (BKDP) submitted its observations on the implementation by the Government of the recommendations of the Commission of Inquiry as well as new allegations of violation of freedom of association in the country. The International Trade Union Confederation (ITUC) submitted new allegations in communications dated 28 June and 29 September 2021.
 5. The Government submitted its reply in a communication dated 31 January 2022.
 6. 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.

▶ B. New allegations relating to the recommendations of the Commission of Inquiry

7. In their communications dated 10, 17 and 28 June, and 29 September 2021 and 17 January 2022, the BKDP and the ITUC refer to the discussion that took place in the Conference Committee on the Application of Standards (CAS) in June 2021 concerning the application of Convention No. 87 in Belarus. According to the BKDP and the ITUC, in her statement, the Minister of Labour and Social Protection characterized the BKDP as a destructive organization causing damage to the State. The BKDP and the ITUC consider that the threatening characterization of the BKDP as an enemy of the Government creates an atmosphere of harassment and intimidation aimed at silencing independent trade unions. It is against this background that the BKDP and the ITUC provide new allegations of violations of trade union rights in law and in practice and consider that the Government has no intentions of implementing the recommendations of the Commission of Inquiry.

Amendments to the legislation

8. The BKDP and the ITUC alleges that the national legislation was further amended to restrict trade union rights. They indicate in this respect that the Criminal Code was amended so as to introduce the following restrictions and associated penalties:
 - repeated violations of the procedure for organizing and holding of mass events, including public calls therefor, are punishable by arrest, or restraint of liberty or imprisonment of up to three years (section 342-2);
 - insult of a government official is punishable by a fine and/or restriction of liberty or imprisonment for up to three years (section 369);
 - the penalty for “discrediting the Republic of Belarus” was increased from two to four years imprisonment with a fine (section 369-1);

- section 369-3 of the Criminal Code has been retitled from “violation of procedure for organizing and holding of mass events” to “public calls for the organization or conduct of an illegal meeting, rally, street procession, demonstration or picketing, or the involvement of persons in such mass events”, which became an offence punishable by up to five years of imprisonment.
9. The BKDP points out that criminal liability can now be established simply for organizing peaceful assemblies and that any criticism and slogans are seen by the authorities as insults within the meaning of section 369 of the Criminal Code. The BKDP alleges that there are many precedents of bringing citizens, including members of independent trade unions, to criminal responsibility under section 369 of the Criminal Code. Referring to the above-mentioned statement of the Minister of Labour and Social Protection to the CAS in June 2021 to the effect that the BKDP spoke out against the Government and took steps against the interest of the State, calling for a boycott of Belarusian goods and application of sanctions, the BKDP and the ITUC allege that the BKDP leaders are under the threat of being prosecuted under section 369-1 of the Criminal Code.
 10. The BKDP and the ITUC further inform that the Labour Code was amended on 28 May 2021 so as to counteract the strike movement in the country by further tightening the requirements for holding strikes and introducing repressive measures against workers by expressly allowing an employer to dismiss/terminate a labour contract with a worker who: (i) is absent from work in connection with serving an administrative penalty in the form of an administrative arrest; (ii) forces other workers to participate in a strike or calls on other workers to stop performing work duties without sound reason; and (iii) participates in an illegal strike or other forms of withholding labour without sound reasons (section 42(7)). Furthermore, the BKDP indicates that an obligation to notify a union (to obtain consent) prior to the potential dismissal (section 46) has been repealed and that pursuant to section 49, the employer has the right to immediately suspend a worker, if he or she is calling other workers to take part in a strike. According to the BKDP, section 388 of the Labour Code was further supplemented with new wording as follows: “during a strike, political demands are prohibited”.
 11. The BKDP further indicates that the Law on Mass Activities was amended on 24 May 2021 and that the amendment aims at further tightening the requirements for holding public events as follows: the organization of mass events has to be authorized by the municipal authorities; funds cannot be raised, money and other assets cannot be received and used, services cannot be rendered in order to compensate for the cost caused by prosecution for violating the established procedure of organization of mass events; public associations will be held responsible if their leaders and members of their governing bodies make public calls for organizing a mass event before the permission to organize the event is granted.
 12. The ITUC further points out that the Government has not taken meaningful action to amend Presidential Decree No. 3 of 25 May 2020 on the registration of foreign gratuitous aid.
 13. According to the BKDP and the ITUC, the BKDP was being excluded from consultations regarding legislative amendments and that its Chairperson was not invited to the meeting of the National Council on Labour and Social Issues (NCLSI) in 2020, nor to the meeting held on 29 April 2021 by videoconference to discuss the preparation of the draft General Agreement for 2022–24, nor to the meeting held on 28 July 2021, also by videoconference, to discuss the issue of economic sanctions imposed on the country. The BKDP indicates that on 15 July 2021 it sent a letter to the Ministry of Labour and Social Protection suggesting to convene a meeting of the tripartite Council for improvement of legislation in the social and labour sphere (hereafter “tripartite Council”) to discuss the possibility of developing an action plan for the

implementation of the conclusions of the CAS and the recommendations of the Commission of Inquiry, but that it received no reply. Consequently, the tripartite Council, which should serve as a platform for such consultations, is unable to play its role.

Practice

14. The ITUC and the BKDP allege that since June 2021 the situation continues to worsen and repression against members of the BKDP affiliated unions has intensified. According to the unions, the repression took the form of searches of trade union premises and apartments and houses of trade union leaders and activists, arrests and detention of trade union members and workers participating in legitimate trade union activities. In particular, the ITUC alleges that a majority of leaders of the 2020 strike committees have lost their jobs, some have had to escape the country and others continue to face repression from law enforcement agencies including through surveillance, threats, searches, administrative arrests on trumped-up charges.
15. Regarding searches, the BKDP and the ITUC alleges the following instances and considers that they amount to harassment of independent trade unions:
 - On 15 June 2021, the house of Mr Gennady Bykov, the Deputy Chairperson of the Belarusian Free Trade Union (SPB) was searched by the Minsk Municipal Department of Internal Affairs.
 - On 26 June 2021, officers of the State Security Committee searched the regional office of the Radio Electronics Workers' Union (REP Union) in Brest. On 16 July 2021, law enforcement officers appeared at the REP Union's headquarters in Minsk, they broke down one door and sealed the other.
 - On 7 July 2021, officers of the State Security Committee apprehended Mr Andrei Dechko, who was one of the initiators of the establishment of a Belarus Independent Trade Union (BNP) primary trade union (the registration of which was ultimately denied) at the "Peleng" company and his apartment was searched.
 - On 8 July 2021, the activists of the primary trade union at "Naftan" company had another round of home searches under the pretext of the investigation of a criminal case over the damage caused to the car of one of the company's managers.
 - On 14 July 2021, officers of the Polotsk District Department of Interior searched the apartment of the Chairperson of the SPB Nikolai Sharakh.
 - On 21 July 2021 the authorities searched the house of the Chairperson of the SPB Internal Auditing Committee Victor Stukov. On 15 June 2021, officers of the Minsk City Department of Interior made a search of the private house of the SPB Deputy Chairperson Mr Gennadiy Bykov.
 - At Naftan in Navapolatsk, the apartment of Ms Volha Brytsikava, the Chairperson of the BNP, was searched and her computer was seized. The local BNP office in Navapolatsk was also searched on 21 September 2021.
16. The BKDP and the ITUC allege numerous cases of detention, arrests and imprisonment of trade union activists and refer, in this respect, to the following examples:
 - Vice-Chairperson of the BNP primary trade union at the "Grodno Azot" company Mr Valiantsin Tseranevich and BNP members, Messrs Andrei Paheryla, Vladzimir Zhurauka, Grigory Ruban, Dmitry Ilyushenko and Aleksey Sidor, were detained. Two more BNP members, Andrey Berezovsky and Roman Shkodin, were arrested for 7 and 15 days respectively.

- BNP president Maksim Pazniakou was detained on 17 September 2021, but later released and fined US\$350 for a social media post from last year, featuring a Belarusian music group, later labelled by authorities as extremist.
 - On 18 May 2021, the Bobruisk District and City Court convicted the Chairperson of the primary trade union at the “Belshina” Mr Sergei Gurlo for violation of section 369 of the Criminal Code (“insulting a law enforcement officer on social media”), which he allegedly committed in 2020. Mr Gurlo was sentenced to 18 months of restriction of freedom. The case was tried in closed hearing and Mr Gurlo was forced to sign a non-disclosure document concerning the criminal case materials.
 - On 20 April 2021, the Chairperson of the primary trade union at the Academy of Sciences of the Republic of Belarus was forcibly transported from work to the internal affairs agency. After she stayed for 11 hours at a police station, the officers prepared a record of an administrative offence for carrying out an unauthorized one-person picket. On 21 April 2021, she was sentenced by court to a fine.
 - In Zhlobin, local BNP secretary-treasurer at the Belarusian Metallurgical Plant (BMZ) Mr Aliaksandr Hashnikau was arrested on 17 September 2021.
 - The BMZ workers Messrs Alexander Bobrov, Igor Povarov and Evgeniy Govor were sentenced to two and a half to three years of imprisonment under section 342 (1) of the Criminal Code for organizing and actively participating in actions that caused a major breach of public order. The workers received this sentence because they tried to call a strike at the workplace on 17 August 2020.
 - The BKDP provides a list of 32 activists of the BMZ who were arrested, detained, dismissed, or whose contract was not extended.
- 17.** The BKDP and the ITUC refer to numerous cases where trade unionists or workers participating in trade union actions were dismissed or whose contract was not renewed. In particular, they refer to the following alleged instances:
- In June 2021, the BNP reported that the “Grodno Azot” Chemical Company did not renew contracts with seven members of the BNP. Before their dismissal the workers faced demands to leave the BNP, speak negatively of the BNP in the workplace bulletin, and join the pro-Government affiliate of the Federation of Trade Unions of Belarus (FPB).
 - The Belarussian State University forced to resign or refused to renew fixed-term employment contracts with at least four lecturers – members of the SPB.
 - The Research Institute of Genetics and Cytology of the National Academy of Sciences dismissed at least four officials of the SPB. Their dismissals took place immediately after the police confiscated the list of trade union members during a search in the apartment of one of the union’s officials which may point to a possible cooperation between the police and the employer. Among the dismissed were the president, the treasurer, and the internal auditor of the union. Each of them was summoned individually by the employer and pushed to sign termination of contract by “mutual consent”. Between August-September 2021 the Institute ended contracts with two other trade union members while three trade unionists were disciplinarily dismissed for having taken part in the protest actions in August 2021.
 - The BKDP provides the following lists and indicates that the legality of dismissals or other measures taken against workers have been confirmed by the courts when such measures were appealed against:

- a list of 99 workers of the “Belaruskali” Potash Fertilizer Producing Company who were dismissed, whose contracts were not renewed or who were otherwise punished (loss of salary and benefits) for participating in a strike on 17 August 2020;
 - a list of 35 workers whose contracts were not renewed or who were dismissed from “Naftan” Oil Refinery;
 - a list of eight trade unionists dismissed from the Minsk Wheel Tractor Plant; a list of three trade unionists dismissed from the Belkommunmash Holding “Managing Company”;
 - a list of 30 trade unionists dismissed from the Minsk Electrotechnical Plant named after Kozlov; and
 - a list of 25 trade union members dismissed from “Grodno Azot”.
- 18.** The BKDP and the ITUC also allege that the authorities continue to deny trade unions registration while courts deny trade unions the right to appeal such refusals. In the opinion of the Belarusian courts, a legal entity is entitled to a legal remedy only where this is explicitly provided for by the law. Under the provisions of Decree No. 2, trade unions have the right to appeal decisions of the Ministry of Justice and its Departments in the regions in a court of the corresponding level. However, many workplace unions have to register their organizations with the municipal authorities. Based on that, the courts conclude that trade unions do not have the right to appeal decisions of municipal authorities in court. Appealing such decisions in courts of a higher instance have proved to be fruitless.
- 19.** The complainants further allege that the SPB made several attempts to register its four enterprise-level organizations. All the necessary documents were prepared in a timely manner, sent to the Sovetsky District Administration of the City of Minsk by registered mail on 16 March 2021 and delivered to an employee of the District Administration. The law requires that such applications should be registered on the date of their delivery. The authorities took a month to reply to the registration request. In the decision refusing the registration, the authorities wrongfully identified the date of delivery of the request as 18 March 2021 and based the refusal on the missed deadline for registration. Despite this obvious factual error appealing the refusal proved to be fruitless.
- 20.** Another systematic practice by which the state authorities expose trade unionists to the risk of having their registration processes blocked is to demand that they disclose the list of the newly elected members of trade union bodies to the employers prior to the registration of the trade union organization. Learning the names of members of trade union bodies allows the employers to block the creation of the union by immediately dismissing these workers. Since the union is not yet registered it is unable to take any action. In this way the authorities and the responsible employers succeed in blocking the registration of a trade union. For example, in January 2021, two workers of the BMZ who had tried to register a BNP-affiliated workplace union organization at the plant received threats from the management in this connection and were subsequently dismissed on the disciplinary grounds. Similar tactics was reported at the “Naftan”.
- 21.** The BKDP alleges several instances of denial of registration. It alleges, in particular, that by its decision dated 1 May 2021, the administration of the Soviet district of Minsk, refused to register three organizational structures of the SPB: the primary students’ trade union organization of the Belarusian State University (BSU), the primary trade union organization of the BSU lecturers’ union, the primary trade union organization of the BSU “Research Centre for Electronic Documentation” without providing an explanation and thus in violation of the law. The registration of the primary SPB trade union organization of employees of the “National

Scientific and Practical Centre for Paediatric Oncology, Haematology and Immunology” was also denied. According to the BKDP, the SPB was also denied the right to appeal the refusals in registration of these union organizations in court thereby violating the constitutional right of independent trade unions to judicial protection.

22. The BKDP further alleges that the SPB primary trade union organization of workers of “Polotsk-Steklovolokno” has been subjected to massive persecution over the past year by the administration of the enterprise and by the Polotsk town authorities. On 13 October 2020, the Polotsk Executive committee deregistered the union due to the lack of legal address. The primary trade union has been liquidated.
23. Further regarding the right to establish organizations of their choosing, the BKDP recalls that the ILO supervisory bodies considered that the demand by the President of Belarus for the setting up of trade unions in all private companies by 2020 on the request of the FPB, was a display of favouritism towards the Federation and interference with the establishment of trade unions in private companies. The BKDP indicates in this connection that on 5 August 2021, in his televised meeting with the leader of the FPB, the Head of the State reiterated his previous statement and stressed that “if certain private companies had not understood his message, the Government should immediately discuss these issues and make specific proposals, including on liquidation of private companies that refuse to have trade union organizations”.
24. In this connection, the BKDP also considers that the effect of the amendment of section 365 of the Labour Code as per the FPB proposal, narrows the coverage of workers by collective agreement as it allows some clauses of collective agreements to be applicable only to members of a trade union which negotiated and signed a collective agreement at an enterprise. The BKDP indicates that at a number of enterprises, FPB-affiliated primary trade unions launched a campaign aimed at ensuring that some of the norms of collective agreements applied only to their members with a view to influencing workers to join their unions.

▶ C. The Government’s reply on measures taken to implement the recommendations of the Commission of Inquiry

25. In its communication dated 31 January 2022, the Government indicates that it had already provided detailed information regarding the issues raised in the complaints to the ILO supervisory bodies. It notes, however, its arguments and information provided in most cases have not been taken into account. The Government expresses its extreme concern at the ILO supervisory bodies form their view of the situation and draw their conclusions based solely on information provided by the BKDP, ITUC, IndustriALL Global Union and several other international trade union bodies. It believes that this case has never had the benefit of due balance and objectivity with regard to the actions of the legitimate Belarusian authorities. The assessments and statements of these trade union organizations are in the vast majority of cases driven solely by political motives, personal convictions and attitudes of their leaders regarding the development path and geopolitical choice of the country and are characterized by a high degree of engagement, bias, incorrectness, lack of appeal, unreasonableness and therefore should not form the basis for an objective view of the situation in the country. In this context, it is clear that the significant negative shift in the ILO supervisory bodies’ assessment of the situation in Belarus with regard to compliance with Convention No. 87 and

implementation of the recommendations of the Commission of Inquiry is solely due to the political developments in the country following the 2020 presidential elections. In the Government's view, such an approach, is unfair and totally unacceptable. Events that were purely political in nature and in no way related to social dialogue processes in the world of work should not and objectively cannot be the basis for assessing a country's compliance with Convention No. 87.

- 26.** The Government stresses that in the preparation and carrying out of the illegal protest actions that took place after the presidential election of the Republic of Belarus, external forces interested in destabilizing the situation in the country to the benefit of their geopolitical interests were actively involved both organizationally and financially. The aggressive external influence on Belarusian society with the use of modern hybrid warfare technologies was aimed at changing the consciousness and will of a considerable part of the population of the country, to replace the value orientations of citizens, to form the feeling of social hostility and to incline people to antisocial activity. The political structures created with foreign support were preparing the ground for an unconstitutional change of power. The implementation of these plans and intentions has an extremely negative impact on the standard of living and quality of life of the Belarusian people and, in general, on the further prosperous development of the country.
- 27.** The Government points out that the main demands made by the protesters included the resignation of the Head of State, the holding of new elections and the exoneration of citizens who had violated the law. Such demands have no connection with trade union rights and freedoms, protection of the labour, social and economic interests of citizens and generally do not correlate with the tasks that trade union structures or employers' associations are designed to fulfil. The Government again draws attention to the political bias, baselessness and unreliability of claims about the allegedly peaceful nature of the protests. According to the Government, these mass events were held in gross violation of the law and posed a serious threat to public order, security, health and life. In the course of the protests, there were numerous instances of active resistance to the lawful demands of law enforcement officers, involving aggression, the use of violence, damage to official vehicles, blocking vehicle traffic and damage to infrastructure facilities. In this situation, the State has clearly fulfilled its tasks: it has taken all necessary measures to ensure law and order, prevented chaos and destabilization in the country and ensured the safety of its citizens.
- 28.** The Government indicates that protest sentiments affected only a small proportion of workers, were politically motivated and lacked economic or social connotation. No demands were made to employers regarding the regulation of labour and socio-economic relations, including within the framework of collective agreements and contracts. Strikes as a legal means of settling collective labour disputes between employers and employee representative bodies have not been announced or organized and the country's enterprises have continued their work. The unsuccessful attempts to organize a strike movement (in the absence of collective labour disputes and without following the procedure prescribed by law) were aimed at drawing public attention to the political demands of some workers against the country's leadership, demonstrating the alleged support of labour collectives for a destabilizing protest movement, blocking and stopping the work of the major enterprises that form the basis of the national economy.
- 29.** The Government stresses that it is unreasonable and counterproductive to use events of a purely political nature to assess the country's compliance with Convention No. 87 and the recommendations of the Commission of Inquiry and that such an approach can be a serious obstacle to the further development of the well-established constructive cooperation on the

implementation of recommendations both within the country and with ILO experts, and is totally unacceptable.

30. The Government provides the following observations in relation to the issues raised by the Committee in its previous report.

