

# Governing Body

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## Report of the Committee on Freedom of Association

394th Report of the Committee on Freedom of Association

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

## ▶ A. Introduction

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1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, from 8 to 13 and 18 March 2021, under the chairmanship of Mr Evance Kalula.
2. Subsequent to the decision of the Governing Body, at its 291st Session (November 2004), that the implementation of the recommendations of the Commission of Inquiry established to examine the observance by the Government of Belarus of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), should be followed up by the Committee on Freedom of Association, the Committee last examined this matter in its 390th Report (June 2019), which was approved by the Governing Body at its 336th Session.
3. On that occasion, the Committee made the following recommendations:
  - (a) The Committee urges the Government to strengthen its efforts in addressing the Committee's conclusions and recommendations, as well as the outstanding comments of the Committee of Experts on the Application of Conventions and Recommendations to fully implement the recommendations of the Commission of Inquiry. The Committee expects that the Government, with the assistance of the ILO and in consultation with the social partners, will take the necessary steps in this regard.
  - (b) The Committee urges the Government to consider, within the framework of the tripartite Council, the measures necessary to ensure that the matter of legal address ceases to be an obstacle to the registration of trade unions in practice.
  - (c) The Committee strongly encourages the Government, together with the social partners, as well as other stakeholders (for example, Ministry of Justice, Office of the Prosecutor-General, judiciary and Belarusian National Bar Association) to continue working together towards building an efficient non-judicial dispute resolution mechanism which could deal with labour disputes involving individual, collective and trade union matters.
  - (d) The Committee once again urges the Government, in consultation with the social partners, to amend Decree No. 24 and the Law on Mass Activities. The Committee considers that the amendments should be directed at abolishing the sanctions imposed on trade unions or trade unionists for a single violation of the respective legislation; setting out clear grounds for the denial of requests to hold trade union mass events, bearing in mind that any such restriction should be in conformity with freedom of association principles; and at widening the scope of activities for which foreign financial assistance can be used, in particular in view of the apparent (financial) burden that is placed on trade unions to ensure law and order during a mass event. The Committee further requests the Government to take the necessary steps in order to repeal the Ordinance of the Council of Ministers No. 49 setting out the Regulations on the procedure of payment for services provided by the internal affairs authorities in respect of protection of public order, expenses related to medical care and cleaning after holding a mass event.

- (e) The Committee requests the Government to provide its observations on the allegations relating to mass investigations of trade unionists and the seizure of trade union documents and material.
  - (f) The Committee requests the Government to submit a copy of the relevant judicial decisions in the alleged tax evasion cases of Messrs Fedynich and Komlik, as well as all other relevant information as a matter of urgency so that it can examine this aspect of the case in full knowledge of the facts.
  - (g) The Committee requests the Government to provide detailed observations on the allegations submitted by the Congress of Democratic Trade Unions (BKDP) in a communication dated 19 April 2019.
  - (h) The Committee urges the Government to provide detailed information on the measures taken in respect of all the above recommendations and expects to be in a position to note tangible progress in the near future.
4. The International Trade Union Confederation (ITUC) submitted new allegations of violations of trade union right in Belarus as well as its observations on the implementation by the Government of the recommendations of the Commission of Inquiry in a communication dated 22 December 2020.
  5. The Government submitted its reply in a communication dated 1 February 2021.
  6. The Committee submits for the approval of the Governing Body the conclusions it has reached concerning the measures taken to implement the recommendations of the Commission of Inquiry.

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

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### New allegations

7. In its communication dated 22 December 2020, the ITUC indicates it has documented numerous cases of repression of trade union members and leaders who took part in strike actions supporting democratic protests that have been taking place in Belarus since August 2020. It refers to the information passed on to it by the Belarusian Congress of Democratic Trade Unions (BKDP) and its affiliates – the Belarus Independent Union (BNP), the Free Trade Union of Belarus (SPB), the Free Trade Union of Metal Workers (SPM) and the Union of Radio and Electronic Industry (REP) – according to which trade unionists were intimidated, arrested, charged under various laws which sometimes entailed heavy prison sentences and repeatedly subjected to administrative arrest and fines. Workers from companies where strikes took place were punished by withdrawal of bonuses and dismissals. The ITUC further alleges that the workers' right to establish their organizations is still seriously restricted and that unethical employers use the fixed-term contract system to punish workers for organizing efforts and to eliminate trade unions from workplaces, while the authorities engage in favouritism in respect of particular organizations. According to the ITUC, these assaults on freedom of association, including the right to strike, constitute an unacceptable escalation of anti-union repression in Belarus.
8. By way of background, the ITUC explains that following the announcement of exit polls on 9 August 2020, hundreds of thousands of protesters have been demonstrating against the falsification of the presidential election results and human rights violations. Protests were supported by workers from numerous companies who downed tools and

joined the demonstrations. These massive, peaceful protests demonstrated the level of discontent and mobilization of Belarusian society. Yet, the Belarusian authorities reacted with violence and repression. Although the protests were peaceful, they were systematically, and in most cases, violently dispersed. The ITUC refers to the statement by the UN High Commissioner for Human Rights on 4 December 2020, who underlined that at least four persons lost their lives in the context of the protests. The ITUC also indicates that it has been estimated that more than 27,000 people have been arrested at some point for protesting against the regime. Over 900 protesters, strikers, supporters and leaders of the opposition, journalists and human rights defenders have reportedly been treated as suspects in criminal cases. Many detainees have reported being held in overcrowded cells without adequate ventilation, despite the risks linked to the COVID-19 pandemic, and denied food, water, access to toilet facilities and medical treatment. They have further reported violent and random beatings, as well as acts of humiliation, insults and threats. Reports indicate that in numerous cases of arrests, due process and fair trial rights were not respected.

