



## SEVENTH ITEM ON THE AGENDA

**345th Report of the Committee  
on Freedom of Association***Contents*

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

## **A. Introduction**

- 1.** The Committee of Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 8, 9 and 16 March 2007, under the chairmanship of Professor Paul van der Heijden.
- 2.** Subsequent to the decision of the Governing Body, at its 291st Session, that the implementation of the recommendations of the Commission of Inquiry established to examine the observance by the Government of Belarus of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), should be followed up by the Committee on Freedom of Association, the Committee last examined this matter in its 341st Report (March 2006), which was approved by the Governing Body at its 295th Session.
- 3.** On that occasion, the Committee made the following recommendations:
  - (a) The Committee is obliged to express in the strongest terms its deep concern that, rather than making good faith efforts to implement the recommendations of the Commission of Inquiry, the Government is on a path to eliminating all remnants of an independent trade union movement in Belarus, apparently hoping that in this way there in effect will be no further sources of complaint. The Committee can only, therefore, reiterate its previous recommendations and urge the Government in the strongest of terms to take appropriate and concrete measures immediately so as to ensure that workers may form and join organizations outside the FPB freely and without pressure or intimidation on the part of enterprise management or the public authorities and that these organizations may exercise their activities without Government interference.
  - (b) The Committee calls upon the Government to take the necessary measures to ensure that the CDTU has a seat on the NCLSI so that its voice may be truly heard within the social dialogue at the national level.
  - (c) The Committee expects that the Government will transmit any new drafts of the Law on Trade Unions to the ILO for advice in terms of its conformity with international labour standards and the recommendations of the Commission of Inquiry before placing them before the Parliament for adoption. The Committee requests the Government to keep it informed of all developments in respect of this Law.
  - (d) The Committee expects that the Government will pursue the instructions to be given to enterprises in a more systematic and accelerated manner so as to ensure that enterprise managers and directors do not interfere in the internal affairs of trade unions, and that they will respect the autonomy of trade unions.
  - (e) The Committee urges the Government to redress immediately the situation of those workers that have suffered consequences for cooperating with the Commission of Inquiry and refers specifically in this respect to Messrs. Gaichenko, Dukhomenko, Obukhov, Shaitor, Dolbik and Sherbo. It further requests the Government to ensure that Mr. Stukov's rights and benefits acquired through previous years of employment are maintained.

- (f) The Committee urges the Government to provide detailed information on the steps taken to ensure the immediate registration of the primary-level organizations that were the subject of the complaint and to ensure the workers in those enterprises where the primary-level organization has been wound down are rapidly and duly informed of their right to form and join organizations of their own choosing without interference and that the registration of any such newly created organization is rapidly effectuated.
  - (g) The Committee urges the Government to establish an independent investigation into the allegations that the non-registration of primary organizations has led to the denial of registration of three regional organizations of the Belarusian Free Trade Union (BFTU) (organizations in Mogilev, Baranovichi and Novopolotsk-Polotsk) and to take the necessary measures to ensure the registration of the primary organizations of the BFTU which had been denied registration so that the regional organizations may once again be registered.
  - (h) The Committee once again urges the Government to take measures immediately to amend Decree No. 2 and its rules and regulations so as to eliminate the obstacles caused by the legal address requirement and by the 10 per cent minimum membership requirement at enterprise level. It further requests the Government to take the necessary measures to disband the Republican Registration Commission.
  - (i) The Committee urgently requests the Government to make a public declaration condemning interference in trade union affairs and to issue instructions to the Prosecutor-General, Minister of Justice and court administrators to thoroughly investigate complaints of interference. The Committee further requests the Government to publish the conclusions and recommendations of the Commission of Inquiry fully at national level and to ensure a wide distribution to the working men and women of Belarus.
  - (j) The Committee requests the Government to indicate the measures taken to implement the recommendations made by the United Nations Special Rapporteur on the independence of judges and lawyers.
  - (k) The Committee urges the Government to take the necessary measures immediately to amend Decree No. 24 so as to ensure that workers' and employers' organizations may effectively organize their administration and activities and benefit from assistance from international organizations in conformity with Articles 5 and 6 of the Convention.
  - (l) The Committee urges the Government to take the necessary measures immediately to amend the Law on Mass Activities (as well as Decree No. 11 if it has not been repealed) so as to bring it in line with the right of workers' and employers' organizations to organize their activities.
  - (m) The Committee requests the Government to provide full details on the steps taken to implement the above recommendations.
  - (n) The Committee urges the Government to reply to the latest allegations from the Congress of Democratic Trade Unions (CDTU) and the Radio and Electronic Workers' Union (REWU) as a matter of urgency.
- 4.** The Radio and Electronic Workers' Union (REWU) sent new allegations relating to the recommendations of the Commission of Inquiry in communications dated 23 March 2006 and 16 January 2007. The International Trade Union Confederation (ITUC) submitted new allegations on 8 January 2007.
- 5.** The Government transmitted its observations on the measures taken to implement the Commission of Inquiry recommendations in a communication dated 20 February 2007.
- 6.** The Committee has examined the information contained in the Government's communication and the new allegations provided by the REWU and the ITUC. 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 23 March 2006 and 16 January 2007, the REWU indicated that violations of trade union rights continued in Belarus. In particular, the REWU referred to the obstacles to registration of its primary trade union organizations, such as the requirement of a legal address and the systematic refusal to register trade unions on various illegal pretexts. Judicial reviews of a large number of refusals to register primary union organizations require considerable financial and human resources, which the union does not have. Firstly, such reviews or appeals often involve numerous administrative and judicial procedures. Secondly, a union bringing a complaint before the court is required to pay duty of 62,000 Belarus roubles (US\$30).
8. According to the REWU, there has not, during the last decade, been a single case of a primary trade union organization being granted registration after applying to the courts. The courts always take the side of the registration authorities and reject complaints brought by members of the REWU. By way of example, the REWU referred to the cases of continuing refusal to register its primary organizations at the following enterprises: the Minsk Automobile Plant (MAZ), the Mogilev Automobile Plant (MoAZ), and the "Planar" Design Bureau of Precision Electronic Engineering. The REWU further referred to the following new cases of refusal to register its organizations. In May 2006, the Grodno City executive committee refused to register the Grodno City REWU primary trade union without providing any justification for the decision. Also unregistered since May 2006 is the REWU primary trade union at "Avtopark No. 1". Since September 2006, the Borisov municipal executive committee is examining the question of registration of the Borisov municipal REWU primary trade union. The registering authorities seem to look for trivial errors of form such as font size and line spacing to refuse registration. In November 2006, despite the fact that the union had submitted all necessary documents, including a copy of the lease for the union's premises (legal address), the Mogilev executive committee refused de facto (but without taking a formal decision in this respect) to register the Mogilev primary trade union for the second time. Officials of the municipal executive committee stated orally that confirmation of the legal address was required. The union has lodged a complaint with the Mogilev regional executive committee in connection with the actions of the officials of the municipal executive committee.
9. The REWU also stated that, while the Ministry of Justice registered new amendments to the REWU's by-laws on 11 January 2006, the Radio and Electronics, Automobile and Agricultural Machinery Workers' Union (REAAMWU), which had ceased to operate in July 2004 following the annulment by the Ministry of Justice of the union's by-laws registered in April 2004, was not re-established on the records.
10. The REWU further alleged that the authorities and certain employers interfere in trade union internal affairs and that its members suffered anti-union pressure from certain employers. The REWU referred to the case of its primary trade union at the Mogilev Plant of Artificial Fibre ("Mogilev ZIV"), the administration of which has more than once attempted to put pressure on the REWU's members. In February 2006, the plant director issued an order banning the transfers of trade union membership dues to the union's account on the grounds that the primary union organization was not registered. In April 2006, the employer cancelled a contract with the leader of the primary organization Mr Vladimir Tuzovy on the grounds that he had reached retirement age, despite the fact that many workers of retirement age continued to be employed. The director of the plant refused to meet with the leaders of the REWU, stating that the management could not collaborate with the independent trade union because it has fewer members than the

pro-government union. Furthermore, the management of the plant refused to provide a legal address for the primary union organization and its leader has been denied access to the company's premises. Every month, the management forced union members to copy statements about their membership with the aim of forcing them to leave the union.