Recommendation (a): Release of detained citizens, withdrawal of all charges, compensation, reinstatement, protection from discrimination, provision of copies of court decisions and list of allegedly affected persons

31. The Government stresses that any claims that trade unionists have been prosecuted solely for their participation in peaceful protests and lawful strikes are untrue and totally unfounded. There were good legal grounds for prosecuting a number of citizens whose actions were unlawful. The mass events (protest actions) organized in the country with the support of external destructive forces were not sanctioned by the authorities, were held in flagrant violation of the law, were intended to destabilize the situation in the country for the subsequent unlawful change of power and were not at all peaceful and in some cases even openly extremist, posing a real threat to the lives of citizens and the security of the entire population.
32. Attempts by individual citizens to organize protest actions directly at enterprises and organizations in the country had nothing to do with the exercise by workers of their right to organize and hold lawful strikes aimed at resolving collective labour disputes that arise and meeting demands of an economic or social nature. At the same time, under the pretext of participation in strikes, which have not been announced or carried out in accordance with the procedure prescribed by law (due to the lack of legal grounds for this), some employees have taken absences and refused to perform the work provided for in their employment contracts, and have attempted to block the work of enterprises. The Labour Code provides for disciplinary action for such misconduct, including dismissal.
33. In view of the above, the Government emphasizes that the citizens mentioned in the complaints as having allegedly suffered for their participation in peaceful protests and strikes, were held responsible for committing specific unlawful acts; this has nothing to do with the persecution of workers and trade unionists for exercising their civil or trade union rights and freedoms. The Government points out that the status of a trade union leader does not create additional advantages for its holder, nor does it guarantee an unconditional right to absolute freedom of action without regard to the legislation in force in the country or the public and state interests. Trade unionists not only have the same rights as other citizens, but also bear the same responsibilities for violations of the law as everyone else. Given that the citizens referred to by the BKDP and the ITUC have been prosecuted for serious violations of labour law or the commission of specific unlawful acts, the Government believes that there is no question of dropping the charges or providing any compensation and/or rehabilitation to the individual concerned.
34. The Government reiterates that the Committee's request for copies of court decisions cannot be granted, as the national legislation does not provide for the possibility of copies of court decisions and other documents to be provided to persons not involved in the proceedings. The Government indicates, however, that, if necessary, copies of the judgments requested can be obtained through trade union associations (in particular, the BKDP) representing the interests of those prosecuted (with the knowledge and consent of the latter).

35. The Government further indicates that it is not possible to comply with the Committee's request for a list of allegedly aggrieved persons because citizens mentioned in the complaints have been prosecuted absolutely lawfully, in accordance with the provisions of the legislation in force, and it is totally incorrect to classify them as persons affected by pressure and persecution for exercising labour and trade union rights and freedoms and expressing their civic position. The Government refers to the Law of 7 May 2021 "On Protection of Personal Data", which ensures the protection of personal data and the rights and freedoms of individuals in the processing of their personal data. Pursuant to the provisions of the Law, the processing of personal data must be proportionate to the stated purposes of its processing and must be carried out with the consent of the personal data subject. In this regard, any action involving the processing and transfer of personal data has a number of objective, enforceable limitations.

Recommendation (b): Impartial and independent judiciary

36. In respect of recommendation No. 8 of the Commission of Inquiry (that an adequate protection or even immunity from administrative detention should be guaranteed to trade unionists in the performance of their duties or the exercise of their civil liberties), the Government considers that this recommendation does not in any way relieve trade unionists of responsibility if they commit unlawful acts. Moreover, the need for workers and employers and their organizations to respect the rule of law in the exercise of the rights recognized by Convention No. 87 is laid down in Article 8(1) of that ILO Convention. In view of the above and taking into account the principle of inevitability of liability for unlawful acts, the Committee's calls for the release and dismissal of all charges against the trade unionists, who have been prosecuted for specific violations of the law, appear to be totally unfounded.
37. Regarding the Committee's recommendation to ensure an impartial and independent judiciary in the country, the Government indicates that the Republic of Belarus is governed by the rule of law. The principle of the rule of law applies in the country and the State guarantees the rights and freedoms of its citizens as laid down in the Constitution, laws and international obligations. All are equal before the law and are entitled without any discrimination to equal protection of rights and legitimate interests. By virtue of the provisions of article 60 of the Constitution of the Republic of Belarus, everyone shall be guaranteed protection of his/her rights and freedoms by a competent, independent and impartial court.
38. The Government points out that judges shall be independent in the administration of justice and shall be subject only to the law. Any interference in the work of judges in the administration of justice shall be inadmissible and punishable by law. The courts shall administer justice on the basis of the Constitution and other laws adopted in accordance therewith. If the court, when examining a specific case, finds a normative act to be incompatible with the Constitution, it shall decide in accordance with the Constitution and raise the issue of declaring the normative act in question unconstitutional in accordance with the established procedure. Cases before the courts are heard collegially and, in cases prescribed by law, by single judges. The hearing of cases in all courts is public. Cases may be heard in camera only in cases specified by law, subject to all the rules of judicial procedure. Justice shall be administered on the basis of adversarial proceedings and equality of arms. Court orders are binding on all citizens and officials. The parties and the persons involved in the proceedings shall have the right to appeal against decisions, judgments and other judicial decisions. There are no obstacles to citizens' recourse to the courts.

Recommendations (c), (d) and (e): The right to strike

39. The Government indicates that it has carefully considered the Committee's recommendations regarding amendments to legislation governing the exercise of the right to strike and reiterates that in its view, the procedure in force for organizing and holding strikes does not contradict international labour standards and allows citizens to fully exercise their right to hold a lawful strike to settle a collective labour dispute. The Government refers in this respect to the information it had previously provided. It emphasizes that the right to strike is not explicitly enshrined in the ILO instruments and the validity of the ILO supervisory bodies' interpretation of Convention No. 87 as providing for the right to strike has been repeatedly and reasonably questioned. Under article 37 of the ILO Constitution, any question or dispute concerning the interpretation of Conventions concluded by Member States in accordance with the provisions of the ILO Constitution shall be referred to the International Court of Justice for decision. In the Government's view, this suggests that under the ILO Constitution, only the International Court of Justice has the power to interpret ILO Conventions for the subsequent binding application of the results of such interpretation by its Member States.
40. In Belarus, under section 388 of the Labour Code, a strike is a temporary voluntary refusal by employees to perform their work duties (in full or in part) to resolve a collective labour dispute, that is, unresolved disagreements between parties to collective labour relations concerning the establishment, modification of the social and economic conditions of work and everyday life of employees, the conclusion, amendment, supplementation, performance or termination of collective contracts, agreements. Under section 22 of the Law on Trade Unions, trade unions have the right to organize and hold strikes in accordance with the legislation in force, and political demands are prohibited when strikes are initiated by trade unions. The prohibition of political demands during a strike is also laid down in section 388(3) of the Labour Code.
41. The unauthorized protests that have taken place in the country since the 2020 presidential election campaign and the attempts to organize a strike movement in enterprises without regard to the legal requirements have nothing to do with the implementation of trade union rights and freedoms to protect the labour, social and economic interests of citizens and, as already indicated above, have nothing to do with the tasks that trade union structures are designed to perform. The organizers of illegal protests in enterprises and organizations in the country, pursuing their own political aims far removed from the realization of workers' rights and freedoms, deliberately misled workers about the legality of such actions, unreasonably confusing such incompatible legal concepts as a strike, which in fact aims to resolve a collective labour dispute between workers and the employer, and a mass event aimed at expressing political and public opinion. For their part, the authorities have repeatedly called on citizens to react in a balanced and cautious manner to calls for participation in what is being called a strike movement and not to give in to provocations that seek to cause economic damage to businesses and the State and to violate the rights and interests of other citizens.
42. The Government indicates that broad discussion and resolution of issues related to the economic and social policy of the State are successfully carried out within the framework of the current social partnership system in the country, which allows public administration bodies, employers' associations and trade unions to work together in developing and implementing the social and economic policy of the State and to take account of the interests of the various strata and groups in society in the social and labour sphere through negotiations, consultation and rejection of confrontations. It is this form of interaction between the subjects of social partnership that appears to be the most constructive, effective and civilized.

43. The Government believes that the implementation of proposals by the ILO supervisory bodies to amend the legislation governing the organization and conduct of strikes to effectively legalize strikes of a political nature will not so much contribute to the right of workers' organizations to full freedom of action, as it may serve to create additional opportunities for abuse by all kinds of destructive structures and be used as a tool to undermine. The right to strike is enshrined in article 41 of the national Constitution.
44. According to the Government, the information provided by the BKDP and the ITUC about citizens allegedly suffering discrimination, pressure and reprisals for merely exercising their right to take part in a peaceful strike is totally unsubstantiated and untrue. The Government once again points out that there have been no lawful strikes in the country's enterprises and that certain workers who have suffered repressive actions by employers and the State, have been justifiably held responsible for specific violations of labour discipline and other legal provisions.