- 9.** The ITUC further alleges anti-union repression in Belarus and refers, in particular, to retaliatory acts against members and leaders at the state-owned company Belaruskali in Soligorsk. The ITUC alleges that on 17 August 2020, workers announced a strike action in support of the democratic protests. Messrs Anatol Bokun and Siarhei Charkasau (BNP Vice-President) were elected as co-chairpersons of the strike committee. Apart from protesting the falsification of the election results and violent suppression of democratic protests, workers were demanding the right to a peaceful strike and an end to the unlimited fixed-term contract system. According to the ITUC, over 1,000 workers took part in demonstrations in Soligorsk. The authorities and the management of the company responded with immediate repression. The ITUC alleges, in particular, that the company immediately began dismissal proceedings against a large number of the striking workers and strike leaders. At the same time, on 21 August 2020, President Alexander Lukashenko publicly announced that the strikers might be replaced with miners from other countries, such as Ukraine. On 25 August 2020, the company notified its intention to dismiss more than 20 workers, including Mr Bokun, the co-Chairperson of the strike committee. On 27 August 2020, the company began dismissal proceedings against four members of the strike committee at Mine No. 1 – Ms Nina Tulaeva, and Messrs Gleb Sandras, Aliaksandr Novik and Pavel Siachko – as well as four members of the strike committee at Mine No. 2 – Messrs Siarhei Shupilau, Ihar Chechet, Raman Bandarovets and Pavel Puchenia. Later, another four members of the strike committee were added to the list of dismissals – Messrs Dzmitry Karaka, Ihar Zabrodski, Uladzimir Perko and Uladzislau Novik. According to the information published by the management, 55 workers who participated in the strike were dismissed by 27 November 2020. According to the ITUC, as of early December, the company continued to notify the trade union about its intent to dismiss the leaders of the strike and continued dismissal proceedings against the participants in the strike.
- 10.** In addition to the dismissals referred to above, the ITUC alleges that on 3 September 2020 the company announced that because of the strike, all miners at Mines Nos 1 and 2 would be deprived of a premium of 55 per cent while the striking workers would be also deprived of all additional payments for a year. In October 2020, the court sided with the employer and upheld the company's decision, failing to recognize the anti-union character of the penalty.
- 11.** Furthermore, the ITUC indicates that on 11 September 2020, the company filed a lawsuit against members of the strike committee, seeking to declare the strike illegal. The

Regional Court in Minsk decided in favour of the employer. The BKDP appealed the judgment and the next hearing was scheduled for 19 January 2021.

12. The ITUC further alleges repression by the authorities against leaders of the strike committee, Messrs Bokun and Charkasau. In this respect it indicates that on 25 August 2020 both were charged with the crime of organizing illegal mass events, which carries a penalty of up to eight years' imprisonment. Mr Bokun was arrested on 31 August 2020 and immediately convicted of "participation in an unauthorized public event" under section 23.34 of the Administrative Code. He was sentenced to 15 days' detention. His conviction was renewed twice during his detention, once for 25 days and once for 15 days. Overall, he spent 55 days in detention. During this time, he was repeatedly moved from one detention place to another. He also received a notification of dismissal from the company. Mr Charkasau was arrested on 13 September 2020 and convicted under section 23.34 of the Administrative Code. His conviction was renewed twice while in detention, on 3 and 19 October 2020. He spent 45 days in detention. On 13 September 2020, two other members of the strike committee, Messrs Yury Korzun and Pavel Puchenia, were arrested, convicted and sentenced to 15 days' detention pursuant to section 23.34 of the Administrative Code. Their conviction was renewed for another 15 days. While in detention, Messrs Bokun, Charkasau, Korzun and Puchenia were pressured into public self-accusation and renunciation of the strike. The authorities demanded that they sign a written statement and recorded an interview for the state TV channel BT in which they were supposed to publicly admit guilt for an illegal strike action. Renewal of detention was a direct punishment for their refusal to agree to these demands.
13. According to the ITUC, at least 55 workers were arrested or were subject to pre-trial detention for their involvement in protests and strikes in Soligorsk and numerous others suffered harsh reprisals. By way of example, the ITUC refers to the following cases:
  - (1) Mr Evgeny Prilutsky, a member of the Independent Union of Miners (NPG), was detained on 9 August 2020, beaten and sentenced to an administrative term. He was released before completing his sentence.
  - (2) Mr Nikolai Zimin, a member of the BNP, was detained on 9 August 2020, beaten and held for 25 days. He was detained again and fined 1,000 Belarusian rubles (US\$380). On 8 September 2020, he was sentenced to another 15-day term of administrative detention.
  - (3) Mr Maxim Sereda was arrested on 9 August 2020 and sentenced to 12 days of detention. He served five days before being released.
  - (4) Mr Dmitry Khrolovich, a member of the NPG, was arrested on 9 August 2020 and sentenced to administrative detention.
  - (5) Mr Evgeny Korotchenya, a member of the NPG, was arrested on 9 August 2020 and sentenced to administrative detention.
  - (6) Mr Lev Vaskov, a member of the NPG, was arrested on 9 August 2020 and sentenced to administrative detention.
  - (7) Mr Piotr Pechkurou was sentenced on 11 September 2020 to seven days of detention.
  - (8) Mr Raman Liavonchyk, a member of the strike committee, was sentenced on 14 September 2020 to 15 days of detention.

- (9) Mr Siarhei Taras, a member of the strike committee, was sentenced on 3 October 2020 to seven days of detention.
  - (10) On 13 November 2020, 43 members of the BKDP and members of the strike committee of Belaruskali were arrested for displaying the Belarusian white-red-white flag in front of the museum of Tadeusz Kosciuszko. All of them spent three days in pre-trial detention.
  - (11) On 16 November 2020, 24 activists received fines between 20 and five base units (one base unit set at 27 Belarusian rubles (US\$11)). A total of 19 activists received, pursuant to section 23.34 of the Administrative Code, detention sentences between five and 15 days for taking part in an unauthorized mass event.
  - (12) Ms Anastasia Stashanina, ex-deputy Chairperson of the NPG at Belaruskali, was detained for ten days.
  - (13) Mr Evgeniy Evsuchenya, a member of the strike committee, served ten days of detention.
  - (14) Mr Andrey Fidrik, acting Chairperson of the NPG, was beaten and detained on 9 August 2020 and released without charge.
  - (15) Mr Dmitry Kudelevich, a member of the strike committee, was interrogated by the authorities on 20 August 2020; he fled the country and went to Ukraine.
  - (16) Mr Pavel Siachko was interrogated by the authorities on 21 August 2020. All members of his family were also subjected to interrogation; he was forced to resign from the strike committee.
  - (17) Mr Gleb Sandras, press secretary of the strike committee, was interrogated by the authorities on 2 September 2020. He was forced to resign from the strike committee. The strike fund of the strike committee maintained by Mr Sandras has been forcibly transferred to a charity.
  - (18) Ms Nina Tulaeva and Mr Aleksey Kryzh, members of the strike committee, were punished with a fine.
  - (19) Mr Nikolai Liavonchyk, an employee of Belaruskali and brother of a member of the strike committee, Mr Raman Liavonchyk, was detained on 3 September 2020 by the police on charges of committing a criminal offence and threatening the police. His apartment was searched.
  - (20) Mr Oleg Kudelka, a miner who refused to leave the mine as a form of protest against repression targeting the Belaruskali striking committee on 21 September 2020, was taken to a psychiatric hospital. After he was released from the hospital, he was summoned by the police "for a talk". Workers who came to support Mr Kudelka were detained for three days.
  - (21) Mr Leonid Makhotko, a trade union organizer in Soligorsk, was fined and received a ten-day term for supporting the Belaruskali miners.
- 14.** The ITUC further alleges repression by the authorities and employers and harsh retaliatory measures against trade union members and leaders participating in strike actions at the following enterprises in Bobruisk, Glubokoe, Grodno, Novopolotsk, Minsk and Mogilev: Belshina, Mozyr Oil Refinery, Grodno Azot, Belarusian State University, Minsk Wheel Tractor Plant (MZKT) and Minsk Tractor Plant (MTZ). By way of example, the ITUC refers to the following cases:

- (1) Mr Sergei Gurlo, Chairperson of the BNP primary organization in Bobruisk, was detained for ten days.
  - (2) Mr Ruslan Parfenov, a member of the BNP at the Mozyr Oil Refinery, was arrested on 8 August 2020.
  - (3) Mr Yury Rovovoi, a co-Chairperson of the strike committee at the Grodno Azot, left for Poland on 24 August 2020 after facing attempts of arrest and kidnapping by people in civilian clothes. He asked for political asylum.
  - (4) Twenty-eight employees of the Grodno Azot were arrested on 25 August 2020. They were released pending trial.
  - (5) Ms Svetlana Volchek, the coordinator of the strike committee of the Belarusian State University in Grodno, was detained during the night of 29–30 August 2020.
  - (6) Mr Sergei Dylevsky, the leader of the strike committee at the MTZ in Grodno, was convicted in the last week of August 2020.
  - (7) Mr Alexander Lavrinovich, the leader of the strike committee at the MZKT, was convicted in the last week of August 2020.
  - (8) Mr Evgeny Vilsky, deputy Chairperson of the Novopolotsk city regional organization of the BNP, was punished with 15 days of detention for supporting the protests.
  - (9) Ms Lizaveta Merlyak, international secretary of the BNP, was detained in Grodno on 30 August 2020. She was punished with a fine.
  - (10) Mr Vadim Khlus, trade union organizer in Glubokoe, was sentenced to three days of detention for “participating in an unauthorized event”.
  - (11) Mr Volodar Tsurpanov, Chairperson of the Mogilev primary organization, was detained for 20 days for speaking at the school assembly of secondary school No. 43 with an invitation to teachers to repent for falsifying the election results. He was charged with “petty hooliganism and insubordination to the demands of police officers”.
  - (12) Ms Galina Smirnova, Chairperson of the Bobruisk trade union, member of the Council of the REP trade union, was fined for “participation in an unauthorized event”.
- 15.** Furthermore, the ITUC provides the following information on members of the BNP employed at “Naftan” company who suffered discrimination and repression:
- (1) Mr Evgeny Ruban’s bonus was cut by 25 per cent after he joined the BNP. He is currently a member of the BNP activists’ council.
  - (2) Mr Alexey Malinovsky’s bonus was cut by 25 per cent after he joined the BNP. He is currently a member of the BNP activists’ council. An administrative case is open against him for having participated in an unauthorized mass event.
  - (3) Mr Sergey Lapunov – after two summonses for participation in an unauthorized mass event and two court hearings, the cases were closed for lack of evidence. He was also deprived of the prize money for the competitions organized by the enterprise because of his BNP membership.
  - (4) Mr Maxim Shchuplenkov’s bonus was cut by 25 per cent. He served five days in a detention facility for having participated in an unauthorized mass event and summoned to the prosecutor’s office after participation in a rally on 17 August 2020. He is a member of the BNP and a shop steward.



- (5) Mr Andrey Pavlov received two subpoenas for having participated in a non-sanctioned mass event. In the first case, he received an ungrounded warning. In the second – 25 hours of detention pending trial.
  - (6) Mr Evgeny Matelenok, on 12 August 2020, filed several applications to leave the Federation of Trade Unions of Belarus' (FPB) affiliate – the Belarusian Chemical Union – as the chairperson of its shop committee only to find out on 5 October 2020 that the applications were simply thrown away. In addition, he was in detention from 23 to 25 September 2020. The ITUC adds that while they are members of the BNP, workers remained members of the FPB's affiliated union without knowing it because their applications to withdraw from that union were not acted upon.
  - (7) Messrs Andrey Ustin and Sergey Volokitin were summoned for participation in an unauthorized mass event and fined.
  - (8) Ms Olga Britikova, Ms Svetlana Gladilovich, and Messrs Vladimir Krysenok, Aleksey Zhuravlev, Alexander Kapshul, Vadim Mikhailov, Sergei Volokitin, members of the BNP, were summoned to the prosecutor's office for their participation in the video "Against violence".
  - (9) Ms Olga Britikova, deputy Chairperson of the primary organization of the BNP, was dismissed.
  - (10) Messrs Igor Valyaev and Alexander Kukharenok were dismissed for having exercised the right to strike.
  - (11) Documents for dismissal are being prepared for another 18 workers on strike.
- 16.** The ITUC also alleges that in November 2020, Alexander Lukashenko announced that the creation of trade union organizations affiliated to the state-controlled FPB will be required at every single private sector company by the end of 2020, under the sanction of closing companies that refused to comply with the new requirement. The ITUC refers in this respect to the announcement as appeared in BelTA news on 10 November 2020. The ITUC considers that the state favouritism in respect of a particular organization violates the right of workers to freely establish and join organizations of their own choosing. According to the ITUC, the new requirement is particularly problematic in view of the widespread and systematic sanctions imposed on independent trade union organizations affiliated to the BKDP for their involvement in the democratic protests. It emphasizes that all trade union organizations should be treated impartially by the authorities, even if they criticize the social or economic policies of the Government.

## Outstanding recommendations of the Committee

### Legal address requirement

- 17.** The ITUC alleges that the Government continues to fail to ensure that workers can establish their organizations without previous authorization or without obstacles, such as the legal address requirement, as requested by the Commission of Inquiry. The ITUC alleges, in particular, that most recently, the newly created primary trade unions of the SPB were denied registration at several national universities. In 2020, the SPB informed the management of the Belarusian State University, the Belarusian State Linguistic University, the Belarusian State Medical University and the Belarusian National Technical University about the establishment of new trade union organizations of students and staff at their respective universities and requested them to provide legal addresses to these newly created trade union structures. In each of the cases, the management not

only denied providing the legal address, which in turn made impossible the legalization of these trade union organizations, but immediately engaged in repressive actions, threatening students and members of the staff trying to join the unions. As a result, at least 180 students were expelled and dozens of professors and academics were dismissed or forced to leave their work under pressure from the university administration. The ITUC reiterates that the legal address requirement puts organizing efforts in a vicious circle by blocking legalization of the newly created trade union organizations and exposing workers who are trying to establish a trade union organization to anti-union discrimination.

### Law on Mass Activities

18. In the ITUC view, the handling of protests by the authorities has shown that the Government has no intention of amending the Law on Mass Activities, as requested by the Commission of Inquiry. The Law was used by the authorities to suppress protests, to prosecute the participants and subject trade union members and leaders to the measures of administrative arrest. Such wide prerogatives to impose arrest stem from the provisions of the Law – its deliberately restrictive scope, prohibition of spontaneous assemblies, rigid authorization procedure, broad discretion as to its application and vague liability provisions. The ITUC refers, in particular, to section 15 of the Law, which allows for organizers and participants of assemblies, including strikes and demonstrations, to be punished pursuant to “the laws of the Republic of Belarus”. Accordingly, the authorities have wide discretion in administering penalties for the alleged violation of the provisions of the Law.