11. The REWU also made reference to the violation of trade union rights at the "Avtopark No. 1" in Gomel where the management of the company, using threats of eviction from their residences and dismissal, forced workers to leave their union. More specifically, the REWU considers that the management of the enterprise is responsible for the death on 27 February 2006 of a 22-year-old driver, one of the activists of the union. The REWU considers that the management put a great deal of stress on the union activist by pressuring him to leave the union and threatening him with dismissal.
12. Furthermore, in March 2006, Mr Aleksandr Evseychuk, the leader of the REWU's section representing workers at "Avtopark No. 1", was fined 310,000 roubles (half of his monthly wages) for his activities on behalf of a supposedly "unregistered" organization. The management, worried about the prospect of having an independent union, resolved to take preventive action and informed the law enforcement authorities that Mr Evseychuk was gathering statements from drivers of their intention to join a non-existent union. He was arrested during a workforce meeting and taken to the police station. The union appealed against the fine imposed on the trade union leader but the decision to impose the fine was upheld. In April 2006, the management of "Avtopark No. 1" decided to get rid of the union activist and informed the union that Mr Evseychuk was to be dismissed for unauthorized absence. Lawyers acting for the union proved that the employer had violated the terms of the worker's employment contract. While Mr Evseychuk could resign and benefit from severance pay, his employment book has not yet been returned to him.
13. On 31 May 2006, another trade union activist, Mr Sergey Shvedov, was dismissed from "Avtopark No. 1" for conveying passengers without valid tickets. The union alleged that the enterprise ordered special checks of the union members during shifts to find pretexts to dismiss them. To contest the dismissal and to obtain the reinstatement of Mr Shvedov and payment of his wages for the period of his enforced absence from work, the union initiated proceedings before the district court. On 7 September, the Gomel regional court quashed the decision of the district court and ordered a review of the case. Mr Shvedov has still not been reinstated and the proceedings continue.
14. In March 2006, the union lodged a complaint with the Office of the Prosecutor of the Sovetskiy district in Gomel. By a letter of 20 April 2006, the union was informed that an inspection had failed to establish any evidence of violation of workers' rights, therefore there were no grounds for any action by the Office of the Prosecutor. The union appealed to the Gomel regional Prosecutor's Office, which instructed the Sovetskiy district Prosecutor's Office to re-examine the union's case. However, instead of investigating the alleged violations of trade union rights, the latter asked the Ministry of Justice for an opinion as to whether it was legal for workers of "Avtopark No. 1" to belong to the REWU. By its letter dated 11 July 2006, the Ministry replied that the REWU membership was open only to persons employed or undergoing training in organizations within the radio and electronics industry; workers in other sectors of the economy could join only if they were retired or dismissed. The union appealed to the Minister of Justice to revoke its erroneous interpretation of the union by-laws. The Minister declined to do so and informed that the Head of the State was examining a new trade union legislation, which would simplify the registration process.
15. On 11 November 2006, the second plenary meeting of the Council of the REWU was held to give the following interpretation of paragraphs 1.1 and 3.1 of the union by-laws: membership of the union was open to workers or trainees of all sectors of the economy

without exception, to those employed at any institution or organization irrespective of the form of ownership, as well as to persons who have lost their jobs, and pensioners. This interpretation was submitted to the Ministry of Justice together with a request to revoke its opinion of 11 July 2006. By a letter dated 30 November 2006, the Ministry informed that it disagreed with the union's interpretation. The REWU considers that the deliberate distortion of its by-laws by the Ministry of Justice in order to restrict membership rights constitutes interference in the union's affairs.

16. In early November 2006, members of the REWU and other workers at the enterprise were informed that their contracts were to be terminated as from 1 December 2006. As regards the members of the union, it was declared that members of a union not affiliated to the Federation of Trade Unions of Belarus (FPB) should not work at the enterprise. The union lodged a complaint with the Ministry of Transport alleging that officials of "Avtopark No. 1" had violated the legislation by infringing workers' rights to freedom of association and committing acts of anti-union discrimination. However, in its letter dated 21 December 2006, the Ministry of Transport explained that, in the light of the explanation given by the Ministry of Justice and the information received from the Office of the Prosecutor of Sovetskiy district in Gomel, it did not consider that there had been any violation of the rights of the REWU members.
17. The REWU further reported several cases of detention of trade union representatives and activists. More specifically, it referred to the case of the arrest of Mr Victor Kozlov, the REWU representative for Gomel region, who, on 17 March 2006, was arrested and taken to the police station where he was detained for two hours. All documents seized from him related to trade union activities, including the applications to join the trade union at "Avtopark No. 1" and trade union bulletins, were not returned. Another trade union member was arrested and detained for 24 hours in Borisov on 18 March 2006 before she was brought before the judge and imposed a fine equivalent to US\$72. Mr Ivan Roman was arrested and detained twice: first from 18 to 20 March 2006 and then, on 23 March 2006, when he was charged with an offence of minor hooliganism and sentenced to 13 days' detention.
18. In its communication of 8 January 2007, the ITUC transmitted a report "Trade union rights in Belarus – Follow-up to the recommendations of the ILO Commission of Inquiry". In this report, the ITUC referred to a number of independent trade union organizations, which still suffered repression and to the Concept Note of the Law on Trade Unions, prepared by the Government and scheduled to become law in 2007. In the ITUC's view, the new legislation would strengthen the trade union monopoly, destroy all the remnants of an independent trade union movement and would further exacerbate obstacles for such unions to develop. While there were fewer instances of trade union discrimination against members of the Congress of Democratic Trade Unions (CDTU) in 2006 than in previous years, the ITUC attributed this to the real threat of international sanctions. The ITUC considered that nothing had happened in Belarus in terms of law or practice, which would justify a decrease in the ILO's attention to the situation in the country. No progress had been achieved with regard to trade union registration, amendment of legislation, or inquiries into claims of trade union discrimination and harassment. The ITUC provided the following information in respect of each of the recommendations of the Commission of Inquiry.

#### **Recommendation No. 1 – Immediate registration of primary-level organizations**

19. No real progress can be noticed with regard to trade union registration. While the Ministry of Justice published a statement on its web site on 20 December 2006 to reiterate citizens'

right to form trade unions of their own choosing, as stipulated in the national law, the Government had confirmed on different occasions that all trade union organizations would have to reapply for registration and that their applications would be reviewed on the basis of existing legislation, including Decree No. 2, its rules and regulations. The organizations that did not meet the legislative requirements, including the legal address or the 10 per cent membership requirement, would therefore not be registered at this point, and would only be able to operate as unions without legal personality once the new Law on Trade Unions came into force.

20. While the REWU has been trying to obtain its registration through the courts, exhausting all instances to no avail and incurring heavy court expenses, the CDTU gave up its attempts to register organizations, which could not obtain a legal address.
21. The Government has never ordered any enterprise managers to provide trade union organizations with premises. While the “Steklovolokno” enterprise primary trade union (Polotsk) was finally granted a legal address, many independent trade unions still operate as “illegal” organizations. In August 2006, another independent trade union, the Belarusian Free Trade Union (BFTU) primary organization at the “Kamvol” company, was threatened with deregistration, as the Ministry of Justice questioned the documents that proved the legal address.
22. The REWU Mogilev City primary organization, which affiliates workers of a number of undertakings listed in the report of the Commission of Inquiry as the CDTU affiliates and now affiliated to the REWU (MoAZ, “Mogilev ZIV”, Mogilev hairdressing salons, Alexandrina, Uspekh, Pavlinka) were denied registration twice, in January and June 2006.
23. On 3 January 2007, the REWU primary organization of Borisov City was denied registration for the fifth time. As explained by the head of the ideology department of the Borisov City executive committee, the organization could not be registered because the application was written in font size 14 instead of the required 14.5. The organization was given two weeks to correct this mistake. In the view of the REWU leadership, the city authorities would use any excuse to deny the registration. In May 2006, the Grodno City executive committee refused to register the Grodno City REWU primary organization without any explanation other than that the authorities considered it inexpedient to include the trade union organization into the register. In the meantime, and in a similar manner, the Gomel City Sovietsky District Administration decided that there were no sufficient grounds to include “Avtopark No. 1” primary organization of the REWU in the register.