Recommendation (f): Alleged favouritism towards certain trade unions

45. With regard to the complaints by the BKDP and the ITUC concerning the State's alleged support for the largest trade union in the country, the FPB, and the Committee's recommendations to refrain from showing favouritism towards any trade union, the Government indicates the following. Trade unions and employers' organizations carry out their activities and cooperate with the Government within the framework of the social partnership system. As independent and autonomous organizations, trade unions and employers' associations are actively involved in the development and implementation of the State's social and economic policies. An open and constructive dialogue enables the interests of different groups in society to be taken into account without unnecessary confrontation and social conflicts. Legislation on social and labour issues is developed with the direct participation of the social partners. Tripartite advisory bodies – labour and social councils – have been set up and operate successfully at all levels (national, sectoral, regional, city and district).
46. The practice of collective and contractual regulation of social and labour relations has become widely established: as of 1 January 2022, 346 councils (1 national, 24 sectoral and 321 territorial), 603 agreements (1 general, 38 tariff and 564 local) and 20,548 collective agreements concluded at enterprise level were in operation. For many years now, the three parties have been concluding general agreements reflecting agreed positions and commitments on economic policy, incomes and living standards, social protection, labour market development and employment promotion, labour protection, social partnership and coordination between the parties. The General Agreement for 2019–21, which the parties have agreed to extend for a further three-year period from 2022 to 2024, is the 16th of its kind and applies to all employers and their associations, all trade unions and their associations (both the FPB and the BKDP), all employees, students and pupils of educational institutions.
47. The Government points out that, today, the FPB is the largest national independent voluntary association of trade unions. It unites 15 sectoral trade unions, 6 regional and Minsk city associations of trade unions, 137 district and city associations of trade unions and represents about 4 million people. In this context, it is not surprising that the FPB is one of the most representative and active social partners of the State in the development, improvement and implementation of socio-economic policies. In making significant efforts to protect the labour, social and economic rights of citizens, the FPB constantly raises the most urgent, acute or problematic issues that workers encounter in the exercise of their rights. In defending the interests of citizens, trade unions belonging to the FPB regularly contact and actively cooperate with the authorities, including the highest levels of Government.

48. During the meeting of the Head of State with the Chairperson of the FPB, in view of the questions voiced on 28 February 2020 at the VIII Congress of the FPB concerning the obstacles created by the management of private enterprises for employees who want to establish a trade union or a primary trade union in a company, the President of the Republic of Belarus clearly indicated the position of the State on the inadmissibility of the obstacles created by private business to implement the trade union policy.
49. The Government points out that in Belarus, trade unions are voluntary public organizations that unite its citizens, foreign citizens and stateless persons, including those studying in institutions of vocational, specialized secondary and higher education, which are bound by common interests according to the nature of their activities in both production and non-production spheres for the protection of labour, social and economic rights and interests. The right of citizens to form trade unions is laid down in section 2 of the Law on Trade Unions. Trade unions may, in turn, form and join republican unions (associations) and other associations with trade union rights on a voluntary basis. Republican trade union associations may, according to the procedure laid down in their statutes, create territorial (regional, city, district) and other organizational structures possessing the rights of trade unions. A prerequisite for trade unions – their independence – is laid down in section 3 of the Law on Trade Unions. Trade unions independently draft and approve their statutes, determine their structure, elect their governing bodies, organize their activities, and hold meetings, conferences, plenums and congresses. In accordance with their statutory objectives and tasks, trade unions have the right to cooperate with trade unions in other countries and to join international and other trade union associations and organizations of their choice. Citizens' membership or non-membership in trade unions does not entail any restrictions on their labour, socio-economic, political or personal rights and freedoms guaranteed by the legislation of the Republic of Belarus. The activities of trade unions may be restricted only in cases that are prescribed by the legislation in the interests of national security, public order or the rights and freedoms of others.

Recommendation (g): Protection of workers against anti-union discrimination

50. The Government reiterates that the equality of all citizens before the law and the right without any discrimination to equal protection of rights and legitimate interests are guaranteed by article 22 of the national Constitution. Discrimination in employment relationships, that is, limitation of employment rights or receipt of any advantages based on gender, race, national or social origin, language, religious or political beliefs, membership or non-membership in trade unions or other public associations, property or occupational status, age, place of residence, physical or mental disabilities not preventing the performance of relevant work duties, other circumstances unrelated to the business is prohibited. Discriminatory terms in collective agreements are invalid. Persons who consider that they have been discriminated against in employment relationships are entitled to apply to a court. The prohibition of discrimination on the grounds of belonging to trade unions is guaranteed by section 4 of the Law on Trade Unions. Thus, the belonging or non-membership of citizens to trade unions does not entail any restrictions on their labour, socio-economic, political, personal rights and freedoms guaranteed by the national legislation. Trade unions have the right, at the request of their members and other citizens, to take legal action to protect their labour and socio-economic rights and interests. To that end, trade unions may establish trade union legal services and other bodies whose competence is determined by the statutes of trade unions and legislation.

51. The Government indicates that the social partners have the opportunity to address and discuss problematic issues, including possible complaints of anti-union discrimination, within the tripartite Council. The Government refers in this respect to the previous examination (in 2016) by the tripartite Council of the question of dismissal in connection with the expiry of the contract of the Deputy Chairperson of the SPB, Mr Sharakh, who worked at the “Polotsk-Steklovolokno”. After consideration of the allegations of the BKDP representatives, the tripartite Council noted that Mr Sharakh decided to retire upon the expiry of his contract and closed the consideration of the case. The Government believes that this example serves to illustrate that complaints by the BKDP and ITUC of alleged anti-union discrimination in the termination of contracts are often without any objective basis.
52. The Government points out that by accepting the contractual form of employment, the employee confirms his or her agreement and intention to be in an employment relationship with the employer for the duration of the contract and his or her agreement and willingness to terminate the employment relationship at the end of the contract period. As in other legal systems, in Belarus, the termination of the employment relationship at the end of a fixed-term contract is not considered as a dismissal at the employer’s initiative. In this respect, the law does not oblige the employer to justify his reluctance to extend the employment relationship after the expiry of the contract. The expiry of the contract is in itself sufficient grounds for termination. Therefore, if the employer has decided not to re-employ the employee after the expiry of the contract, there is no need for any further justification on this point. The issue of forcing the employer to enter into a new contract with an employee cannot be resolved, including in court (except for categories of employees for whom special protective measures are established by law).
53. The Government further points out that the legislation governing employee contracts is improving. It indicates in this respect that in 2019 the Labour Code was amended to increase the duration of contracts to be concluded or renewed.

Recommendation (h): Submission of its recommendations on trade union registration for consideration by the tripartite Council

54. The Government refers to the information it previously provided and indicates that the possibility of implementing the Committee’s recommendations can be considered when the tripartite Council resumes its work after the epidemiological situation has improved. It points out, however, that it is only appropriate for the Council to consider an issue if there is genuine evidence of an issue of concern submitted to it by the parties (or one party). Otherwise, there would be no basis for the members of the Council to consider and discuss the relevant agenda item.
55. The Government further points out that it has done everything necessary at the level of legislation to ensure that the vast majority of trade unions and their organizational structures that apply to the registration authorities obtain registration. When the State authorities review the documents submitted for the registration of trade unions and their organizational structures and in other cases involving decisions by the State authorities that affect the right of citizens to form trade unions, the relevant decisions are taken in strict compliance with the legislation in force and on the basis of the principle of maximum consideration of the interests and rights of citizens and trade unions.
56. In order to increase the ability of trade unions to obtain a registered office, they have been given the option of locating themselves at any place other than their employer’s. The Government indicates that that practice has shown that, to date, the need to prove the

existence of a registered office is not an obstacle to the registration of trade unions. Cases of refusal of state registration of trade union organizational structures are isolated and have objective reasons, in the vast majority of cases not related to the lack of proof of legal address. The main reasons for refusals are non-compliance by trade unions with the legal provisions on the procedure for establishing trade union organizations and submitting all the necessary information and documents to the registration authorities. Once the procedure for establishing a trade union organization is complied with, the documents for state registration of a trade union or its organizational structure may be resubmitted to the registration authorities after all the shortcomings identified have been rectified. Thus, the Government argues, the refusal to register does not amount to a ban on establishing a trade union or its organizational structure and is not an insurmountable obstacle to registration.

57. The Government considers that in view of the above, the BKDP and ITUC claims that the legal requirement to provide a legal address for the registration of trade unions and the registration of trade union organizational structures is an insurmountable obstacle to trade union activity in Belarus appear to have no objective basis.

Recommendation (i): Amendments to legislation governing the receipt and use of foreign donations and the procedure for organizing and holding public events

58. The Government refers to the information it had previously provided and expresses its regret at the fact that its arguments concerning the possible destructive effects of the implementation of recommendations aimed at weakening the State's control over funds flowing into the country from abroad and absolving trade union structures from responsibility for violations of the law during public events was not taken into account. The Government reiterates the current procedure for receiving funds from abroad (foreign gratuitous aid) is unreasonably linked by ILO supervisory bodies with Articles 5 and 6 of Convention No. 87, under which workers' organizations are guaranteed the right to join international trade union organizations and the right to freely carry out their activities without interference from the State. Articles 5 and 6 of Convention No. 87 contain no provisions stipulating the right of trade unions to freely receive and use financial or other forms of assistance for political and public campaigning.
59. As regards the Committee's reference to paragraph 624 of the Commission of Inquiry's report, according to which Articles 5 and 6 of Convention No. 87 imply the right to benefit from relations established with international workers' and employers' organizations, the Government points out that the national legislation does not prohibit trade unions from receiving foreign non-repayable assistance, including from international trade union organizations. At the same time, the legislation determines the conditions (purposes) of foreign gratuitous aid usage (traditionally and reasonably, such kind of aid, provided to legal entities, is directed to humanitarian, social, cultural and educational purposes), and also provides that foreign gratuitous aid should be registered in the established order. However, the procedure for registering foreign donations is not complicated and is carried out in a short period of time. The Government draws the Committee's attention to the absence of cases of denial of foreign gratuitous aid to trade unions, and the absence of cases of liquidation of trade unions for violating the procedures for its use.
60. The Government indicates that allowing outside forces (such as trade unions from other countries and international trade union associations) to sponsor public events in the country could be used to destabilize the sociopolitical and socio-economic situation, which in turn

would have an extremely negative impact on public life and the well-being of citizens. Thus, the prohibition to receive and use foreign gratuitous aid for purposes involving political and mass agitation work among the population is determined by the interests of national security, the expediency of excluding opportunities for destructive influence and pressure from external forces (foreign States, international organizations and associations, foundations, etc.) with the aim of destabilizing the sociopolitical and socio-economic situation in the country. The main and absolutely justified principle in this case is observance of the balance of interests and rights of individual groups of citizens and society as a whole.