### Anti-union discrimination

19. The ITUC also alleges that workers remain particularly vulnerable to anti-union discrimination because of the widespread short-term employment contract system based on Decree No. 29 and further incorporated into the Labour Code in 2019. In this respect, the ITUC refers to the example of the metallurgical company Belarusian Steel Works in Zhlobin where workers have been trying to set up a trade union organization since October 2020. The company employs over 12,000 workers. Organizing efforts coincided with workers’ participation in the democratic protests. The management immediately engaged in anti-union discrimination, threats and intimidation to stop the exercise of trade union rights. The ITUC alleges in this respect that all workers who took part in the protests as well as those engaged in establishing a new union were deprived of bonuses and explains that bonuses can add around one fourth to the monthly salary, which at the company can be as low as 1,200 Belarusian rubles (around US\$450). The workers concerned also received first disciplinary reprimands and were made aware that repeated misconduct justified termination of their contracts. Further, members of the founding committee, including the elected chairperson of the newly created trade union organization, were informed that their fixed-term contracts would not be renewed. In such cases, workers would not be able to finalize the establishment of their union since termination of the contract of a single member of the founding committee stops the process of legalization. The ITUC emphasizes that the above-described situation illustrates how the fixed-term contract system renders workers vulnerable to abusive practices and unfair anti-union dismissals and therefore violates the principles of freedom of association.
20. The ITUC expresses its deep disappointment that 16 years after the adoption of the recommendations of the Commission of Inquiry, the Government continues to fail to ensure full respect for the basic civil liberties of trade union members and leaders, such

as freedom of assembly, freedom of expression and the principles of freedom of association contained in Convention No. 87 as well as the ILO Constitution. The ITUC condemns the Government's ongoing and systematic intimidation, harassment and repression against trade unions.

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

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21. In its communication dated 1 February 2021, the Government provides detailed replies to the recommendations of the Committee.

### Recommendation (b): Legal address requirement

22. The Government reiterates that trade unions can declare their legal address outside the employer's premises and underlines that this requirement is not an obstacle to the registration of trade unions. The Government indicates that as of 1 January 2021, a total of 25 trade unions (20 national trade unions, one territorial trade union and four trade unions in organizations), four unions (associations) of trade unions and 26,522 organizational structures of trade unions were registered in Belarus. There were no decisions to refuse state registration of trade unions or unions (associations) of trade unions in 2019 and 2020. Cases of refusal of state registration of organizational structures of trade unions are sporadic and have objective reasons, and in the vast majority of cases are not related to the lack of confirmation of legal address. Rather, the main reasons for refusals are non-compliance by trade unions with the legal provisions concerning the procedure of creation of trade union organizations and submission to the registration authorities of all the necessary information and documents.
23. In this respect, the Government explains that refusals in state registration of the primary organization of the unitary building enterprise "Remmontazhstroi Trest" of the BNP were due to the failure of the trade union to submit all documents required by the legislation. After submitting all the necessary documentation, this primary organization was registered by the decision of the Soligorsk District Executive Committee on 15 January 2019. Refusal to register in 2019 the Bobruisk city primary trade union organization and Orsha district primary trade union organization of the REP trade union, and in 2020, the Mogilev city REP primary trade union organization, and primary BNP trade union organizations of employees of EPAM Systems and employees of Peleng company were caused by non-compliance with the relevant legislative provisions concerning trade union establishment and registration procedures. The Government refers to section 1 of the Law on Trade Unions, which requires primary trade union members to be bound by common interests by virtue of the nature of their work. The Government points out that the relevance and the validity of this requirement was confirmed at a meeting of the tripartite Council for improvement of legislation in the social and labour sphere (hereafter "tripartite Council") of 30 April 2009. No common interests in the type of activity of the citizens belonging to the above-mentioned primary organizations of the REP and BNP trade unions could be discerned. Thus, the steps taken by the REP and BNP unions to establish the so-called city primary organizations, uniting citizens without association with any organization, industry or profession, did not meet the requirements of the Law on Trade Unions. The Government also indicates that as the documents for

the state registration of a trade union or an organizational structure of a trade union may be submitted to the registration authorities repeatedly after all the identified deficiencies have been eliminated, the refusal to register is not equivalent to a ban on the establishment of a trade union or its organizational structures. In view of the above, the Government considers that the assertions that the legal address is an insurmountable obstacle to the activities of trade unions have no objective basis.

24. Regarding the Committee's previous request to discuss the issue of registration of trade unions at the tripartite Council, the Government indicates that the agenda of the Council's meetings is drawn up on the basis of proposals from the parties and organizations represented on the Council, taking into account the relevance of the issues raised and in consultation with the members of the tripartite Council. A member of the tripartite Council (or an organization) that initiates the examination of a particular issue shall submit to the Council secretariat (Ministry of Labour and Social Protection) relevant materials confirming the possible existence of the issue of concern and the appropriateness of its examination within the Council. The Government indicates that between 2016 and 2020 there had been no submissions for discussion of issues relating to the legal address requirement.

### **Recommendation (c): Non-judicial dispute resolution mechanism**

25. The Government reiterates its interest in continuing to work together with the social partners and the ILO in order to establish a strong and effective labour dispute resolution system that could be used to resolve disputes involving individual, collective and trade union issues. In this respect, the Government appreciates the assistance provided by the Office in improving the work of the tripartite Council. The Government indicates that there have been concrete positive outcomes of cooperation, such as tripartite seminars and training courses that have resulted in capacity-building for social dialogue, as well as the inclusion in the General Tripartite Agreement of provisions dealing with the procedures for development and implementation of collective agreements in situations where two trade union organizations are active in an undertaking/organization. The Government points out that all social partners were very enthusiastic about the involvement of the Office in improving the way sectoral and local agreements are negotiated and implemented. The Government refers, in particular, to the meeting of the tripartite Council on 14 November 2019 in the framework of which the issue of tariff and local agreements were examined and discussed together with an ILO expert. The Government believes that the proposals and recommendations set out in the analytical note prepared by the expert provide a good basis for the parties to work out acceptable solutions.
26. The Government explains that one of the objectives pursued by the parties in setting up the tripartite Council, and particularly in reformulating its work in 2009, was the implementation of the Commission of Inquiry recommendations Nos 5 and 7. The Council was set up in consultation with the Office as a body trusted by all parties to consider matters relating to the implementation of the Commission of Inquiry recommendations as well as other issues of interaction between the Government and its social partners, including the handling of complaints made by trade unions. The Government indicates its readiness to move forward either by further improving this function of the Council or by creating another structure. It nevertheless expresses its concern over the issue of representation at the Council and the willingness of the parties to accept the decisions that will be made within this tripartite body. The Government indicates, in particular, that in its experience, representatives of the BKDP are not

prepared to support Council decisions that differ from the BKDP predetermined position or declare that they do not have the necessary authority to adopt a position of the Council. The Government indicates that it would like to count on the advice of the Office in this respect once the Council resumes its work, which has been temporarily suspended due to the epidemiological situation caused by the wide spread of COVID-19.