### **Recommendation No. 2 – Amendment of Decree No. 2 and its rules and regulations to eliminate obstacles to registration**

24. On 9 October 2006, the President of the Republic of Belarus signed Decree No. 605 “on some aspects of the state registration of public associations and their unions” and approved the concept of the Law on Trade Unions. The presidential press service stressed that this document essentially simplified the establishment process and the functioning of trade unions, which it qualified as “one of the most powerful supports of the state”. The only purpose of the Decree is to dissolve the Republican Registration Commission and to transfer its powers to other state bodies. The “simplified” procedure for trade union establishment would be regulated, according to the Concept Note, under the Law on Trade Unions. Unlike FPB, independent trade unions were not consulted during the process of drafting and adopting the Decree and the Concept Note.

- 25.** The draft law, as explained in the Concept Note, would further aggravate the danger that all remnants of an independent trade union movement in Belarus would be eliminated. According to the Concept Note, where a union or a primary-level organization established at an enterprise represents 75 per cent of all employees at the enterprise and has already signed a collective agreement with the employer, no other primary-level organization can be registered. This concerns organizations that wish to obtain legal personality as well as those that do not. An unregistered trade union organization would be illegal. This new rule would preclude the registration of the overwhelming majority of trade unions not affiliated to the FPB, which represents over 4 million workers. As Belarus' workforce was estimated to be 4.3 million, there is no doubt that primary trade union organizations within the FPB structure would meet the 75 per cent threshold. Furthermore, there was little doubt that these trade union organizations had been properly registered and were able to have a collective agreement with the employer. If workers would not be able to establish enterprise-level trade union organizations outside the FPB structure, this would create a spillover effect for the higher-level organizations, since a trade union association would not be able to register unless it comprised two or more registered organizations of the same type.
- 26.** There is a theoretical possibility of creating a territorial trade union association with structural units in different enterprises, thus bypassing the 75 per cent rule. However, in this case the territorial trade union should comprise at least 1,500 founding members from the majority of districts of the region, or the majority of administrative-territorial units of a district, or a majority of organizations of a city. If the only option of creating an independent trade union is to follow this procedure, then the prerequisites are clearly excessive and unreasonable, and in breach of Article 2 of Convention No. 87. Moreover, such a system would violate the right of trade unions to freely organize their administration and to draw up their rules enshrined in Article 3 of the Convention. Therefore, the 75 per cent rule allows the FPB to establish a trade union monopoly and deprives Belarusian workers of the right to establish organizations of their own choosing.
- 27.** The Government has not abolished the minimum 10 per cent membership and the legal address requirements. While Chapter 2 of the Law would provide that an enterprise-level trade union must comprise at least three founding members working or studying at the same organization, according to Chapter 3, a trade union, which wishes to have legal personality, must comprise at least 10 per cent of employees or students at the relevant organization and no less than ten persons. Trade unions that do not wish to have legal personality must only indicate an address for correspondence. Therefore, trade unions seeking to obtain legal personality would still need to have a legal address. According to the concept, all higher-level trade unions must have legal personality and must therefore follow the rules for obtaining legal personality. Therefore, as long as the Government maintains unacceptable rules regarding the establishment of trade unions with legal personality, no substantial progress regarding Recommendation No. 2 can be noted.
- 28.** With regard to the thresholds proposed under the concept for establishment of trade unions, the ITUC considered that a requirement of 8,000 members in the majority of regions and Minsk City, or at least one-third of the total number of workers employed in the same sector of activity for registration of a national-level trade union, was excessive, unreasonable and aimed at ruling out any trade union at national level outside the FPB structures. The requirement of having members in the City of Minsk is also incompatible with the workers' right to form organizations of their own choosing. The complainant considered that the threshold of 1,500 members for the establishment of a territorial trade union was also excessive. Forcing the national-level unions outside the FPB structures to demote themselves to a "territorial status" was incompatible with their right to freely determine the scope of their activities. It could also be an obstacle to their international

affiliation, since many international trade union federations would only accept trade unions that are active on a national level.

### **Recommendation No. 3 – Dissolution of the Republican Registration Commission and amending the procedure of registration**

29. The abovementioned Decree No. 605 amends a number of earlier decrees and consists of four points of substance: (1) the Republican Registration Commission is dissolved; (2) the registration procedure is transmitted to the Ministry of Justice and to local administrative authorities; (3) a number of decrees and ordinances are repealed, in part or as a whole; and (4) the Council of Ministers must elaborate, within three months, the draft of a law implementing the provisions of the Decree. Therefore, the only real accomplishment of the Decree is the disbandment of the Republican Registration Commission. However, the Commission of Inquiry had also urged the Government to ensure full transparency in the registration process and to make the registration a mere administrative formality at the corresponding local, regional or national levels. The particulars of the registration being left to the new Law on Trade Unions, the independent trade unions commented that, while Decree No. 605 was a step forward, it was not a fully appropriate solution, since, in their view, the Ministry of Justice could also play the role of a political filter.
30. On 20 December 2006, the Ministry of Justice published on its web site an explanatory memorandum on the questions of membership in trade unions. Since the Ministry of Justice was now the highest body responsible for trade union registration, this memorandum could also be seen as the key interpretation of the registration rules. However, while explaining the definition and functions of a trade union as provided for in the existing legislation, the memorandum did not repeal any of the regulations of the registration procedure and was neither effective nor a sufficient measure to simplify trade union registration. While the memorandum did make a non-specific reference to Convention No. 87, it did not mention the conclusions or recommendations of any of the ILO supervisory bodies.
31. The Concept Note of the Law on Trade Unions brought no significant improvement in comparison to the existing legislation regarding the denial of trade union registration or dissolution of trade unions. The new registration procedure would not be “a mere formality”. Although trade unions with no legal personality would have to comply with fewer formalities, they would still have to be registered and therefore would be required to submit a number of documents. The registering authority would be still able to deny registration on vague grounds, such as violation of the establishment procedure or non-compliance with constituent documents. An organization having no legal address could still be denied registration.

### **Recommendation No. 4 – Dissemination of the conclusions and recommendations, public declaration of unacceptability of the acts of interference into trade union matters, investigation of complaints of external interference**

32. On 9 November 2006, the Government published the text of the recommendations (but not the conclusions) in *Respublika*, the official newspaper of the Council of Ministers of the Republic of Belarus having a nationwide circulation. The Government’s official web site also contained an interview with the Deputy Prime Minister, Mr A. Kobyakov, who

considered that “the recommendations of the Commission of Inquiry had a rather controversial character and represented the opinion of certain experts who were faced with the examination of the situation in Belarus for the first time”. If quoted correctly, this statement by the Deputy Prime Minister made a mockery of the Government’s purported intention to comply with the ILO’s recommendations.

33. Furthermore, there was no public declaration made to stress that acts of interference were unacceptable. Nor was there any instruction given to the administrative or judicial authorities to thoroughly investigate any complaint of external interference. On the contrary, new cases of external interference had been reported.

#### **Recommendation No. 5 – Protection of the organizations listed in the complaint**

34. No measures to protect the victim organizations have been taken. The Government had suggested that the body responsible for examining the complaints must be the Council for the Improvement of Labour and Social Legislation. However, this Council has been criticized by the independent trade unions as a body having no real status under the existing legislation. Therefore, it could not be viewed as a body having the confidence of all parties concerned.
35. The REWU, as one of the organizations that suffered interference, should have enjoyed special protection. However, in 2006, it once again suffered interference from the state bodies. In its letter of 11 July 2006, the Ministry of Justice stated that the REWU could not affiliate workers other than those employed in the radio-electronic industry. This opinion was circulated following a request addressed to the Ministry of Justice by the Sovetskiy District Prosecutor’s Office of Gomel City to indicate whether bus drivers could legally join the REWU. The Prosecutor’s Office requested the employer of “Avtopark No. 1” to inform the employees of the interpretation provided by the Ministry of Justice “in order to avoid misleading the workers on joining the REWU and illegal campaigning by outsiders that call themselves the REWU activists”. The Office also required strengthening security checks at the bus park. The REWU asked the Ministry to withdraw the letter, but the reply was that the new Law on Trade Unions would simplify the procedure for forming and registering trade unions and could therefore resolve the problem.

#### **Recommendation No. 6 – No enterprise management in trade union meetings**

36. The Government had not pursued the instructions to be given to enterprise managers and directors not to participate in trade union decision-making in a “more systematic and accelerated manner”, as recommended by the Committee. On the contrary, on 27 November 2006, Ms Petkevich, the Deputy-Head of the Presidential Administration, commented in the “Panorama of the Week” (a TV show), that the ILO “tried to impose foreign traditions” on Belarus. Ms Petkevich disagreed with the view that the management’s participation could jeopardize trade union independence and pointed out that Belarusian workers would be offended if the enterprise director was not a trade union member, as this could show disrespect towards both the trade unions and the workers. She also said that, in her opinion, Belarusian workers did not need trade unions because, in case of any problems, they could write directly to the company director, to the state authorities or to the President of the Republic.