- 61.** The Government emphasizes that given the events of 2020, the creation of conditions for the unimpeded flow of financial resources into the country for subsequent use by various kinds of opposition and destructive structures for political struggle would be an action directly contrary to the interests of the State and the well-being of its people. Therefore, the repeal of the legislation in this regard is not being considered
- 62.** The Government further reiterates that the procedure for the organization and holding of mass events does not contravene the principles of freedom of association and assembly and is fully in keeping with the provisions of the International Covenant on Civil and Political Rights. The exercise of the right of peaceful assembly shall not be subject to any restrictions except those that are prescribed by law and are necessary in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.
- 63.** The legal provisions imposing penalties for breaching the procedure for organizing and holding a mass event which caused serious negative consequences are aimed at preventing socially dangerous unlawful acts which pose a real threat to the life and health of citizens. Therefore, their repeal is not being considered. When holding public events, trade unions have a duty to respect public order and a priori must not allow any action that could render the event not peaceful and cause serious harm to citizens, society and the State. The penalties prescribed by law for the organizers of mass events for causing substantial damage, harming the rights and interests of citizens, organizations and the State or public interests are not and should not objectively be interpreted as a deterrent to the exercise by citizens and trade unions of the right to freedom of peaceful assembly.
- 64.** As with the receipt of foreign donations, there is an undeniable need to balance the interests and rights of individual groups and society as a whole. The preservation and maintenance of this balance is a direct task of the State. The decision to terminate a trade union for breach of the legislation on mass events that has caused serious damage, substantial harm to the rights and interests of citizens, organizations, society and the State, can only be taken in a court of law. There have been no decisions to liquidate trade unions for violating the procedure for organizing and holding public events. The amendments introduced into the Law on Mass Activities do not contain any norms prohibiting citizens from exercising their right to peaceful assemblies for protection of their rights and legal interests. The amendments are aimed solely at protecting the State and public security, public order, public health and morals, rights and freedoms of other persons and do not contradict the provisions of the national Constitution. In particular, the amendment to the Law was directed against the organization, preparation and commission of acts that infringe on the independence, territorial integrity, sovereignty of the State, the foundations of the constitutional order and public security by organizing mass disturbances, vandalism involving damage to or destruction of property, seizure of offices and buildings, and other acts that seriously disturb public order, or active participation in any of the above. Thus, the right of citizens and trade unions to organize and hold mass events is guaranteed by the legislation and is implemented by them in practice.

65. Taking into account the difficult sociopolitical situation in the country following the presidential election campaign and the unprecedented political and economic pressure on the Republic of Belarus aimed at undermining its economic potential, slowing development and reducing living standards, the Government believes that loosening liability for violating the procedure for holding mass events and lifting restrictions on the use of foreign financial aid for public events will provide conditions for an enhanced destructive foreign influence on the situation in the country, which is contrary to the national interests of Belarus.

Recommendation (j): Prosecution of officials of the REP Union, Messrs Fedynich and Komlik

66. The Government points out it had submitted its comments thereon on several occasions. It once again reiterates that the prosecution of the two officials of the REP Trade Union took place solely because they had committed a crime against the procedure for economic activity (tax evasion). A conviction is based on evidence that has been objectively tested at trial. This case is in no way related to the activities of the REP Union and should not be regarded as persecution of trade unionists for exercising civil or trade union rights. The Government recalls that it had previously submitted information reflecting the position of Mr Yaroshuk on this issue, the Chairperson of the BKDP, who publicly acknowledged the illegality of the actions of Messrs Fedynich and Komlik.
67. The Government reiterates that the Committee's request for copies of the relevant court decisions cannot be complied with in the light of the legislation in force, which does not provide for the transmission of copies of court decisions and other documents to persons who have not taken part in criminal proceedings. The Government indicates that the legality and validity of the above court decisions were verified by the Supreme Court of the Republic of Belarus.
68. The Government informs that at present, due to the application of the amnesty legislation to the convicts, the main punishment in the form of restriction of freedom has been served in full by Messrs Fedynich and Komlik. Information on the results of verification of other offences of a similar nature can be provided upon completion of the verification.

Recommendation (k): Building an effective non-judicial mechanism; settlement of labour disputes

69. The Government reaffirms its interest in continuing to work with the social partners and the ILO to improve the labour dispute resolution system, which could be used to resolve disputes involving individual, collective and trade union issues. In this regard, the Government appreciates the assistance provided by the International Labour Office in improving the work of the tripartite Council. To date, there have been concrete positive outcomes of cooperation in the form of tripartite seminars and training courses, which have resulted in capacity-building for social dialogue, as well as additions to the General Agreement between the Government, national associations of employers and trade unions on interaction between the parties in developing and implementing collective agreements in the presence of organizations. The Government indicates that all social partners were very enthusiastic about the involvement of International Labour Office experts in improving the way sectoral and local agreements are negotiated and implemented.
70. The Government points out that one of the objectives pursued by the parties in setting up the tripartite Council, and particularly in reformulating its work in 2009, was the implementation of Commission of Inquiry recommendations Nos 5 and 7. The tripartite Council was set up in

consultation with the International Labour Office as a body trusted by all parties to consider matters relating to the implementation of Commission of Inquiry recommendations and to deal with other issues of cooperation between the Government and its social partners, including the handling of complaints made by trade unions. The Government is prepared, however, to move forward either by further improving the functioning of the tripartite Council or by creating another structure.

71. The Government points out that the key issue of concern will be the identification of the persons (representatives) with decision-making power and the willingness of all parties represented on the tripartite Council to accept and agree to the decisions to be made within this tripartite body. The Government indicates that years of experience of the tripartite Council have shown that the BKDP representatives are not prepared to accept the tripartite Council's decisions that differ in one way or another from their predetermined position. Often, the BKDP representatives claim that they do not have the necessary authority to adopt the tripartite Council's position. The Government believed that the experience of the International Labour Office in dealing with this kind of situation would be extremely useful in this regard.
72. The Government indicates that due to the unfavourable current epidemiological situation caused by the COVID-19 pandemic, the Council's activities have been temporarily suspended. It looks forward, however, to the participation of ILO experts in the work of the Council as soon as this is again possible.

Recommendations (a) and (I): Measures taken by the Government to implement the recommendations of the ILO Commission of Inquiry

73. The Government deeply regrets the negative assessments of its efforts to engage constructively with the social partners and the ILO in order to implement the Commission of Inquiry's recommendations. It points out in this respect that it has consistently demonstrated its goodwill and cooperated with the ILO. The Government believes that the Committee should take a more critical view of the information received from the BKDP and the ITUC and not base its position solely on unsubstantiated data. In the Government's opinion, trade union complaints do not objectively reflect the real situation in the country.
74. The Government emphasizes its openness and willingness to engage in a constructive dialogue with the social partners and the ILO, which it considers to be a good basis for continued engagement on the implementation of the Commission of Inquiry's recommendations, the content of which involves long-term and systematic work to improve social dialogue.
75. The Government reiterates that in collaboration with the ILO it had fully implemented some of the recommendations and achieved good progress in implementing others, and refers to the activities that have been conducted in the country over the years. The Government expresses its interest in continuing to engage with the ILO both on the implementation of the recommendations and on a broader range of issues that are consistent with the aims and objectives of the Organization.

Comments on the BKDP and the ITUC 2021 complaints

76. The Government considers that the assessment, statements and comments made by the BKDP and the ITUC on the situation in the country are misleading, distorted and politically biased, and do not reflect the reality on the ground and recalls its introductory remarks pointing out that the protests held in the country in 2020 were not aimed at protecting trade union rights

or at drawing the attention of the authorities to the social or economic demands of citizens but rather an aggressive external hybrid attack on the country aimed at destabilizing the sociopolitical situation and carrying out a coup d'état.

- 77.** In this difficult situation, the authorities stabilized the situation and restored law and order. The natural and logical step was to take steps to prosecute citizens who had committed offences. Thus, the citizens referred to by the BKDP and the ITUC as having allegedly suffered for carrying out lawful trade union activities to protect workers' labour, social and economic rights and for taking part in peaceful protests and lawful strikes have in fact violated the law, committed unlawful acts and have therefore been held proportionately responsible – disciplinary (at their workplace), administrative and in some cases criminal. Such actions by employers and authorized authorities are perfectly legal and justified. Measures to prosecute offenders are normal practice in any State governed by the rule of law and do not contravene any international norms and principles.
- 78.** According to the Government, a striking example of deliberate distortion of the facts is the information according to which employees of the BMZ, Messrs Povarov, Govar and Bobrov are serving unjustified sentences on charges of joining a warning strike on 17 August 2020 (from two and a half to three years' imprisonment under part one of article 342 of the Criminal Code). The Government indicates that in reality, the three individuals organized an illegal entry of unauthorized persons into the territory of the company, delaying the movement of transport, which led to the disruption of normal operation of the enterprise and stopping the smelting of steel in three electric-arc furnaces, which resulted in material damage to the enterprise. On 1 February 2021 the Zhlobin District Court sentenced the persons in question to a prison term under part one of article 342 of the Criminal Code "Organization and preparation of actions that grossly violate public order, or active participation in them".
- 79.** With regard to the information on the searches carried out by the authorized bodies at the places of residence and work of certain citizens, the Government indicates that these activities took place within the framework of investigating the circumstances of the illegal financing and informational support of protest activities (mass riots) and other illegal actions and in this regard have absolutely nothing to do with the legitimate trade union activities of the persons mentioned in the complaints.
- 80.** As regards the legality of disciplinary sanctions, including dismissal, against employees for violating labour law requirements and avoiding the performance of duties under the employment contract, the Government indicates that citizens who believe that they have been or are being discriminated against in employment relationships on the grounds of trade union membership, including pressure from company management, have the possibility to apply to the court for the elimination of discrimination.
- 81.** With reference to the concrete cases of denial of registration mentioned by the BKDP the Government indicates that: (1) refusals to register the SPB primary trade union of employees of the Belarusian State University "Belarusian Research Center for Electronic Documentation" is due to non-compliance of the submitted documents with the legal requirements; (2) the refusal to register the SPB primary trade union of employees of the Belarusian State University and the SPB primary trade union of students of the Belarusian State University are due to the violation of the established deadline for submission of documents; (3) the BNP primary trade union of employees of the Belarusian Metallurgical Plant – Managing Company of the Holding Company "Belarusian Metallurgical Company" was not registered because of the violation of the procedure for establishment of trade unions and absence of documents confirming the existence of a legal address.

