



Governing Body

346th Session, Geneva, October–November 2022

Institutional Section

INS

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Thirteenth item on the agenda

Consideration of any further measures, including those foreseen in the ILO Constitution, to secure compliance by the Government of Belarus with the recommendations of the Commission of Inquiry

▶ Background

1. At its 291st Session (November 2004), the Governing Body took note of the Report 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), the Commission's recommendations and the deadline of 1 June 2005 set by the Commission for their implementation, and the Commission's consideration that the implementation of its recommendations should be followed up by the Committee on Freedom of Association.
2. Subsequently, the Committee on Freedom of Association examined the matter on 12 occasions, of which the last one, contained in its [398th Report](#), was approved by the Governing Body at its 344th Session (March 2022).
3. On that occasion, the Committee made a number of recommendations and urged the Government "to pursue its efforts" and further expected "that the Government, with the assistance of the ILO and in consultation with the social partners, [would] take the necessary steps to fully implement all outstanding recommendations and ensure effective implementation of the ratified Conventions without further delay". Furthermore, "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 [drew] this serious situation to the attention of the Governing Body so that it may consider any further measures to secure compliance therewith”.

4. In its [2021 observation](#) on the application of Convention No. 87 in Belarus, the Committee of Experts on the Application of Conventions and Recommendations, following-up on the 2021 conclusions of the Committee on the Application of Standards and on the recommendations of the Commission of Inquiry, noted that there had been no meaningful progress towards full implementation of the 2004 Commission of Inquiry recommendations, and noted with grave concern that the recent developments and the apparent lack of action on the part of the Government to follow up on the conclusions of the Conference Committee in consultation with all the social partners in the country would appear to demonstrate a lack of commitment to ensure respect for its obligations under the ILO Constitution. It requested the Government to reply to its comments in 2022.
5. In June 2022, in the context of its consideration of the application of Convention No. 87 in Belarus, the Committee on the Application of Standards noted the long-standing nature of this case, “expressed its deep concern that, 18 years after the Commission of Inquiry’s report, the Government had failed to take measures to address most of the Commission’s recommendations”, “deplored and deeply regretted the allegations of extreme violence to repress peaceful protests and assembly, and the detention, imprisonment and violent treatment of workers while in custody” and further “deplored the escalating measures deployed to repress trade union activities, as well as the systemic destruction of independent trade unions”. The Conference Committee reiterated its 2021 conclusions and furthermore urged the Government, in consultation with the social partners, to restore without delay full respect for workers’ rights in respect of freedom of association; refrain from the arrest, detention, violent treatment, intimidation or harassment, including judicial harassment, of trade union leaders and members conducting lawful trade union activities; investigate without delay alleged instances of intimidation or physical violence through an independent judicial inquiry; immediately release all trade union leaders and members arrested for participating in peaceful assemblies or arrested for exercising their civil liberties pursuant to their legitimate trade union activities and drop all related charges; and give access, as a matter of urgency, to visitors, including officials of the ILO, to ascertain the conditions of arrest and detention and the welfare of the abovementioned persons.
6. The Committee on the Application of Standards decided to include its conclusions in a special paragraph of the report and to mention this case as a case of continued failure to implement the Convention. It further referred this matter to the Governing Body to follow up at its June 2022 session and consider, at that time, any further measure, including those foreseen in the ILO Constitution, to secure compliance with the recommendations of the Commission of Inquiry.
7. In the context of its consideration of the questions arising from the 110th Session of the International Labour Conference requiring immediate action, the Governing Body, having taken note of the [conclusions of the Committee on the Application of Standards concerning the case of Belarus](#), approved by the International Labour Conference:
 - (a) decided to include on the agenda of its 346th Session (October–November 2022) an item entitled “Consideration of any further measure, including those foreseen in the ILO Constitution, to secure compliance by the Government of Belarus with the recommendations of the Commission of Inquiry”; and
 - (b) invited the Director-General to prepare a report for its consideration.¹

¹ GB.345/PV/Draft, para. 37.

▶ Latest developments

8. Despite repeated requests to that effect, the Office has not thus far been given access to the persons detained to ascertain the conditions of arrest and detention. Currently, there are a total of 23 trade unionists who are detained or whose freedom of movement is restrained: 11 trade unionists remain in detention pending trial while another 2 are subject to travel ban pending trial; 8 trade unionists are serving their respective sentences in prison, correctional facility or penal colonies; and 2 are serving their sentences under house arrest. Moreover, at present, following the Supreme Court decision calling for the dissolution of the independent trade unions, the Belarusian Congress of Democratic Trade Unions and other affiliated trade unions undergoing liquidation procedures, with the Belarusian Independent Trade Union liquidation procedure completed on 26 September 2022.

▶ Previous consideration of measures under the ILO Constitution

9. It may be recalled that in [June 2006](#), the Conference Committee on the Application of Standards had requested the Governing Body to consider possible measures to secure compliance by Belarus of the Commission of Inquiry recommendations. The Government Body subsequently considered the matter in November 2006,² March 2007,³ November 2007,⁴ March 2008,⁵ November 2008⁶ and March 2009,⁷ when it noted a plan of action of the Government of Belarus on the implementation of the recommendations of the Commission of Inquiry. Progress on this plan was the subject of further consideration by the ILO supervisory bodies with the most recent conclusions set out in paragraphs 1 to 6 above.