### **Recommendation (d): Amendments to the legislation governing the receipt and use of foreign gratuitous aid and to the Law on Mass Activities**

- 27.** The Government indicates that Presidential Decree No. 24 of 28 November 2003 expired five years ago due to the adoption of Presidential Decree No. 5 of 31 August 2015 on Foreign Gratuitous Aid. Decree No. 5, in turn, became invalid due to the adoption of Presidential Decree No. 3, which entered into force (except for certain provisions) on 27 August 2020. Decree No. 3 defines the purposes for which foreign aid can be used and excludes seminars (with the exception of seminars aimed at conducting political and mass propaganda work among the population) from the list of prohibited events. It retains the provision according to which an improper use of aid by trade unions and other public associations, foundations and non-profit organizations is a ground for their liquidation (termination of activities) even for a single commission of a violation. The Government explains that the national legislation does not prohibit trade unions from receiving foreign aid, including from international trade union organizations and associations; rather, it determines the conditions and purposes for which it can be used. At the same time, the procedure for registering foreign gratuitous aid is not complicated and is carried out in a short period of time. The Government indicates that the ban on receiving and using foreign aid for purposes involving political and mass propaganda work among the population is conditioned by national security interests, the need to exclude opportunities for destructive influence and pressure from external forces (foreign states, international organizations and associations, foundations, etc.) aimed at destabilizing the socio-political and socio-economic situation in the country. The Government believes that allowing outside forces (in this case, foreign and international trade unions) to sponsor mass activities in the country could be used to destabilize the socio-political and socio-economic situation and thereby affect the well-being of citizens. The Government emphasizes that this procedure applies to all legal entities, including trade unions, and further points out that there are no cases of trade unions being denied foreign gratuitous aid and that there were no cases of trade unions being liquidated for the violation of the procedure of use of foreign gratuitous aid. The Government also indicates that in 2019–20, there have been no requests submitted by trade unions to register such aid. Further in this respect, the Government considers that the issue of procedure established for receiving foreign gratuitous aid is unjustifiably linked to Articles 5 and 6 of the Convention.
- 28.** Regarding the Law on Mass Activities, the Government indicates that it was amended on 26 January 2019. It explains that the revised legislation sets out a number of additional measures and requirements that need to be complied with by the organizers in order to ensure law and order and public safety during mass events. The Government indicates that because a violation of the procedure for organizing and/or holding a mass event may entail a serious threat to public order and may even lead to the loss of life, national legislation establishes certain liability, including liquidation of an organization for a single violation if the mass event results in serious damage or substantial harm to the rights and legal interests of other citizens and organizations. The Government points out

that the above should not be interpreted as a deterrent to the exercise by citizens and trade unions of their right to freedom of peaceful assembly. The Government adds that the decision to terminate activities of an organization may only be taken by the Supreme Court. The Government indicates that to date, there have been no decisions on the liquidation of trade unions for violation of the procedure for organizing and conducting mass events.

29. With regard to the information previously provided by the BKDP that the introduction of notification procedures for the organization and holding of mass events in permanent locations imposes on the organizers the format of the event, the Government indicates that the organizers have the right to determine the format of the planned event themselves. Thus, if the planned format allows the event to be held in one of the specially designated permanent locations, the organizers may use the notification procedure; if not, the organizers need to receive permission to hold the mass event. The above is aimed not at restricting the organizers in choosing the format of the event, but rather at eliminating excessive interference by state bodies in the process and thus at creating additional guarantees for the realization by citizens of the right to assembly. The Government further indicates that at the same time, certain restrictions on individual rights and freedoms are a means of legal protection of public order and public safety, morality, public health and the rights and freedoms of other persons. Thus, the Government considers that the legislation in force is in conformity with the principles of freedom of association and freedom of assembly.
30. The Government indicates that the BKDP and its member trade unions have repeatedly exercised their right to assemble and organize mass events in practice. It further indicates that all decisions to refuse to hold public events including those organized by the BKDP and its trade unions, were taken by the heads of the local executive and administrative authorities in strict compliance with the law, taking into account the obligation to respect the freedom of assembly and the right of trade unions to act collectively to protect their members' interests, and were based on a thorough analysis of all possible circumstances directly affecting the provision of order and security. According to the Government, the most common reasons for refusals to issue authorizations to hold mass events are: the application did not contain the information required by the law; another mass event was being held in the same place at the same time; the event was to take place in a location not allowed for such a purpose; the documents submitted did not indicate the precise location of the event; and the event was announced in the mass media prior to receiving authorization. The Government indicates that when permission to hold a mass event is not granted, the organizers, having rectified the shortcomings, can resubmit their application.

### **Recommendation (e): Alleged investigations of trade unionists and the seizure of trade union documents and material**

31. Regarding the cases of Messrs Fedynich and Komlik, leaders of the REP union, found guilty in 2018 of tax evasion and use of foreign funds without officially registering them with the authorities as per the legislation in force, the Government indicates that computer equipment, mobile phones and other equipment seized during searches of the REP union and the BNP administrative premises were returned to their official representatives in October 2019, except for the hard drives and flash drives containing information on the financial and economic transactions of these organizations. The data storage devices have not been returned and are kept together with the corresponding material in the criminal case of tax evasion by the leaders of the REP union,

Messrs Fedynich and Komlik. The Government indicates that the information contained therein will be used to conduct further investigations into possible similar crimes committed by these persons in the period 2012–18. The Government reiterates that the public statement made by the BKDP Chairperson following the charges made against, and the arrest of, Messrs Fedynich and Komlik demonstrate that the core issue of the situation was “far beyond trade union movement” and that these persons “made a mess of things”.

### **Recommendation (f): Request to submit copies of the court decisions in the criminal case against Messrs Fedynich and Komlik**

32. The Government indicates that given the provisions of current legislation, this request cannot be satisfied. The Government explains that pursuant to section 367 of the Code of Criminal Procedure, only the accused, defence counsel and public and private prosecutors can be served a copy of the judgment, as well as the victim, civil claimant, civil defendant and their representatives, if the court receives a request to that effect from the above-mentioned persons. The national legislation does not provide for the provision of copies of court and other documents to persons who have not taken part in criminal proceedings. The Government indicates that the legality and validity of the above judicial decisions were verified by the Supreme Court on appeals.