82. Regarding the complaints of the BKDP and the ITUC about the measures taken to amend the Labour and Criminal Codes and the Law on Mass Activities, the Government indicates that the introduction of amendments to the said legislative acts is dictated by the events of 2020. The Republic of Belarus, as an independent and sovereign State, has all the necessary powers to develop and improve national legislation in order to bring its provisions into line with the current interests of society and the State.
83. The Government points out that businesses should not become venues for political ambition. The prohibition of political demands when organizing and holding strikes is a fairly common international practice. The provisions of the national legislation governing the organization and conduct of strikes, which aim to create conditions for resolving a collective labour dispute through consultation and negotiation in conciliation procedures, are not in conflict with international labour standards. It should also be taken into account that a strike can lead to the shutdown of an entire workplace. The consequences of this kind of action at hazardous workplaces can turn into a real disaster – causing irreparable, extremely severe negative consequences not only for the company and its employees, but also for society as a whole. Thus, a ban on strikes at enterprises with hazardous production facilities is a logical and perfectly justified step aimed at protecting employees of particular enterprises and citizens in general from serious potential threats to their lives and health.
84. The Government indicates that the amendments made to the legislation on mass events are necessitated by the need to improve the legal regulation of the procedure for organizing and holding mass events in the light of law enforcement practice and are aimed at creating additional conditions for ensuring legality, law and order and public safety during their holding in order to prevent violations of citizens' rights and freedoms and the lawful interests of organizations and enterprises in the country. Thus, the legislative amendments are another step towards improving the national legal framework in order to bring the legislative provisions into line with the current situation as well as the serious challenges that the Republic of Belarus has had to face due to the unprecedented planned attack on the State by unfriendly external and internal forces.
85. With regard to the complaints about the alleged lack of social dialogue in the country, the Government indicates that the necessary conditions have now been created for the successful functioning of the social partnership system and the regulation of collective labour relations at all levels – national, sectoral, local and enterprise level: an appropriate legal framework has been created, tripartite advisory bodies – labour and social councils – are operating, and parties are developing and concluding sectoral agreements and collective bargaining agreements
86. In accordance with the law and the provisions of the General Agreement, draft regulations affecting the labour and socio-economic rights and interests of citizens are developed with the participation of the most representative associations of trade unions and employers – the FPB and the Confederation of Industrialists and Entrepreneurs (Employers). Close cooperation with trade unions and employers' associations takes place within the National Council for Labour and Social Issues (NCLSI), sectoral councils, and workshops and meetings to discuss topical social and labour issues.
87. The Government refutes the BKDP and the ITUC allegation that during the June 2021 CAS discussions, the Minister of Labour and Social Protection of Belarus threatened the BKDP, called it destructive, an enemy of the current Government causing damage to the State. The Government considers that the BKDP and the ITUC statement is based on a total distortion of the words of the Government representative and a clear desire to strike a blow to the image of the country and its officials, and is absolutely unacceptable, as it violates not only the

principles of social partnership and constructive interaction between the parties, but also elementary norms of ethics. The Government indicates that in her speech, the Minister rightly pointed out and not without a good reason, that the BKDP “is an open opponent of the current Government”, “has never had an objective and balanced position, has repeatedly taken steps against the interests of citizens and the State” and “builds its position on rejection and criticism of any measures by the Government in all areas of social and economic policy regardless of their intended effect”.

88. In conclusion, the Government reaffirms that it appreciates the experience and expertise of the ILO and recognizes the authority of this international Organization in social and labour matters. At the same time, the Government is extremely concerned about the fact that instead of developing mutually beneficial cooperation, strengthening global solidarity and enhancing policy coherence in the economic, social and other spheres, some States, foreign entities and organizations actively contribute to destabilizing the situation in Belarus. An aggressive and large-scale information attack has been launched against Belarus and steps are being taken to form an extremely negative image of the State in the international arena. The aim of all these actions is to justify unprecedented and unjustified sanctions against Belarusian enterprises, organizations and officials. The Government regrets that unfriendly countries and various structures are actively using the ILO platform to make unfounded accusations against Belarus. The Government requests the Committee to adopt an open-minded attitude towards the ongoing processes in the country and to refrain from hasty criticism of the actions of the national authorities aimed at restoring law and order in the country. The Government stresses that the interests of society and citizens, their inalienable rights and freedoms, including the rights to a peaceful life, creative work and social protection, have always been at the forefront of the interests of the Belarusian State. The realization of these rights can only be guaranteed in conditions of civil peace and harmony, and the State will make all necessary efforts to preserve the rule of law and order on its territory.

► D. The Committee’s conclusions

89. *The Committee notes the allegations transmitted by the BKDP and ITUC as well as their observations on the implementation by the Government of the recommendations of the Commission of Inquiry outlined in their communications dated 10, 17 and 28 June 2021, 29 September 2021 and 17 January 2022. It further notes the Government’s detailed reply to the Committee’s previous recommendations and to the BKDP and ITUC communications.*
90. *As both the complainants and the Government refer to the Government representative’s statement at the CAS in June 2021, and by way of background, the Committee notes the said statement as reflected in the CAS report:*

The BKDP speaks out against the Government. It does not adopt a balanced position and takes steps against the interest of the State and Government, calling for a boycott of Belarusian goods and application of sanctions. The Government is trying to hold dialogue with the BKDP and has allowed it to participate in the tripartite bodies, the NCLSI and the tripartite Council. However, all we have heard is criticism relating to the policies of the Government regardless of the effect. The BKDP is lobbying its destructive position in the ITUC, which unquestionably accepts all of this criticism and takes it as truth about the situation in Belarus. The ITUC has attempted to tie the illegal protest to the question of strikes. There is an unfounded attempt to link questions which fall outside the ILO with the work of the ILO.

The Committee is of the opinion that while the language used by the Government's representative would appear to be within the limits of parliamentary language expected at the International Labour Conference, it does indeed depict the tensions that exist between the Government and one of its social partners.

91. *The Committee notes that the BKDP and the ITUC allege that no steps had been taken by the Government to implement the outstanding recommendations of the Commission of Inquiry and that violations of freedom of association have intensified both in practice and through amendments of the legislation. The Committee notes that the Government reiterates its previous indication to the effect that the BKDP and the ITUC allegations are politically motivated and that they do not represent the reality on the ground. The Committee notes with deep regret that the Government refutes the merits of each of the Committee's previous recommendations and justifies its actions with regard to all of the previously and recently alleged violations of civil liberties and trade union rights. The Committee understands therefrom that the Government has no intention of implementing its outstanding recommendations. The Committee further notes the Government's indication that it has no intention of amending the legislation in force, as requested by this Committee and other ILO supervisory bodies, including the Commission of Inquiry, as this would be contrary to the sovereign interest of the State.*
92. *The Committee is bound to recall that by virtue of its Constitution, the ILO was established in particular to improve working conditions and to promote freedom of association in the various countries. Consequently, the matters dealt with by the Organization in this connection no longer fall within the exclusive sphere of States and the action taken by the Organization for the purpose cannot be considered to be interference in internal affairs, since it falls within the terms of reference that the ILO has received from its Members with a view to attaining the aims assigned to it [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paragraph 2]. The Committee wishes to emphasize in this respect that, when a State decides to become a Member of the Organization, it accepts the fundamental principles embodied in the Constitution and the Declaration of Philadelphia, including the principles of freedom of association. Furthermore, the Committee draws the Government's attention to the fact that freedom of association is one of the primary safeguards of peace and social justice. The ILO Member States have committed, through the 2008 Social Justice Declaration to respect, promote and realize the fundamental principles and rights and work, with an emphasis on freedom of association and effective recognition of collective bargaining as particularly important to the attainment of the four strategic objectives of the ILO Decent Work Agenda [see **Compilation**, paragraph 47]. The ultimate responsibility for ensuring respect for the principles of freedom of association lies with the Government [see **Compilation**, paragraph 46]. The Committee reiterates its previous recommendations and urges the Government to take all necessary measures to implement these recommendations of the Commission of Inquiry, to prevent the occurrence of human rights violations and ensure full respect for workers' rights and freedoms.*
93. *The Committee recalls that the allegations of criminal prosecution, arrests and imprisonment of trade unionists, their sentencing of up to three years of imprisonment and dismissals are linked to protests and strikes organized following presidential elections in August 2020. The Committee recalls that the UN High Commissioner for Human Rights reported to the Human Rights Council in December 2020 that the monitoring and analysis of demonstrations since 9 August 2020 indicated that participants were overwhelmingly peaceful. The Committee recalls that, on many occasions, it has emphasized the importance of the principle affirmed in 1970 by the International Labour Conference in its resolution concerning trade union rights and their relation to civil liberties, which recognizes that the rights conferred upon workers and employers' organizations must be based on respect for those civil liberties which have been enunciated in particular in the Universal Declaration*

of Human Rights and in the International Covenant on Civil and Political Rights, and that the absence of these civil liberties removes all meaning from the concept of trade union rights [see **Compilation**, paragraph 68]. The Committee recalls that the resolution “places a special emphasis on the following civil liberties, as defined in the Universal Declaration of Human Rights, which are essential for the normal exercise of trade union rights: (a) the right to freedom and security of person and freedom from arbitrary arrest and detention; (b) freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers; (c) freedom of assembly; (d) the right to a fair trial by an independent and impartial tribunal; (e) the right to protection of the property of trade union organizations”. The Committee notes that in her Oral Update on the Situation of Human Rights in Belarus on 24 September 2021, the High Commissioner for Human Rights stated that the scale and pattern of behaviour by the Belarusian authorities to date strongly suggested that limitations to freedoms of expression and assembly were primarily aimed at suppressing criticism of and dissent from governmental policies, rather than any aim regarded as legitimate under human rights law, such as the protection of public order. The High Commissioner was also alarmed by persistent allegations of widespread and systematic torture and ill-treatment in the context of arbitrary arrests and detention of protesters.