▶ Measures to be considered by the Governing Body

10. At this stage, the Governing Body is invited to consider any measures in order to secure compliance by the Government with the recommendations of the Commission of Inquiry. These could include measures that fall within its competence and measures that could be considered by the Conference under article 33 of the Constitution. In this framework, the Governing Body could decide to put in place a process of gradually escalating measures and recommending more drastic measures by the Conference at a later stage. On the other hand, there is no obligation for the Governing Body to do so and the Governing Body could decide to consider directly the use of article 33, having regard notably to the converging assessment of the three supervisory bodies.
11. The Governing Body could consider taking at its forthcoming session in March measures falling within its primary area of competence such as a suspension to invitations other than the

² GB.297/9.

³ GB.298/6 and [Conclusions](#).

⁴ GB.300/9, GB.300/9/1 and [Conclusions](#).

⁵ GB.301/17/4 and [Conclusions](#).

⁶ GB.303/19/2.

⁷ GB.304/14/3.

Conference. It could also request the Director-General to contact other international organizations addressing the human rights situation in the country so as to coordinate actions aimed at seeking steps from the Government in line with its obligations deriving from its membership of the respective organizations.

12. With respect to article 33 of the Constitution, that provision states that “in the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry ... the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith”. This article is the result of an amendment adopted in 1946 with the purpose of removing reference solely to the economic sanctions that could be imposed on a Member in the event of its failing to carry out the recommendations of a Commission of Inquiry. The intention of the article was to leave the Governing Body full discretion to adapt its action to the circumstances of the particular case. Measures under this article were adopted for the first time by the International Labour Conference in 2000 in relation to the failure of the Government of Myanmar to carry out the recommendations of the Commission of Inquiry concerning the application of the Forced Labour Convention, 1930 (No. 29).
13. Application of article 33 of the Constitution implies, on the one hand, that the item be placed on the agenda of the International Labour Conference and, on the other, that the Governing Body has at its disposal information allowing it to propose for adoption those recommendations of the Conference which it considers appropriate to secure compliance with the Commission of Inquiry's recommendations on the part of the Member in question. This information concerns both the nature of the measures that the Governing Body might recommend to the Conference for adoption by the latter and the Member's failure to comply with the Commission of Inquiry's recommendations. The Governing Body could thus consider the placement on the agenda of the 111th Session of the Conference (June 2023) of an item entitled: “Action recommended by the Governing Body under article 33 of the Constitution – Implementation of the recommendations contained in the report of the Commission of Inquiry: Trade union rights in Belarus”. In March 2023, the Governing Body would consider the measures that it would propose to the Conference for adoption. As regards the nature of the measures that the Governing Body may recommend, the only guidance is to be found in article 33 which provides that measures should be “wise” and “expedient”. In preparing the Governing Body's discussion that finally led to the adoption of measures under article 33 against Myanmar, the Office elaborated on the nature and limits of such measures. Concretely, measures under article 33:
 - may be of an economic or other character;
 - must lie within the competence of the Conference;
 - must satisfy to the principles of proportionality and necessity, meaning that they should not exceed what is practically necessary for ensuring effective and timely compliance.⁸
14. Subject to the decision of the Governing Body, the Office could submit to the 347th Session (March 2023) a paper detailing the various options, taking account of the views expressed during the discussion at the current session to facilitate an informed decision on possible recommendations under article 33 of the Constitution. Given that it is a question of freedom of association, it would seem appropriate that any assessment of the situation would be done

⁸ GB.277/6, para.12

by the Committee on Freedom of Association and reported by it to the Governing Body at that time.

▶ Draft decision

15. The Governing Body, on the recommendation of its Officers:

- (a) deplored that no progress had been made by the Government of Belarus in implementing the recommendations of the 2004 Commission of Inquiry;
- (b) urged the Government to ensure full respect for freedom of association and, in particular, revoke all legislative and other measures directly or indirectly having the effect of outlawing independent trade unions or employers' organizations;
- (c) urged the Government to immediately release all trade union leaders and members arrested for participating in peaceful assemblies or arrested for exercising their civil liberties pursuant to their legitimate trade union activities and drop all related charges;
- (d) urged the Government to allow the ILO, as a matter of urgency, to ascertain the conditions of arrest and detention and the welfare of the above-mentioned trade unionists;
- (e) noted that the Committee of Experts on the Application of Conventions and Recommendations will be reviewing the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) in Belarus at its November–December 2022 meeting;
- (f) urged the Government to submit all information regarding the measures taken to implement all outstanding recommendations of the Commission of Inquiry and in respect of the more recent developments forming part of the complaint to the Committee on Freedom of Association for its examination at its March 2023 meeting;
- (g) requested the Director-General to submit to the Governing Body at its 347th Session (March 2023) a document detailing options for measures under article 33 of the ILO Constitution as well as other measures to secure compliance by the Government of Belarus with the recommendations of the Commission of Inquiry taking account of the views expressed;
- (h) decided to place on the agenda of the 111th Session (2023) of the International Labour Conference an item concerning measures under article 33 of the ILO Constitution to secure compliance by the Government of Belarus with the recommendations of the Commission of Inquiry.