### **Recommendation (g): 2019 BKDP allegations**

33. The Government refutes the BKDP allegation that the Government has failed to implement the main recommendations of the Commission of Inquiry and refers to the information outlined above.
34. With regard to the allegation that the management of Belaruskali and Trest Remontazhstroi enterprises coerced employees to leave the BNP primary trade union organizations, the Government explains that at these enterprises, primary trade union organizations of both the FPB and the BKDP have been established. For example, the first enterprise has two primary trade union organizations: the primary organization of the Belarusian Trade Union of Chemical, Mining and Oil Industry Workers (Belhimprofsoyuz), which is part of the FPB, and the Independent Trade Union of Mineworkers of Belaruskali, the primary organization of the BNP, which is part of the BKDP. The Government indicates that the existence of organizational structures of two different unions at the same enterprise naturally gives rise to competition for membership. Trade unions use different methods and means to strengthen their position, to retain old members and to attract new ones. The Government explains that the by-laws of the Belhimprofsoyuz do not allow simultaneous membership in two trade unions. In preparation of the 2019–20 reporting and election campaign, the trade union committee of the Belhimprofsoyuz primary trade union decided to eliminate dual trade union membership. In order to implement this decision, the trade union carried out the following activities: the provisions of the Belhimprofsoyuz by-laws were brought to the attention of employees who were members of both unions; workers were advised that they had the right to independently choose their trade union membership and were asked to do so; and to that effect, relevant notices and samples of applications were distributed. According to the Government, as a result of this outreach, the number of members of the BNP primary organization decreased.
35. The Government indicates that there has been no information regarding acts of pressure on members of the primary trade union organizations of the BNP from the management

of enterprises to force workers to leave their trade union and no information has been submitted to the tripartite Council in this respect. The Government also indicates that employees who believe they have been or are being discriminated against in employment relationships on the grounds of trade union membership, including pressure from the company management, have the right to apply to the courts for redress of discrimination.

- 36.** Regarding the alleged refusals to grant permission to members of the BKDP to hold mass events, the Government provides detailed information regarding cases where permission to hold a demonstration was denied and explains that the decision to allow or prohibit a mass event is made taking into account the date, place, time, number of participants, weather conditions and a number of other circumstances directly affecting public order and safety and that both the rights of citizens to freedom of association and freedom of assembly and the principle of the priority of the public interest, according to which the exercise of rights should not undermine public benefit and safety, damage the environment, historical and cultural values, and infringe on the rights and interests of other persons, are taken into account. Such denials also included cases where: the event was to take place in a location not allowed for such a purpose; the failure to provide information on the source of funding and information on contracts for medical care and cleaning of the territory; the application did not contain the information required by the law; and another mass event was being held in the same place at the same time. The Government reiterates that when permission to hold a mass event is not granted, the organizers, having rectified the shortcomings, can resubmit their application; a decision prohibiting the holding of a mass event may be appealed in court.
- 37.** Regarding the alleged prohibition of strikes, the Government indicates that the right to strike is not expressly provided for in the instruments of the ILO and that the fact that ILO supervisory bodies derive the right to strike from Article 3 of Convention No. 87 is questioned by the Employers' group. The Government refers to the national constitutional and legislative provisions enshrining the right to strike, according to which the exercise of the right to strike requires the existence of a collective labour dispute. The Government points out that national legislation does not provide for the possibility of organizing and holding political strikes. The law may impose restrictions on the exercise of the right to strike to the extent necessary in the interests of national security, public order, public health and the rights and freedoms of others. The Government points out that pursuant to section 393 of the Labour Code, in the event of a real threat to national security, public order, public health, the rights and freedoms of other persons and in other cases provided for by law, the President of the Republic of Belarus has the right to postpone or suspend a strike, but not for more than three months. The Government further points out that legal provisions containing certain restrictions or conditions on the exercise of the right to strike are due to the very nature of the right. According to the Government, the right to strike is fundamentally different from other human rights due to a number of specific features: it is not an end in itself, but a tool to achieve an end, a way to protect the interests of workers; the right to strike is not inherent and inalienable as it may be restricted; it must be balanced with the rights of other human rights when the health and safety of others are affected or essential services are impacted; and while it is an individual right, the possibility of its realization depends on the agreement of other parties. The Government confirms that the decision by members of the SPB at an enterprise in Polotsk to call a rolling strike from 1 November to 31 December 2017 was declared illegal by the court.
- 38.** With regard to the BKDP allegations concerning the discriminatory use of fixed-term employment contracts, the Government indicates that the equality of all citizens and



protection of their rights and legitimate interests are guaranteed by article 22 of the Constitution. The Government further refers to the relevant legislative provisions prohibiting anti-union discrimination and indicates that complaints and allegations of discrimination in employment relations, including discrimination on the grounds of belonging to a trade union, are carefully considered by the courts. In addition, the social partners have the opportunity to address and discuss problematic issues, including complaints of anti-union discrimination, within the framework of the tripartite Council. Regarding the fixed-term system in general, the Government considers that by accepting the contractual form of employment and signing a contract, the employee confirms his or her agreement and intention to be in an employment relationship with the employer for the duration of the contract and his or her agreement and willingness to terminate the employment relationship at the end of the contract period. As in other legal systems, in Belarus, the termination of the employment relationship at the end of a fixed-term contract is not considered as a dismissal at the employer's initiative. In this respect, the law does not oblige the employer to justify his or her reluctance to extend the employment relationship after the expiry of the contract. The expiry of the contract is in itself sufficient grounds for termination. Therefore, if an employer decides not to re-employ the employee after the expiry of the contract, there is no need for any further justification. The question of forcing the employer to enter into a new contract with an employee cannot be resolved, including in court (except for categories of employees for whom special protective measures are established by law).

39. To conclude, the Government underlines its constructive attitude in engaging with the ILO. The Government indicates that in close cooperation with the social partners, it has taken a number of concrete, targeted steps which have resulted in full implementation of some of the recommendations of the Commission of Inquiry; substantial progress has been achieved in the implementation of others; and there is advancement in the realization of some of the other recommendations. The Government reiterates in detail the information on the effect given to the Commission's recommendations it has been providing since the publication of the Commission's report in 2004. The Government believes that the steps it has taken to develop the social partnership system and to include all interested trade unions and employers' organizations in the dialogue, as well as the constructive engagement with the ILO on implementing the recommendations of the Commission of Inquiry and the openness to cooperation on a wider range of social and labour issues, confirm the commitment of Belarus to fundamental principles and rights at work and its willingness to continue engagement on the issues of concern.