94. The Committee notes that the Government once again reiterates that the right to strike does not derive from ILO instruments and that in any case, the strikes that took place in the country following the presidential election were not linked to collective labour disputes at any particular enterprise, but were rather political in nature. The Committee must once again recall that it has always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests. The Committee considers that the right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement; workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their members’ interests [see **Compilation**, paragraphs 752 and 766]. The Committee recalls, moreover, that a system of democracy is fundamental for the free exercise of trade union rights [see **Compilation**, paragraph 69]. The Committee once again recalls that arrests and dismissals of strikers on a large scale involve a serious risk of abuse and place freedom of association in grave jeopardy. The competent authorities should be given appropriate instructions so as to obviate the dangers to freedom of association that such arrests and dismissals involve [see **Compilation**, paragraph 975]. The Committee considers that for the contribution of trade unions and employers’ organizations to be properly useful and credible, they must be able to carry out their activities in a climate of freedom and security. This implies that, in so far as they may consider that they do not have the basic freedom to fulfil their mission directly, trade unions and employers’ organizations would be justified in demanding that these freedoms and the right to exercise them be recognized and that these demands be considered as coming within the scope of legitimate trade union activities [see **Compilation**, para. 75]. The Committee urges the Government to take the necessary measures to ensure that no person is detained in connection with his or her participation in a peaceful industrial action or protest. The Committee further urges the Government to take the necessary measures to ensure that all persons who have been arrested and/or detained for their participation in a peaceful industrial action or protest are adequately compensated for damages suffered. It requests the Government to indicate all measures taken to that end.
95. The Committee notes that the Government reiterates that it cannot provide court judgments as per the Committee’s request as the legislation in force does not provide for such a possibility, which implies that court decisions and judgments are not public. The Committee recalls that in many cases, it has asked the governments concerned to communicate the texts of any judgments that have been delivered together with the grounds adduced therefor. The Committee has emphasized that when it

requests a government to furnish judgments in judicial proceedings, such a request does not reflect in any way on the integrity or independence of the judiciary. The very essence of judicial procedure is that its results are known, and confidence in its impartiality rests on their being known [see **Compilation**, paragraphs 179 and 180]. Recalling its previous conclusions in this respect as well as the recommendations of the Commission of Inquiry, the Committee once again stresses the need to ensure an impartial and independent judiciary and justice administration in general in order to guarantee that investigations into these grave allegations are truly independent, neutral, objective and impartial. Accordingly, the Committee requests the Government to take the necessary measures including legislative if necessary, to supply copies of the relevant court decisions upholding detention and imprisonment of workers and trade unionists. The Committee also requests the BKDP to provide any judicial decisions in its possession concerning its members.

96. The Committee once again recalls that the Commission of Inquiry on Belarus considered that 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.). While noting the Government's reference to paragraph 1 of Article 8 of Convention No. 87, the Committee recalls that in exercising freedom of association rights, workers and their organizations should respect the law of the land, which in turn should respect the principles of freedom of association [see **Compilation**, paragraph 66]. The Committee points out that for a number of years, the ILO supervisory bodies have been expressing concerns at the numerous violations of the Convention in law and in practice in Belarus. The Committee therefore reiterates its recommendation (b) and firmly urges the Government to investigate without delay each alleged instance of intimidation or physical violence through an independent judicial inquiry and invites the complainants to provide any additional information in its disposal to facilitate such investigations. It requests the Government to provide detailed information on their outcome.
97. The Committee notes with regret that the Labour Code was amended on 28 May 2021 to further restrict the right to strike by expressly allowing an employer to dismiss/terminate a labour contract with a worker who is absent from work in connection with serving an administrative penalty in the form of an administrative arrest; who forces other workers to participate in a strike or calls on other workers to stop performing work duties without sound reason; and who participates in an illegal strike or other forms of withholding labour without sound reasons (section 42(7)). The Committee recalls the BKDP allegations that numerous trade unionists who participated in mass events and strikes organized following the August 2020 presidential election were found guilty of administrative breaches and received corresponding penalty in the form of administrative arrest and the lists of workers who were subsequently dismissed. The Committee regrets that the amendment of the Labour Code would appear to facilitate the dismissal and penalization of workers for exercising their civil liberties and trade union rights and observes that this punishment is linked specifically to the exercise of industrial action without sound reason which would not appear to set an objective measure. Noting further the Government's explanation of the national legislation outlining when and how the right to strike can be exercised and the Government's general view that no legislative amendments are required to ensure the exercise of the right to strike in Belarus, the Committee once again recalls its specific request to the Government to amend its legislation, in consultation with the social partners, to ensure that workers are protected against any acts of discrimination for simply having peacefully exercised their right to strike to defend their occupational and economic interests, which do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions. The Committee urges the Government to provide information on all measures taken or envisaged to that end.

98. Further in this connection, when trade unionists or union leaders are dismissed for having exercised the right to strike, the Committee can only conclude that they have been punished for their trade union activities and have been discriminated against [see **Compilation**, paragraph 958]. The Committee considers that if it appears that the dismissals occurred as a result of involvement by the workers concerned in the activities of a union, the Government must ensure that those workers are reinstated in their jobs without loss of pay [see **Compilation**, paragraph 1169]. In light of the above conclusions concerning the restrictive nature of the legislation in this regard, the Committee urges the Government to ensure that all workers who have participated in the industrial actions referred to in this case will be reinstated in their jobs without loss of pay. The Committee requests the Government to provide information on all measures taken in this respect.
99. With regard to the alleged numerous cases of non-renewal of contract with trade union activists, the Committee notes that the Government reiterates that the termination of employment upon the expiry of a fixed-term employment contract cannot be considered as a dismissal by the employer. The Government further explains that under the law, the employer is not obliged to justify his or her unwillingness to extend an employment relationship upon the expiry of a contract. Thus, according to the Government, the expiry of a contract is already in itself sufficient grounds for its termination; there are no legal means of compelling an employer to conclude a new contract with a worker. The Committee once again recalls that the non-renewal of a contract for anti-union reasons constitutes a prejudicial act within the meaning of Article 1 of the Convention [see **Compilation**, paragraph 1093]. It observes that inadequate safeguards against acts of anti-union discrimination, including against non-renewal of contracts for anti-union reasons, may lead to the actual disappearance of primary level trade unions, which are composed only of workers in an undertaking. Additional measures should therefore be taken to ensure greater protection for leaders and members of trade unions against any such acts, including consideration of the adoption of measures for shifting the burden of proof in the event that a prima facie case of anti-union discrimination has been made. The Committee expects the Government to take, in consultation with the social partners, the necessary measures to adopt specific legislative provisions affording an adequate protection against cases of non-renewal of contracts for anti-union reasons. It requests the Government to provide information on all steps taken to that end.
100. The Committee recalls that it had urged 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. In particular, it expected the Government, as a member of the tripartite Council, to submit the Committee's comments on the issue of registration for the Council's consideration at one of its meetings as soon as possible. The Committee notes the Government's indication that the possibility of implementing the Committee's recommendation may be considered when the tripartite Council resumes its work once the epidemiological situation in the country has improved. To that end, a member of the tripartite Council, submitting this issue for discussion must also establish that the issue is one of concern. While noting that according to the Government, the issue of legal address for registration is not an unsurmountable obstacle to trade union activity in the country, the Committee observes the difficulties reported by the BKDP and the ITUC, and considers that the issue of legal address and registration of trade union organizations more generally, especially those affiliated to the BKDP, remains an issue of concern and thus once again requests the Government to put the issue of registration of trade union organizations, including the question of legal address requirement, on the agenda of the tripartite Council. The Committee expects the Government to provide detailed information on the outcome of the discussion by the tripartite Council.
101. The Committee observes with deep regret the absence of information on the measures taken by the Government to refrain from interference with the establishment of trade unions in private companies

and the lack of any public clarification that the decision to set up a trade union is solely at the discretion of workers themselves. Instead, the Government provides what appears to be a justification for the favouritism of the FPB at the higher levels of the State. The Committee further notes with deep concern that on 5 August 2021, in his televised meeting with the leader of the FPB, the Head of the State reiterated his previous statement and stressed that “if certain private companies had not understood his message, the Government should immediately discuss these issues and make specific proposals, including on liquidation of private companies that refuse to have trade union organizations”. The Committee draws the Government’s attention to the fact that all three ILO bodies that are examining the follow-up given to the recommendations of the Commission of Inquiry on Belarus in relation to the non-observance of Convention No. 87, i.e. this Committee, the Committee of Experts on the Application of Conventions and Recommendations and the CAS have concluded, that such demands by the country’s President constituted an interference with the establishment of trade union organizations and favouritism towards a particular trade union. The Committee therefore once again urges the Government to refrain from any interference with the establishment of trade unions in private companies, in particular from demanding the setting up of trade unions under the threat of liquidation of private companies otherwise; to clarify publicly that the decision whether or not to set up a trade union in private companies is solely at the discretion of the workers in these companies; and to refrain from showing favouritism towards any particular trade union in private companies. The Committee expects that all steps in this regard will be taken without delay.