## **Recommendation No. 7 – Investigation of discrimination claims, particularly as regards the use of fixed-term contracts**

- 37.** According to the ITUC, anti-union discrimination, including discriminatory use of fixed-term contracts, remained a part of Belarusian reality. President Lukashenko, in his address to Belarusian society in May 2006, suggested that the “unhealthy commotion” concerning fixed-term contracts ought to be stopped, that everybody, from top-level management to unskilled labour, should be employed on the basis of fixed-term contracts and that any abuses should be dealt with by the FPB.
- 38.** In the meantime, threats of non-renewal of fixed-term contracts with workers affiliated to the independent trade unions caused the CDTU’s affiliates to lose a lot of members – over 550 persons at the “Grodno–Azot” enterprise in 2006, and 45 members at the “Belshina” enterprise in Bobruisk, during the first eight months of 2006. While the organization at the Tractor Spare Part plant in Bobruisk was also under pressure, the situation had improved after the information reached the ILO.
- 39.** In the beginning of 2006, the management of the “Grodno–Azot” enterprise launched a campaign against the primary organization of the Belarusian Independent Trade Union (BITU). The floor managers invited the BITU members to sign statements about leaving their union and discontinuing the payment of trade union membership fees. Those who refused were threatened with dismissal and the non-renewal of their fixed-term contracts. The deputy director for ideology of the enterprise said that the employer “had the right to point out to the worker which trade union to join”, and that the management considered the coexistence of two independent trade unions to be inappropriate. In August 2006, the director of the enterprise stated before the staff assembly that his objective was to talk the members of the independent trade unions into merging or joining another trade union. He stressed that he had the authority not to renew the contracts with members of independent trade unions. The most active union members had even been sidelined or transferred. The trade union lost its office next to the production site and, in exchange, got a room situated far away from the workplace. The BITU also reported that the management refused to sign a collective agreement under the pretext of an order from the Deputy Prime Minister.
- 40.** Members of the BITU primary organization at the “Belshina” enterprise have been suffering discrimination since spring 2006. The management refused to extend the scope of the collective agreement to the BITU members, did not include them in the list of people to be presented with an award on Chemical Industry Day and deprived them of the 75 per cent bonus of additional annual paid leave for health restoration. The deputy director for ideology of the enterprise stated that trade union premises would be taken away through the courts, despite the fact that the lease for the premises expires only in 2008. The BITU activists at “Belshina” complained to the Office of the Public Prosecutor, but the Prosecutor did not find any offence in the actions of the employer. On 12 September 2006, the union brought a lawsuit on grounds of trade union discrimination, but the court declared it inadmissible. On 3 October, the deputy chairperson of the primary organization went on a hunger strike in order to protest against trade union discrimination and non-registration of their trade union organization. She continued her hunger strike for 43 days, while about ten trade union activists joined the hunger strike for a shorter period. On 22 November, a partial compromise was reached: the BITU members received a part of their bonuses; however to date, the organization does not have a legal address and its bank accounts remain blocked.

## **Recommendation No. 8 – Effective procedures against retaliatory acts**

- 41.** The ITUC was not aware of any steps taken to implement the recommendations made by the United Nations Special Rapporteur.
- 42.** Furthermore, on 17 March 2006, Mr Viktor Kozlov, an REWU representative in Gomel region, was detained by the Gomel City transport militia, when he was trying to recruit members in “Avtopark No. 1”. Seventy application forms were confiscated. Although the forms were later returned, the names of trade union members became known to the bus park management.
- 43.** On 23 March 2006, the REWU activist, Mr Ivan Roman, was sentenced to 13 days of administrative arrest for hooliganism, although he insisted that the incident had been provoked by the militia. Mr Roman had previously been taken into custody on 18 March at the REWU office to be released on 20 March at the Lida City District Department of Internal Affairs. Meanwhile his family and colleagues knew nothing of his whereabouts.
- 44.** On 27 April 2006, one of the REWU’s leaders, Mr Alexander Bukhvostov, was sentenced to 15 days of administrative arrest by the Minsk City Pervomayskiy District Court following the statement he had made during the public meeting dedicated to the 20th anniversary of the Chernobyl disaster.

## **Recommendation No. 9 – Use of foreign gratuitous aid**

- 45.** No amendments had been introduced to Decree No. 24 on use of foreign gratuitous aid.

## **Recommendation No. 10 – Amendment of the Law on Mass Activities**

- 46.** The Law on Mass Activities has not been amended. In practice, organizing trade union mass activities remain very difficult. For example, when the REWU decided to organize pickets against the denial of registration of its local organizations, it initially applied to have the meetings simultaneously in the cities of Minsk, Grodno, Gomel and Mogilev on 12 July 2006. The pickets had to be approved by the city executive committees. However, only in Minsk did the authorities allow up to 100 picketers on Bangalor Square. The Mogilev City authorities asked the REWU to contract services of militia and medics and to provide proof of rental payment for the land where the picket would take place. The Grodno City authorities refused to allow the REWU picket to be conducted in Lenin Square and asked to choose another location, while, in Gomel, the officials prohibited the action, without providing any reason for their decision. The authorities in Mogilev did not allow the picket to take place on 25 July because the REWU had not contracted any cleaning services. The REWU managed to organize a picket on 8 August in front of the City Executive Committee Centre for Culture and Recreation, but it had to pay rent for the land and services of the militia, doctors and community service workers.

## **Recommendation No. 11 – Social dialogue**

- 47.** Due to the changes in the regulation on the National Council on Labour and Social Issues (NLCISI), at the time of drafting of the present report, the CDTU had no official seat in this body. While the authorities had verbally informed the CDTU that it had one seat, no official decision was yet available. On 17 August 2006, the CDTU chairperson,

Mr A. Yaroshuk, had participated in the NCSLI meeting at the invitation of the FPB, which had promised to grant one of its seats to the CDTU. However, when Mr Yaroshuk requested a copy of a formal decision in this respect, he received no reply.

### **Recommendation No. 12 – Review of the national industrial relations system**

48. The ITUC noted a complete lack of progress or even willingness on the part of the Government to implement this Recommendation. As long as senior Government officials called the ILO recommendations “controversial” or stated that Belarusian workers would be offended if enterprise directors did not join trade unions, it was highly unlikely that state bodies at any level could promote independent trade unions or employers’ organizations.
49. Further to the above comments with regard to the Concept Note of the Law on Trade Unions, prepared without consulting independent trade unions, the ITUC raised concerns over trade union dissolution and trade union representativeness. Chapter 7 of the draft Law would stipulate the grounds for suspension of trade union activities and compulsory dissolution. Although these decisions are to be taken by a court of law, the authorities would still have large discretionary power. Trade union activities can be suspended if they violate the law and the violations are not eliminated during the term stipulated in the written notice by the registrar, while the violations in question might be insignificant, or the law might in itself be incompatible with the ILO standards. If a trade union fails to eliminate those violations, it may be dissolved. A union can further be dissolved on the grounds provided by the Civil Code, which are not explained in the Concept Note and which are not necessarily compatible with Convention No. 87.
50. The Concept Note deals with the question of representativeness, which was not in itself the subject of the ILO Commission of Inquiry’s recommendations. In its 341st Report, the Committee on Freedom of Association criticized the Government of Belarus for focusing too much on establishing a representativeness criteria, since introducing such criteria at this stage would complicate the improvement of the trade union rights’ situation. Indeed, the Government must concentrate on allowing workers to establish trade unions of their own choosing, not on further reducing the rights of trade unions outside the FPB structures. The Concept Note introduces additional criteria for a representative enterprise-level trade union, which should comprise at least 10 per cent of workers in the enterprise. The Concept Note does not stipulate which additional representativeness criteria will be introduced for higher-level trade unions.
51. Chapter 4 of the draft would provide for the rights enjoyed by the representative trade unions. It appears that non-representative trade unions, even in the absence of a majority trade union, will not be able to conclude collective agreements, even on behalf of their members. Non-representative trade unions will have neither the right to receive or disseminate information, nor the right to protect citizens’ labour rights. Moreover, only representative trade unions will have facilities for their officers, such as complimentary use of an employer’s premises and communication facilities. Representative trade unions will receive exclusive rights related to social care, public control and housing issues, which amount to excessive favouritism by the State.
52. The Concept Note stipulates that the level of protection against dismissal of trade union officers will depend on whether they were released from work for union activity or not. This will further jeopardize smaller unions that do not have the capacity to support full-time officers.