## ► D. The Committee's conclusions

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40. *The Committee notes the allegations transmitted by the ITUC as well as its observations on the implementation by the Government of the recommendations of the Commission of Inquiry outlined in its communication dated 22 December 2020. It further notes the Government's detailed reply to the Committee's previous recommendations.*
41. *The Committee notes with concern the new allegations submitted by the ITUC which refer to events which occurred following the presidential election in August 2020. The ITUC alleges, in particular, violation of the right to protest, detention, imprisonment and fines imposed on trade unionists and workers who have participated in demonstrations. The ITUC alleges that peaceful demonstrations were violently dispersed and that many detainees have reported being held in overcrowded cells, without adequate ventilation, despite the risks linked to the*

COVID-19 pandemic, and denied food, water, access to toilet facilities and medical treatment. The ITUC further refers to the reported violent and random beatings while in detention, as well as acts of humiliation, insults and threats. According to the ITUC, in numerous cases, due process and fair trial rights were not respected.

42. The Committee regrets that the Government has not replied to these serious allegations. The Committee notes, however, the Government's reply to the same allegations within the framework of the regular supervision of the application of Convention No. 87 in the Republic of Belarus. The Committee notes, in particular, the Government's view that the exercise of rights and freedoms, including freedom of assembly (meetings, street processions, demonstrations and picketing) must be peaceful, respect the law of the land and not lead to violations of the law or the rights and legitimate interests of others, or threaten public and national security. According to the Government, however, protest actions by some citizens to express their disagreement with the results of the presidential elections were purely political in nature and were organized without regard to the legislation establishing the procedure for their conduct and were not always peaceful. The Government indicates that in the course of these actions, numerous offences were recorded; these included acts of resistance to the legitimate demands of law enforcement officers, associated with the manifestation of aggression, use of violence, damage to official transport and blocking the movement of vehicles, damage to infrastructure facilities. Furthermore, according to the Government, the majority of persons referred to in the allegations had been held administratively liable for organizing and/or actively participating in illegal protests or calling for participation in such protests. The Committee observes the statement by the UN High Commissioner for Human Rights at the Intersessional meeting of the Human Rights Council on the situation in Belarus on 4 December 2020, referred to by the ITUC, in which she pointed out that the monitoring and analysis of demonstrations since 9 August 2020 indicate that participants were overwhelmingly peaceful. The Committee expresses its deep concern over the serious allegations submitted by the ITUC and the continued deterioration of the situation of human rights in the country, particularly with respect to the right of peaceful assembly. The Committee recalls that on many occasions, it has emphasized the importance of the principle affirmed in 1970 by the International Labour Conference in its resolution concerning trade union rights and their relation to civil liberties, which recognizes that "the rights conferred upon workers' and employers' organizations must be based on respect for those civil liberties, which have been enunciated in particular in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights, and that the absence of these civil liberties removes all meaning from the concept of trade union rights" [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, para. 68]. The Committee recalls that among those liberties essential for the normal exercise of trade union rights are freedom of opinion and expression, freedom of assembly, freedom from arbitrary arrest and detention and the right to a fair trial by an independent and impartial tribunal. The Committee considers that peaceful participation in demonstrations should not give rise to arrest or detention. No one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful protest. The Committee refers to recommendation No. 8 of the Commission of Inquiry on Belarus, which considered that adequate protection or even immunity against administrative detention should be guaranteed to trade union officials in the performance of their duties or when exercising their civil liberties (freedom of speech, freedom of assembly, etc.). The Committee urges the Government to take all necessary measures to implement this recommendation of the Commission of Inquiry, to prevent the occurrence of human rights violations and ensure full respect for workers' rights and freedoms. The Committee further urges the Government to take measures for the release of all of trade unionists who remain in detention and the

*dropping of all charges related to participation in peaceful protests and industrial action. The Committee requests the Government to take the necessary measures to ensure that the affected persons are adequately compensated for damages suffered. It requests the Government to indicate all measures taken to that end. While taking due note of the Government's indication that court decisions are not made public or provided to third parties (a matter which the Committee addresses below in detail), the Committee requests the Government to supply copies of the relevant court decisions upholding detention and imprisonment of workers and trade unionists and to provide a list of the affected persons.*

- 43.** *Regarding the reported cases of violent mistreatment of workers participating in such protests, the Committee, deeply regretting that the Government provides no information in this regard, recalls that it is the responsibility of the Government to ensure a climate free from violence, threat or pressure against peacefully protesting workers. The Committee urges the Government to investigate without delay the alleged instances of intimidation or physical violence through an independent judicial inquiry, in order to shed light on the facts and circumstances surrounding these acts, and to identify those responsible, punish the guilty parties and thus prevent the repetition of similar events. The Committee requests the Government to provide information on all measures taken to this end. Further, in this respect, the Committee, with reference to the recommendations of the Commission of Inquiry, stresses the need to ensure an impartial and independent judiciary and justice administration in general in order to guarantee that investigations into these grave allegations are truly independent, neutral, objective and impartial. In this respect, the Committee recalls the Commission of Inquiry recommendation No. 8 calling upon the Government to implement the recommendations made by the United Nations Special Rapporteur on the independence of judges and lawyers and requests the Government to indicate the steps it has taken to ensure that the above allegations are investigated by an independent body.*
- 44.** *The Committee notes the ITUC's detailed allegations regarding acts of anti-union discrimination, including withdrawal of benefits and dismissals, as well as arrests and detention in retaliation for having exercised the right to strike. The Committee regrets the absence of the Government's reply thereto. The Committee notes, however, the general comments of the Government, which dispute that the right to strike derives from ILO Instruments, while describing the legislation protecting the right of workers to strike in the framework of collective labour dispute. The Committee recalls 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. It considers that the right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement; workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their members' interests [see **Compilation**, paras 752 and 766]. Moreover, and in light of the new grave and serious allegations examined above, the Committee, noting that a system of democracy is fundamental for the free exercise of trade union rights, [see **Compilation**, para. 69] considers that, in a situation in which they deem that they do not enjoy the fundamental liberties necessary to fulfil their mission, trade unions (and employers' organizations) would be justified in calling for the recognition and exercise of these liberties and that such peaceful claims should be considered as lying within the framework of legitimate trade union activities, including in cases when such organizations have recourse to strikes. The Committee therefore requests the Government to amend its legislation, in consultation with the social partners, to ensure that workers are protected against any acts of discrimination for simply having peacefully exercised their right to strike to defend their occupational and economic interests, which do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and*

social policy questions. The Committee requests the Government to provide information on all measures taken or envisaged to that end.