- 102.** *The Committee recalls that it had urged the Government to amend Decree No. 3 of 25 May 2020 on the registration and use of foreign gratuitous aid, the Law on Mass Activities and the accompanying Regulation, and recalled 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. The Committee notes with deep regret that the Government merely reiterates the information it had previously provided and in particular, that it has no intention of amending the legislation as requested by the Commission of Inquiry, whose recommendations the Government accepted as per article 29(2) of the ILO Constitution, with follow-up of the implementation of the recommendations entrusted by the Governing Body to this Committee. The Committee notes that the Law on Mass Activities was amended on 24 May 2021 and observes with regret in this respect that according to the BKDP and publicly available information, the amendment aims at further tightening the requirements for holding public events as follows: the organization of mass events has to be authorized by municipal authorities; funds cannot be raised, money and other assets cannot be received and used, services cannot be rendered in order to compensate for the cost caused by prosecution for violating the established procedure of organization of mass events; public associations will be held responsible if their leaders and members of their governing bodies make public calls for organizing a mass event before the permission to organize the event is granted.*
- 103.** *The Committee further notes with deep regret that on 8 June 2021, the Criminal Code was amended so as to introduce the further restrictions on trade union rights as follows: repeated violations of the procedure for organizing and holding of mass events, including public calls therefor, are punishable by arrest, or restraint of liberty or imprisonment of up to three years (section 342-2); insult of a government official is punishable by a fine and/or restriction of liberty or imprisonment for up to three years (section 369); the penalty for “discrediting the Republic of Belarus” was increased from two to four years imprisonment with a fine (section 369-1); section 369-3 of the Criminal Code has been retitled from “violation of procedure for organizing and holding of mass events” to “public calls for the organization or conduct of an illegal meeting, rally, street procession, demonstration or*

*picketing, or the involvement of persons in such mass events”, which became an offence punishable by up to five years of imprisonment. The BKDP points out that criminal liability can now be established simply for organizing peaceful assemblies and that any criticism and slogans are seen by the authorities as insults within the meaning of section 369 of the Criminal Code. The BKDP alleges that there are many precedents of bringing citizens, including members of independent trade unions, to criminal responsibility under section 369 of the Criminal Code. The Committee recalls that the right to express opinions, including those criticizing the Government’s economic and social policy, is one of the essential elements of the rights of occupational organizations [see **Compilation**, paragraph 245]. The Committee reiterates its previous request to amend without further delay and in consultation with the social partners, Decree No. 3, the Law on Mass Activities and the accompanying Regulation (Ordinance No. 49 of the Council of Ministers), as per the outstanding recommendations of the Commission of Inquiry and this Committee. With reference to the considerations above, the Committee further requests the Government to repeal the above-mentioned amended provisions of the Criminal Code in order to bring them into compliance with the Government’s international obligations regarding freedom of association.*

- 104.** *The Committee recalls that it had previously strongly encouraged 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 non-judicial dispute resolution mechanism which could deal with labour disputes involving individual, collective and trade union matters. Noting the Government’s stated interest in working thereon, the Committee requests the Government to keep it informed of the measures taken or envisaged in this regard.*
- 105.** *The Committee notes with concern the BKDP allegation that laws and regulations affecting labour and social interests of people are adopted without due public discussion and coordination with the interested parties. The BKDP alleges that it is also being excluded from the process and that its Chairperson was not invited to the meeting of the NCLSI in 2020, nor to the meeting held on 29 April 2021 by videoconference to discuss the preparation of the draft General Agreement for 2022–24, nor to the meeting held on 28 July 2021, also by videoconference, to discuss the issue of economic sanctions imposed on the country. The BKDP indicates that on 15 July 2021 it sent a letter to the Ministry of Labour and Social Protection suggesting to convene a meeting of the tripartite Council to discuss the possibility of developing an action plan for the implementation of the conclusions of the Conference Committee and the recommendations of the Commission of Inquiry, but that it received no reply. The Committee notes the Government’s indication that various actions it has taken – the steps to develop the social partnership system which involves all interested trade unions and employers’ associations in the dialogue, its constructive cooperation with the ILO to implement the Commission of Inquiry’s recommendations and its openness to further cooperation – confirm the commitment of Belarus to the underlying principles and rights at work and its readiness to continue to engage on issues of concern raised by the parties. Recalling the Government’s own assertion that the best manner of resolving any pending issues is through tripartite social dialogue, the Committee firmly expects that the Government will fully engage with the social partners, the ILO, as well as relevant national institutions and bodies, with a view to improving the functioning, procedures and the work of the tripartite Council aimed at enhancing its impact in addressing the issues stemming from the recommendations of the Commission of Inquiry and other ILO supervisory bodies.*

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- 106.** *The Committee is obliged to note with deep regret the lack of progress towards full implementation of the 2004 Commission of Inquiry recommendations. It notes with grave concern that the Government’s expressed lack of intention to amend the legislation, which the ILO supervisory bodies considered to be in violation of freedom of association, and the absence of measures of redress*

against violation of trade union rights as per the Committee's request demonstrate a lack of commitment to ensure respect for its obligations under the ILO Constitution. The Committee therefore urges the Government to pursue its efforts and 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 and ensure effective implementation of the ratified Conventions without further delay. Noting with deep regret the serious retreat on the part of the Government from its ILO constitutional obligations and its commitment to implement the Commission of Inquiry recommendations 17 years ago, the Committee draws this serious situation to the attention of the Governing Body so that it may consider any further measures to secure compliance therewith.

► The Committee's recommendations

107. 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 take the necessary measures to ensure that no person is detained in connection with his or her participation in a peaceful industrial action or protest. The Committee further urges the Government to take the necessary measures to ensure that all persons who have been arrested and/or detained for their participation in a peaceful industrial action or protest are adequately compensated for damages suffered. It requests the Government to indicate all measures taken to that end. The Committee once again stresses the need to ensure an impartial and independent judiciary and justice administration in general in order to guarantee that investigations into these grave allegations are truly independent, neutral, objective and impartial. Accordingly, the Committee requests the Government to take the necessary measures, including legislative if necessary, to supply copies of the relevant court decisions upholding detention and imprisonment of workers and trade unionists. The Committee also requests the BKDP to provide any judicial decisions in its possession concerning its members.**
- (b) **The Committee refers to recommendation 8 of the Commission of Inquiry on Belarus, which considered that 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.). The Committee firmly urges the Government to investigate without delay each alleged instance of intimidation or physical violence through an independent judicial inquiry and invites the complainants to provide any additional information in its disposal to facilitate such investigations. It requests the Government to provide detailed information on their outcome. Further in this respect, the Committee, with reference to the recommendations of the Commission of Inquiry, stresses the need to ensure an impartial and independent judiciary and justice administration in general in order to guarantee that investigations into these grave allegations are truly independent, neutral, objective and impartial.**
- (c) **The Committee once again recalls its specific request to the Government to amend its legislation, in consultation with the social partners, to ensure that**

workers are protected against any acts of discrimination for simply having peacefully exercised their right to strike to defend their occupational and economic interests, which do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions. The Committee urges the Government to provide information on all measures taken or envisaged to that end.

- (d) The Committee urges the Government to ensure that all workers who have participated in the industrial actions referred to in this case will be reinstated in their jobs without loss of pay. The Committee requests the Government to provide information on all measures taken in this respect.
- (e) The Committee expects the Government to take, in consultation with the social partners, the necessary measures in order to adopt specific legislative provisions affording an adequate protection against cases of non-renewal of contracts for anti-union reasons. It requests the Government to provide information on all steps taken to that end.
- (f) The Committee considers that the issue of legal address and registration of trade union organizations more generally, especially those affiliated to the BKDP, remains an issue of concern and thus once again requests the Government to put the issue of registration of trade union organizations, including the question of legal address requirement, on the agenda of the tripartite Council. The Committee expects the Government to provide detailed information on the outcome of the discussion by the tripartite Council.
- (g) The Committee once again urges the Government to refrain from any interference with the establishment of trade unions in private companies, in particular from demanding the setting up of trade unions under the threat of liquidation of private companies otherwise; to clarify publicly that the decision whether or not to set up a trade union in private companies is solely at the discretion of the workers in these companies; and to refrain from showing favouritism towards any particular trade union in private companies. The Committee expects that all steps in this regard will be taken without delay.
- (h) The Committee once again urges the Government, in consultation with the social partners, to amend the Law on Mass Activities and the accompanying Regulation, as well as Decree No 3 on the registration and use of foreign gratuitous aid in the very near future and requests the Government to provide information on all measures taken in this respect as soon as possible. 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. The Committee further requests the Government to repeal the above-mentioned amended provisions of the Criminal Code in order to bring them into compliance with the Government's international obligations regarding freedom of association. The Committee requests the Government to provide information on all measures taken to that end and invites the Government to avail itself of ILO technical assistance in this respect.

- (i) **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, non-judicial 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.**
- (j) **The Committee firmly expects that the Government will fully engage with the social partners, the ILO, as well as relevant national institutions and bodies, with a view to improving the functioning, procedures and the work of the tripartite Council aimed at enhancing its impact in addressing the issues stemming from the recommendations of the Commission of Inquiry and other ILO supervisory bodies.**
- (k) **The Committee urges the Government to pursue its efforts and 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 and ensure effective implementation of the ratified Conventions without further delay.**
- (l) **Noting with deep regret the serious retreat on the part of the Government from its ILO constitutional obligations and its commitment to implement the Commission of Inquiry recommendations 17 years ago, the Committee draws this serious situation to the attention of the Governing Body so that it may consider any further measures to secure compliance therewith.**