- 53.** The Concept Note keeps trade unions under state control: trade unions will have to disclose information on the use of their property, including finances, and report to the registrar. According to Chapter 6, official bodies shall exercise, within their competence, control over the financial and economic activities of trade unions. The Concept Note also suggests that requirements shall be set as to names and symbols of trade unions. This would give additional grounds for arbitrary interference with internal trade union matters.
- 54.** In conclusion, the ITUC considered that only the following measures could be considered as concrete steps taken by the Government to implement the recommendations: the disbandment of the Republican Registration Commission, publication of the recommendations in the *Respublika* newspaper, and the publication of the explanatory memorandum of the Ministry of Justice, stating that citizens have the right to join trade unions of their own choice. The ITUC expressed hope that a promise to grant one seat in the NLSI to the CDTU would be made official.
- 55.** With regard to the Concept Note drafted by the Government with participation of the independent trade unions, the ITUC considered that this document was incompatible with Conventions Nos. 87 and 98. The Concept Note did not envisage the abolishment of the legal address or the 10 per cent membership requirements for registration for trade unions with legal personality or the higher-level trade unions.
- 56.** According to the complainant, no progress could be noted with regard to the registration of primary trade unions affiliated to the CDTU and the REWU. The Government has not taken any steps to register any of the organizations that had already been mentioned in the earlier ILO recommendations. Furthermore, new cases of the denial of registration occurred during the year. The Government had been very clear that the unions without a legal address could not be registered now and would not have legal personality under the new concept. Employers continued to refuse to provide independent trade unions with legal addresses. As a result, trade unions were either giving up on official registration of their primary organizations or were going through available court instances, without any success but with considerable expenditure.
- 57.** The independent trade unions were still being harassed at the workplace. While under the threat of EU sanctions, fewer instances of trade union harassment had occurred in 2006, the situation remained very serious as the existing system of industrial relations still worked against employees who wished to exercise their right to organize in unions of their own choosing.
- 58.** The Government had not made any systematic changes. The legislation had not been amended as required by the Commission of Inquiry. Clear, unequivocal and accessible instructions to the employers and public authorities to respect trade unions had not been issued. In this context, the fact of relieving pressure on some enterprise unions appears just a manoeuvre to give the Government something to report on. The Government seems to stick to its strategy of providing smokescreens of minor achievements, masking the fundamental problems of non-registration and harassment, so that the international community's scrutiny would lose momentum and so as to allow the Government, after having escaped stronger ILO measures, to return to its previous anti-union practices.
- 59.** The ITUC found particularly disturbing the fact that, at a time when the Government tried to appear cooperative towards international bodies, its higher officials sent a different message through the national media. These public statements were much more likely to influence Belarusian executive authorities, the judiciary and the employers, than an article in small print on the ILO Commission of Inquiry published in a national newspaper. The ITUC therefore considered that the Government had not achieved any "real and tangible progress", such as requested by the International Labour Conference, or taken any steps

showing its good faith towards pursuing such a progress. In the ITUC's view, the Government should be called before the next session of the International Labour Conference to show the required result or face further measures available under the ILO Constitution.

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

- 60.** In its communication dated 20 February 2007, the Government provided the following information in respect of each of the recommendations of the Commission of Inquiry.

#### **Recommendation No. 1 – Immediate registration of primary-level organizations**

- 61.** As of 1 January 2007, 33 republican-level trade unions, two territorial trade unions, two enterprise-level trade unions and 22,021 trade union organizational structures were registered in the Republic of Belarus. In 2006, three primary organizations of the Radio and Electronic Workers' Union (REWU) were registered. The Brest city primary trade union was included in the register on 29 March 2006, the Minsk city primary trade union of transport workers was registered on 18 April 2006 and the Borisov city primary trade union was recorded on 8 February 2007. In the following two cases, registration was denied for the reason of violation of the REWU's by-laws: the Grodno city primary organization was denied registration on 19 July 2006 (the minimum membership requirement for an auditing commission was not respected) and the primary trade union at "Avtopark No. 1" in Gomel was denied registration on 24 May 2006 (less than half of the trade union members were present at the meeting held for the purpose of establishing the union). In the case of the Mogilev city primary trade union, which submitted its application for registration in February and in October 2006, no formal decision was taken due to the absence of confirmation of a legal address, despite several requests addressed to the REWU by the registering authority to redress this shortcoming. The Ministry of Justice pointed out to the Mogilev executive committee, the registering authority, that it did not respect the legal period for examination of the application for the registration and recommended that it take a decision without delay.
- 62.** On 31 January 2007, the Ministry of Justice transmitted a letter to the regional and Minsk city executive committees, which stressed the need for the strict observance of the legislation in the process of registration of trade unions and their organizational structures and the inadmissibility of taking groundless decisions.

#### **Recommendation No. 2 – Amendment of Decree No. 2 and its rules and regulations to eliminate obstacles to registration**

- 63.** With the adoption of the new Law on Trade Unions, which will regulate the establishment and the registration of trade unions, the corresponding provisions of Decree No. 2 will no longer be in force. The new legislation will regulate two key issues raised in the recommendations made by the Commission of Inquiry with regard to the establishment and the registration procedure. Firstly, the minimum 10 per cent membership requirement to establish an enterprise-level trade union will be abolished (three persons would be able to establish a trade union without legal personality). Secondly, the requirement of a legal

address will be abolished and replaced by a contact address for trade unions without legal personality.

64. The Government of Belarus has made a number of concrete steps aimed at developing dialogue with the International Labour Office. In particular, upon the Government's initiative, consultations were held on 19 and 20 October 2006 in Geneva to discuss the measures taken or envisaged to implement each of the 12 recommendations of the Commission of Inquiry. One of the key issues of the consultations related to the Concept Note of the draft Law on Trade Unions. The Government delegation explained the approach of the Concept Note and submitted it for expert evaluation by the Office. In December 2006, the Government received the informal opinion of the Office relating to the Concept Note.
65. Also upon the Government's initiative, two rounds of consultations were held in Geneva in February 2007. The first round, held on 8 and 9 February, included joint work on the draft Law on Trade Unions at the level of experts. The representatives of the Ministry of Labour and Social Protection and the Ministry of Justice discussed in detail the provisions of the draft Law together with the experts of the International Labour Standards Department. The Government submitted four chapters of the draft Law (general provisions, basic rights of trade unions, control over trade union activities and responsibility of trade unions). In the process of consultations, a number of issues were identified and were further examined during the visit to Geneva on 14 and 15 February of a high-level delegation of the Republic of Belarus, which included the Deputy Prime Minister, Mr A. Kobyakov, and the Deputy Head of the Administration of the President, Ms N. Petkevich. The Belarusian delegation proposed to the International Labour Office to continue working together on the draft Law once it is completed (approximately in May 2007).

### **Recommendation No. 3 – Dissolution of the Republican Registration Commission and amending the procedure of registration**

66. This recommendation has been implemented. Decree of the President of the Republic of Belarus No. 605 of 6 October 2006 disbanded the Republican Registration Commission. The functions of the registration of trade unions and their organizational structures were transferred to the Ministry of Justice, as well as to the local executive and governing bodies.

### **Recommendation No. 4 – Dissemination of the conclusions and recommendations, public declaration of unacceptability of the acts of interference into trade union matters, investigation of complaints of external interference**

67. In 2005, the recommendations made by the Commission of Inquiry were published in the official journal of the Ministry of Labour and Social Protection "Labour and Social Protection". However, taking into account the opinions expressed by the ILO experts in the course of the October consultations, the Government additionally published the recommendations in the newspaper *Respublika* – the major periodical of the country (No. 206 of 9 November 2006).
68. Furthermore, measures are being taken to inform the representatives of the judiciary system and the Office of the Public Prosecutor on the problematic issues raised by the Commission of Inquiry. To that end, on 16 January 2007, the Government, together with

the International Labour Office, held the seminar entitled “The issues of protection of trade union rights in the activities of courts and prosecutors in Belarus in the light of the recommendations of the Commission of Inquiry”. Over 100 persons attended the seminar, including judges of the Supreme Court, regional and district courts, prosecutors responsible for the supervision of the application of trade union legislation, experts from the Ministry of Justice, the Ministry of Labour and Social Protection and the Republican Labour Arbitration Commission. In addition to the participation in the workshop for the judges and prosecutors, the programme of the ILO mission to Minsk included meetings at the Council of Ministers, the Ministry of Labour and Social Protection and the Ministry of Foreign Affairs, as well as meetings with trade unions.

### **Recommendation No. 5 – Protection of the organizations listed in the complaint**

69. The Government recalled that the national legislation ensures protection of trade union rights. The existing Law on Trade Unions guarantees protection from interference in trade unions’ internal affairs. The Criminal Code establishes criminal responsibility for the obstruction of the legal activities of the voluntary associations or interference in their legal activities.
70. The Government stated that to implement this recommendation, it had a difficult task of identifying an independent body, enjoying the confidence of all parties concerned, which could examine the complaints of interference without duplicating the work of the judiciary system, prosecutor’s offices and other state supervisory bodies. In the process of consultations held in Geneva in October 2006, it was agreed that the Council for the Improvement of Legislation in the Social and Labour Spheres, established by the Ministry of Labour and Social Protection could be such a body. Together with the representatives of the Government, the representatives of the FPB and the CDTU joined this Council on a voluntary basis. The Ministry of Labour and Social Protection performs the functions of the secretariat of the Council and establishes its agenda on the basis of the proposals put forward by the FPB and the CDTU.
71. The last meeting of the Council was held on 25 January 2007. During this meeting, the Council examined the issues of contractual form of employment, the scope of collective agreements and the complaint brought by the Belarusian Independent Trade Union (affiliated to the CDTU) on the situation at the “Grodno Azot” and the “Belshina” enterprises and adopted advisory conclusions. The conclusions in respect of the situation at the “Grodno Azot” and the “Belshina” were adopted unanimously. On the whole, the work of the Council and the constructive discussions were positively assessed both by the representatives of state bodies and trade unions.

### **Recommendation No. 6 – No enterprise management in trade union meetings**

72. In the course of the consultations in Geneva in October 2006 and at the 297th Session of the ILO Governing Body (November 2006), the Government acknowledged its obligations to monitor consistently and on a permanent and systematic basis the issues of interaction of the management of the enterprises and the trade unions. On 31 January 2007, this issue was examined in depth at the meeting of the NCLSI. The discussion concerned the established forms of interaction between the enterprise management and trade unions as well as the issue of trade union membership of managers. The NCLSI drew the attention of the representatives of the management of the enterprises and the trade unions to the need for strict observance of the principles of social partnership, highlighted the inadmissibility

of interference by the employers in internal affairs of trade unions and recommended to trade unions to use proactively the mechanisms of social partnership to protect their rights and the rights of their members. In accordance with the decision of the NCLSI, the sectoral and territorial councils on labour and social matters will examine the established practice of interaction between employers and trade unions at the enterprise level during the first half of 2007.

### **Recommendation No. 7 – Investigation of discrimination claims, particularly as regards the use of fixed-term contracts**

- 73. The Ministry of Labour and Social Protection and the State Labour Inspection continuously monitor the use of contractual forms of employment. Employers committing violations bear responsibility in accordance with the legislation.
- 74. The issue of the development of the legislation on the contractual form of employment was examined at the meeting of the Council for the Improvement of Legislation in the Social and Labour Spheres. Moreover, the Statutes of the Council were amended so as to invest it with the right to examine individual cases of discrimination. Once a complaint is submitted to the secretariat, the latter puts it on the Council's agenda.
- 75. With regard to the workers mentioned in the complaint who allegedly suffered from anti-union discrimination, the Government refers to the information it had previously submitted to the Committee. It further informs that on 5 January 2007, Mr O. Dolbik was hired in the position of air traffic controller by the “Belaeronavigatsia”. A three-year contract was concluded with him.
- 76. Taking into account the positive experience of the seminar for judges and prosecutors held in January 2007, the Government deems it expedient to hold, in cooperation with the International Labour Office, a seminar on the issues of anti-union discrimination. This proposal was mentioned by the Belarusian delegation during the consultations in Geneva in February 2007.

### **Recommendation No. 8 – Effective procedures against retaliatory acts**

- 77. The national legislation provides for adequate measures to protect citizens from acts of anti-union discrimination. The legislation also provides for special measures of protection of trade union officers and members. Further guarantees may be provided by a collective labour agreement. In this respect, the General Agreement for 2006–08, concluded between the Government and the republican-level organizations of employers and trade unions, recommended the inclusion in collective agreements of provisions providing for additional guarantees to the employees elected to trade union office.
- 78. Citizens who suffered discrimination can apply to court for the protection of their rights. Trade unions are entitled to act as legal representatives of their members in court. In cases of individual labour disputes, workers are exempted from the payment of legal expenses. In addition to the labour and trade union legislation, in the process of examination of labour disputes, the courts are also guided by the Decision of the Plenum of the Supreme Court of 29 March 2001, No. 2, on certain issues of the application by the courts of the labour legislation.

- 79.** The legislation of Belarus provides for the possibility of examination of an individual labour dispute through the commissions on settlement of labour disputes established at the enterprises. Such commissions are formed of equal numbers of trade union and employer representatives. Moreover, the State Labour Inspectorate, legal labour inspectorates and legal advice offices provide employees with assistance in the field of protection of their rights. The Ministry of Labour and Social Protection also provides advisory services to citizens on the issues of application of the labour legislation.
- 80.** The new Law on Trade Unions will preserve the guarantees afforded to trade union members and trade union officials against anti-union discrimination.

### **Recommendation No. 9 – Use of foreign gratuitous aid**

- 81.** The Government points out that Presidential Decree No. 24 concerning the receipt and use of foreign gratuitous aid does not prohibit trade unions to receive foreign gratuitous aid from international trade union federations, provided that the basic conditions are followed, i.e. foreign aid is not intended for the purposes prohibited by the Decree and is registered with the Humanitarian Activities Department of the Executive Secretariat of the President. The procedure of the registration of aid is not complicated and is carried out within a short period of time. Decree No. 24 provides for a possibility of dissolution of an organization for the violation of the rules on the use of foreign gratuitous aid. The dissolution is carried out in accordance with the procedure, established by the legislation, i.e. by the decision of the court. Up to the present moment, there have been no cases of the dissolution of trade unions for the violation of the procedure of using foreign gratuitous aid.
- 82.** The Government states that it has repeatedly drawn the need for holding additional discussion of this issue to the attention of the International Labour Office. More specifically, a concern was expressed by the Belarusian delegation in the course of the consultations held in Geneva in October 2006, that neither the report of the Commission of Inquiry, nor the previous decisions of the ILO supervisory bodies indicated clearly which provisions of Decree No. 24 violate the provisions of Conventions Nos. 87 and 98. The right to strike is recognized by the national legislation. However, the recognition of the right to strike and the procedure of conducting a strike are intrinsically different issues. The Government considers that a general comment that the right to strike is one of the fundamental elements of the right to organize is insufficient to justify the reasoning of the supervisory bodies with regard to Decree No. 24. The Decree by no means calls into question this right; it deals with one specific aspect – getting aid from abroad to conduct a strike. The Government believes that neither Convention No. 87, nor Convention No. 98 regulate this issue.

### **Recommendation No. 10 – Amendment of the Law on Mass Activities**

- 83.** The Government indicates that there were no cases of dissolution of trade unions in connection with the violation by them of the procedure of carrying out mass activities provided for in Presidential Decree No. 11 and the Law on Mass Activities.

### **Recommendation No. 11 – Social dialogue**

- 84.** This recommendation has been implemented. The meeting of the NLCI was held on 31 January 2007, during which a new composition of the Council was approved so as to provide a seat to the Chairperson of the CDTU, Mr A. Yaroshuk.

## **Recommendation No. 12 – Review of the national industrial relations system**

- 85.** The revision of the system of labour relations of the country is being carried out by the Council for the Improvement of Legislation in the Social and Labour Spheres, the membership of which is composed of trade union representatives (the FPB and CDTU), representatives of employers' organizations, non-governmental organizations, the Government and academia. The Council examined the problems of the development of the national legislation, including the conceptual approaches to the improvement of the legislation on trade unions, collective labour relations and contractual forms of employment.
- 86.** To conclude, the Government informed of the measures scheduled for the first half of 2007. In this respect, it will continue its work on the draft Law on Trade Unions, taking into account the comments made by the Committee of Experts on the Application of Conventions and Recommendations. It is envisaged to hold further consultations with the International Labour Office on the draft Law. In May 2007, the draft Law on Trade Unions will be examined by the Council for the Improvement of Legislation in Social and Labour Spheres and in July–August 2007, by the NLCI. The Government will continue to closely follow-up the issue of registration of trade unions and their organizational structures. Particular attention will be given to the strict observance of the legislation by the registering bodies.
- 87.** Given the positive experience of the seminar for judges and prosecutors held in January 2007, the Government deems it expedient to continue cooperation with the International Labour Office on the organization of joint seminars. For example, Recommendation No. 7 of the Commission of Inquiry deals with the issues of discrimination in the sphere of labour relations. In the course of the February consultations in Geneva, the Belarusian delegation suggested to consider a possibility of conducting a joint seminar on the issues of anti-union discrimination.

### **D. The Committee's conclusions**

- 88.** *The Committee notes with interest certain steps taken by the Government to implement the recommendations of the Commission, which include the disbandment of the Republican Registration Commission, by virtue of Presidential Decree No. 605 on certain issues of state registration of public associations and their unions (confederations), and the publication of the Commission's recommendations in a widely disseminated national newspaper.*
- 89.** *The Committee further notes with interest that upon an invitation of the Government, a high-level Office mission went to Minsk to attend a seminar entitled "The issues of trade unions' protection in the activity of Belarussian courts and prosecutor's authorities of the Republic of Belarus" during which the conclusions and recommendations of the Commission of Inquiry were disseminated and discussed. In addition, the mission was provided with some documents pronouncing that Mr Yaroshuk, the Chairperson of the CDTU, had a seat in the National Council on Labour and Social Issues (NLCI).*
- 90.** *The Committee nevertheless notes with continuing concern that several important matters raised by the Commission of Inquiry and figuring in their corresponding recommendations have not yet been fully addressed by the Government. In this regard, the Committee deeply regrets that the primary-level trade union organizations that were subject to the complaint remain unregistered and that no information was provided by the Government in respect of the allegation that the non-registration of primary organizations has led to the denial of registration of three regional organizations of the Belarusian Free Trade Union (BFTU)*

(organizations in Mogilev, Baranovitchi and Novopolotsk–Polotsk). Therefore, the Committee is bound to reiterate its previous requests and once again urges the Government to take the necessary steps to ensure the immediate registration of these organizations.

91. The Committee further notes from the latest allegations, new cases of refusal to register the REWU primary trade union organizations. While noting the Government's indication that three out of six trade unions which applied for registration in 2006 were registered (Brest city primary trade union, Minsk city primary trade union of transport workers and Borisov city primary trade union), the Committee notes that the Grodno city primary trade union and the primary trade union at "Avtopark No. 1" were denied registration for the reason of violation by the union of its own by-laws and that in the case of the Mogilev city primary trade union organization, no formal decision was taken by the registering authorities due to the absence of a confirmation of a legal address. The Committee notes that while the Government states that the reason for denying registration to the trade union organization at "Avtopark No. 1" was that, contrary to the REWU's by-laws, less than half of trade union members were present at the meeting held for the purpose of establishing the union, it appears from the REWU's recent communication that the Ministry of Justice concluded that the workers of "Avtopark No. 1" could not be the members of the REWU primary trade union as they were not employed in the radio-electronics industry. In this respect, the Committee understands, however, that new amendments to the REWU's by-laws were registered on 11 January 2006. These amendments should have opened membership to workers employed in the automobile and agricultural machinery sector. The Committee therefore requests the Government to take the necessary measures to ensure that the cases of the Grodno city primary trade union organization and the primary trade union of "Avtopark No. 1" are reconsidered by the registering authorities without delay. It further requests the Government to provide information on the decision taken in respect of the Mogilev city primary trade union.
  
92. As regards the implementation of the recommendation to amend Decree No. 2 and its rules and regulations so as to eliminate the obstacles caused by the legal address requirement and by the 10 per cent minimum membership requirement at enterprise level, the Committee notes that the Government states that these matters will be dealt with under a new Law on Trade Unions. In this respect, the Government has prepared the Concept Note of the Law on Trade Unions, scheduled to become law in 2007. The Committee notes that upon the Government's request, an informal opinion on the Concept Note was prepared by the Office and a series of consultations were held in Geneva in October 2006 and February 2007 to discuss the Concept Note and the corresponding draft legislation. The Committee further notes that the Committee of Experts on the Application of Conventions and Recommendations examined the Concept Note during its last session of November–December 2006 and raised deep concerns over a number of its precepts.
  
93. Indeed, the Committee notes that several draft provisions, if applied in the current circumstances, would result in a quasi de facto monopoly of workers' representation and queries whether republican-level trade union organizations outside of the FPB structure would continue to exist in the framework introduced by the Concept Note. This impression is strengthened by the Government's persistence with focusing on the question of representativeness at various levels. In this respect, the Committee notes with regret that the Concept Note refers to the determination of representative capacity of trade unions and introduces new and significantly higher thresholds for registration at the Republican and territorial levels. The Committee recalls that on several occasions, it had advised the Government against this approach. The Committee considers that before establishing the notion of representativeness in the trade union legislation, the Government should ensure an atmosphere in which trade union organizations, whether within or outside the traditional structure, are able to flourish in the country. The Committee recalls that the

*Commission of Inquiry has concluded that the REWU, previously one of the largest republican-level trade unions in the country, saw its membership decline following an open anti-union campaign, which included interference, pressure and anti-union discrimination, and which affected all of the complainant trade union organizations [see Trade union rights in Belarus: Report of the Commission of Inquiry (July 2004), paras 133 and 599–615]. In the Committee’s view, in its current form, the general approach adopted in the Concept Note can only be understood as a continuing effort to eliminate any independent voices within the trade union movement in Belarus and as one of many means used to ensure the de facto monopoly situation of the FPB. The Committee therefore once again urges the Government to abandon this approach and to ensure that the new Law on Trade Unions will fully and truly ensure freedom of association and the rights of all workers to form and join organizations of their own choosing, including through the elimination of all remaining obstacles to trade union registration and their functioning. Noting that the Council for the Improvement of Legislation in the Social and Labour Spheres would appear to have a clear mandate to review, discuss and elaborate legislation relating to trade unions, the Committee urges the Government to consult this body rapidly in respect of the Concept Note and any preliminary draft of the Law on Trade Unions so that the members of the Council may make their views known in this regard at an early stage so that any concerns may be duly taken into account. The Committee requests the Government to keep it informed of all developments in respect of the Law on Trade Unions.*

94. *The Committee further notes with deep regret the new allegations of interference in trade union internal affairs, anti-union pressure and anti-union discrimination at the Mogilev Plant of Artificial Fiber (“Mogilev ZIV”) and “Avtopark No. 1”. In respect of the latter enterprise, the Committee notes with even deeper concern that, according to the allegations, the Prosecutor’s Office in Gomel refused to investigate a complaint alleging the use of anti-union tactics by the management and that, instead of conducting proper inquiries into the matter, the prosecutor applied to the Ministry of Justice for an opinion as to whether it was legal for workers of “Avtopark No. 1” to belong to the REWU. While noting the Government’s information on the measures taken to implement the relevant recommendations of the Commission of Inquiry (seminar for judges and prosecutors, the use of the Council for the Improvement of Legislation in the Social and Labour Spheres to review complaints concerning specific enterprises and discussions at the level of the NCSLI on the non-interference by management in unions), the Committee considers that the measures taken so far by the Government are insufficient. Moreover, with regard to the frequent assertion by the Government that any trade union organization can turn to the courts to have any violation of trade unions’ rights condemned and the situation redressed, the Committee must observe the persistent complaint from the complainants, once again reiterated in the latest allegations, that judicial appeals involve considerable financial and human resources, which the unions do not have, and which are often wasted in procedures that do not even address their claims of anti-union discrimination. In this respect, the Committee also recalls its previous requests and that of the Commission of Inquiry concerning the recommendations made by the United Nations Special Rapporteur on the independence of judges and lawyers. The Committee therefore urges the Government to pursue more vigorously, on the one hand, the instructions to be given to enterprises in a more systematic and accelerated manner so as to ensure that enterprise managers do not interfere in the internal affairs of trade unions and on the other, instructions to the Prosecutor-General, Minister of Justice and court administrators that complaints of interference and anti-union discrimination shall be thoroughly investigated. The Committee further requests the Government to ensure an independent investigation into the new alleged instances of interference and anti-union discrimination at the “Mogilev ZIV” and “Avtopark No. 1” and to ensure that the rights of any workers who suffered anti-union discrimination at these enterprises are fully redressed. In this respect, the Committee requests the Government and the complainant organizations to keep it informed*

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as to the sufficiency of the role to be played by the Council for the Improvement of Legislation in the Social and Labour Spheres in reviewing such complaints.

95. With regard to the Committee's request to immediately redress the situation of those workers that have suffered consequences for cooperating with the Commission of Inquiry, and specifically, in respect to Messrs Gaichenko, Dukhomenko, Obukhov, Shaitor, Dolbik, Sherbo and Stukov, the Committee notes with interest the Government's indication that Mr Dolbik was hired in the position of air traffic controller by the "Belaeronavigatsia" and that a three-year contract was concluded with him. The Committee nevertheless regrets that no information was provided in respect of the other above-named persons and therefore once again reiterates its previous request to redress their situations and to provide information as to their current contractual status.
96. As regards the Government's comments with respect to the long-standing request by the Committee and the Commission of Inquiry for the amendment of Decree No. 24 concerning the use of foreign gratuitous aid, the Committee would recall that it first examined this question at its May–June meeting in 2001. At that time, the decree in question was Decree No. 8 regarding certain measures aimed at improving the arrangement of receiving and using foreign gratuitous aid (see Case No. 2090, 325th Report, paras 167–168), which contained nearly identical restrictions to the use of foreign gratuitous aid to those that have been criticized in Decree No. 24. The Committee had recalled that trade unions should not be required to obtain prior authorization to receive international financial assistance in their trade union activities and that legislation prohibiting the acceptance by a national trade union of financial assistance from an international organization of workers to which it is affiliated infringes the principles concerning the right to affiliate with international organizations of workers. The Committee considered that the aspects of the Decree which prohibited trade unions, and potentially employers' organizations, from receiving and using foreign aid from international organizations of workers or employers was a serious violation of the principles of freedom of association. The Committee must therefore recall that its concerns were twofold: (1) employers' and workers' organizations should not be required to obtain approval for receipt of international financial assistance for activities relating to the nature of their organizations; and (2) such assistance should not be prohibited as far as it concerns the legitimate activities of employers' and workers' organizations. The Committee would recall in this regard 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. In addition, while purely political strikes do not fall within the scope of the principles of freedom of association, trade unions should be able to have recourse to protest strikes, in particular where aimed at criticizing a government's economic and social policies [See **Digest of decisions and principles of the Freedom of Association Committee**, fifth edition, 2006, paras 521 and 529]. The Committee therefore once again urges the Government to take the necessary measures to ensure that employers' and workers' organizations may benefit freely, and without previous authorization, from the assistance which might be provided by international organizations in order to carry out activities in line with the nature of their organizations and the abovementioned principles. The Government is requested to keep the Committee informed of the measures taken in this regard.
97. The Committee notes some positive steps taken by the Government and urges the Government to continue its cooperation with the Office, as well as social dialogue with all partners, including the trade unions outside of the FPB, to implement all the recommendations of the Commission of Inquiry and ensure that any legislative changes will conform to this objective. The Committee nevertheless regrets that the current situation in Belarus remains far from ensuring full respect for freedom of association and that several recommendations of the Commission of Inquiry are still not implemented. The Committee must therefore once again reiterate its previous recommendations and urge the

*Government in the strongest of terms to take appropriate and concrete measures immediately so as to ensure that workers may form and join organizations outside the FPB freely and without pressure or intimidation on the part of enterprise management or the public authorities and that these organizations may be able to fully exercise their activities without government interference.*

- 98.** *The Committee further requests the Government to reply to the latest allegations of the REWU and the International Trade Union Confederation (ITUC) as a matter of urgency.*

### **The Committee's recommendations**

- 99.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*

- (a)** *The Committee once again urges the Government to take the necessary steps to ensure the immediate registration of the primary-level organizations that were the subject of the complaint and to ensure the workers in those enterprises where the primary-level organization has been wound down are rapidly and duly informed of their right to form and join organizations of their own choosing without interference and that the registration of any such newly created organization is rapidly effectuated.*
- (b)** *The Committee urges the Government to establish an independent investigation into the allegations that the non-registration of primary organizations has led to the denial of registration of three regional organizations of the Belarusian Free Trade Union (BFTU) (organizations in Mogilev, Baranovitchi and Novopolotsk–Polotsk) and to take the necessary measures to ensure the registration of the primary organizations of the BFTU which had been denied registration so that the regional organizations may once again be registered.*
- (c)** *The Committee requests the Government to take the necessary measures to ensure that the cases of the Grodno city primary trade union organization and the primary trade union of “Avtopark No. 1” are reconsidered by the registering authorities. It further requests the Government to provide information on the decision taken in respect of the Mogilev city primary trade union.*
- (d)** *With regard to the process of drafting a new Law on Trade Unions, the Committee urges the Government to abandon the approach taken in the Concept Note in its present form, particularly as regards the question of representativeness which would ensure, de facto, a trade union monopoly in Belarus and to take the necessary steps to ensure that the new law will fully and truly ensure freedom of association and the rights of all workers to form and join organizations of their own choosing, including through the elimination of all remaining obstacles to trade union registration and their functioning. Noting that the Council for the Improvement of Legislation in the Social and Labour Spheres would appear to have a clear mandate to review, discuss and elaborate legislation relating to trade unions, the Committee urges the Government to consult this body rapidly in respect of the Concept Note and any preliminary draft of the Law on Trade Unions so that the members of the Council may make their views known in this regard*

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*at an early stage so that any concerns may be duly taken into account. The Committee requests the Government to keep it informed of all developments in this regard.*

- (e) *The Committee urges the Government to pursue vigorously, on the one hand, the instructions to be given to enterprises in a more systematic and accelerated manner so as to ensure that enterprise managers do not interfere in the internal affairs of trade unions and on the other, instructions to the Prosecutor-General, Minister of Justice and court administrators that all complaints of interference and anti-union discrimination are thoroughly investigated.*
- (f) *The Committee requests the Government to ensure an independent investigation into the new alleged instances of interference and anti-union discrimination at the “Mogilev ZIV” and “Avtopark No. 1” and to ensure that the rights of any workers who suffered anti-union discrimination in these enterprises are fully redressed. In this respect, the Committee requests the Government and the complainant organizations to keep it informed as to the sufficiency of the role to be played by the Council for the Improvement of Legislation in the Social and Labour Spheres in reviewing such complaints.*
- (g) *The Committee urges the Government to immediately redress the situation of those workers that have suffered consequences for cooperating with the Commission of Inquiry and refers specifically in this respect to Messrs Gaichenko, Dukhomenko, Obukhov, Shaitor and Sherbo. It further requests the Government to ensure that Mr Stukov’s rights and benefits acquired through previous years of employment are maintained.*
- (h) *The Committee requests the Government to indicate the measures taken to implement the recommendations made by the United Nations Special Rapporteur on the independence of judges and lawyers.*
- (i) *The Committee once again urges the Government to take the necessary measures to ensure that employers’ and workers’ organizations may benefit freely, and without previous authorization, from the assistance which might be provided by international organizations in order to carry out activities in line with the nature of their organizations and the abovementioned principles. The Government is requested to keep the Committee informed of the measures taken in this regard.*
- (j) *The Committee urges the Government to take the necessary measures immediately to amend the Law on Mass Activities (as well as Decree No. 11 if it has not been repealed) so as to bring it into line with the right of employers’ and workers’ organizations to organize their activities.*
- (k) *The Committee requests the Government to provide full details on the steps taken to implement the above recommendations.*
- (l) *The Committee requests the Government to reply to the latest allegations of the REWU and the ITUC as a matter of urgency.*

- (m) *The Committee urges the Government to continue its cooperation with the Office, as well as social dialogue with all partners, including the trade unions outside of the FPB, to implement all the recommendations of the Commission of Inquiry and ensure that any legislative changes will conform to this objective.*

Geneva, 16 March 2007.

(Signed) Professor Paul van der Heijden,  
Chairperson.

*Point for decision:* Paragraph 99.