45. The Committee further recalls that the authorities should not resort to arrests and imprisonment in connection with the organization of or participation in a peaceful strike; such measures entail serious risks of abuse and are a grave threat to freedom of association [see **Compilation**, para. 970]. Regarding what appears to be an allegation of a wave of dismissals or threats thereof across the country following workers' declaration and/or participation in strikes, the Committee recalls that arrests and dismissals of strikers on a large scale involve a serious risk of abuse and place freedom of association in grave jeopardy. The competent authorities should be given appropriate instructions so as to obviate the dangers to freedom of association that such arrests and dismissals involve [see **Compilation**, para. 975]. It requests the Government to take the necessary measures to ensure that no person is detained in connection with his or her participation in a peaceful strike. The Committee further requests the Government to take the necessary measures to ensure that all persons who have been arrested and/or detained for their participation in a peaceful strike are adequately compensated for damages suffered. It requests the Government to indicate all measures taken to that end. The Committee also requests the Government to reply to the ITUC allegations regarding dismissals and withdrawal of bonuses and to ensure that those workers who suffered these measures as a result of participation in a peaceful strike are reinstated. It requests the Government to provide information on the measures taken in this respect.
46. The Committee observes with concern the ITUC allegation that "Alexander Lukashenko urged that trade unions be set up at all private enterprises by the end of 2020 under the threat of liquidation of those private companies which did not organize trade unions upon the FPB demand "as announced by BelTA, the Belarusian news agency, and broadcast by the state TV channel". The Committee recalls that the 1952 ILC resolution concerning the independence of the trade union movement emphasizes that a stable, free and independent trade union movement is an essential condition for good industrial relations and that it is essential for the trade union movement in each country to preserve its freedom and independence so as to be in a position to carry forward its economic and social mission irrespective of political changes. The resolution recalls that governments, in seeking the cooperation of trade unions to carry out their economic and social policies, should recognize that the value of this cooperation rests to a large extent on the freedom and independence of the trade union movement as an essential factor in promoting social advancement and should not attempt to transform the trade union movement into an instrument for the pursuit of political aims, nor should they attempt to interfere with the normal functions of a trade union movement. The Committee considers that the issuance of a statement by a high-level public authority that would favour one union over another or even use its authority to create unions within a designated trade union federation undermines the right of workers to establish and join organizations of their own choosing. The Committee urges the Government to refrain from showing favouritism towards any given trade union and to put an immediate stop to the interference in the establishment of trade union organizations. The Committee requests the Government to provide information on all measures taken to that end.
47. The Committee notes the ITUC allegations regarding other cases of anti-union discrimination (reduction of bonuses after joining the BNP union at "Naftan" company, withdrawal of bonuses and threats aimed at putting a stop to organizing efforts at a metallurgical company in Zhlobin, dismissal of professors and academics, as well as student being expelled for wanting to join the SPB unions). The Committee further notes the allegation of use of fixed-term contracts system not to renew contracts with trade unionists and activists. The Committee notes that while the Government does not provide its observations regarding the particular cases alleged by the ITUC, it refers to the general prohibition of anti-union

*discrimination and the right of workers to address their grievances to courts. Regarding the fixed-term contract system, the Government explains that the termination of employment upon the expiry of a fixed-term employment contract cannot be considered as a dismissal by the employer. The Government further explains that under the law, the employer is not obliged to justify his or her unwillingness to extend an employment relationship upon the expiry of a contract. Thus, according to the Government, the expiry of a contract is already in itself sufficient grounds for its termination; there are no legal means of compelling an employer to conclude a new contract with a worker. The Committee recalls that the non-renewal of a contract for anti-union reasons constitutes a prejudicial act within the meaning of Article 1 of the Convention [see **Compilation**, para 1093]. The Committee requests the Government to take, in consultation with the social partners, the necessary measures to adopt specific legislative provisions affording an adequate protection against cases of non-renewal of contracts for anti-union reasons. It requests the Government to provide information on all steps taken to that end. The Committee further requests the Government to provide its observations on the other detailed allegations of anti-union discrimination.*

- 48.** *Regarding the Committee's previous request to discuss the issue of registration of trade unions by the tripartite Council, the Committee notes that the Government reiterates that the agenda for meetings is set on the basis of proposals from the parties and organizations represented on the Council, taking into account the relevance of the issues raised, and with the agreement of the Council members. To that end, information should be submitted to the Council secretariat (the Ministry of Labour and Social Protection) with an explanation as to why that particular issue is problematic and merits consideration by the Council. The Government indicates that in 2016–20, there had been no submissions for discussion of issues relating to the legal address requirement. Noting that according to the ITUC, the legal address requirement continues to be an obstacle to the organizing efforts of workers, the Committee urges the Government, as a member of the tripartite Council, to submit the Committee's comments on the issue of registration for the Council's consideration at one of its meetings as soon as possible. The Committee expects the Government to inform it of the outcome of the discussion.*
- 49.** *The Committee recalls that the Commission of Inquiry had requested the Government to amend Presidential Decree No. 24 of 28 November 2003 on Receiving and Using Foreign Gratuitous Aid. The Committee further recalls that it had considered that the amendments should be directed at abolishing the sanctions imposed on trade unions (liquidation of an organization) for a single violation of the Decree and at widening the scope of activities for which foreign financial assistance can be used so as to include events organized by trade unions. The Committee observes that Decree No. 24 had been superseded by Presidential Decree No. 5 of 31 August 2015 on Foreign Gratuitous Aid and the ensuing Regulations on the Procedures for the Receipt, Recording, Registration and Use of Foreign Gratuitous Aid, the Monitoring of its Receipt and Intended Use, and the Registration of Humanitarian Programmes. The Committee notes further that Decree No. 5 has been replaced by Decree No. 3 of 25 May 2020. The Committee notes the Government's indication that the national legislation does not prohibit trade unions from receiving gratuitous foreign aid, including from international trade union organizations. At the same time, the legislation defines the objectives and conditions for the use of foreign gratuitous aid and stipulates that such aid must be registered in accordance with the established procedure, which, according to the Government, is rapid and not complicated. The Committee notes with regret that just as previously under Decrees Nos 24 and 5, foreign gratuitous aid cannot be used to organize or hold assemblies, rallies, street marches, demonstrations, pickets or strikes, or to produce or distribute campaign materials, hold seminars or carry out other forms of activities aimed at "political and mass propaganda work among the population", and that a single violation of*

*the legislation bears the sanction of possible liquidation of the organization. The Committee notes the Government's indication in this respect that the ban on receiving and using foreign donations for purposes involving political and mass propaganda work among the population is conditioned by national security interests and the need to exclude opportunities for destructive influence and pressure from external forces (foreign states, international organizations and associations, including international trade unions, etc.) aimed at destabilizing the socio-political and socio-economic situation in the country. The Government emphasizes that this procedure applies to all legal entities, including trade unions, and further points out that there are no cases of trade unions being denied foreign gratuitous aid nor of cases of trade unions being liquidated for violation of the procedure for its use. Furthermore, the Government considers that the issue of procedure established for receiving foreign gratuitous aid is unjustifiably linked to Articles 5 and 6 of the Convention.*

50. *As to the link with Articles 5 and 6 of the Convention, the Committee draws the Government's attention to paragraph 624 of the report of the Commission of Inquiry where it was observed that the right recognized in these Articles "implies the right to benefit from the relations that may be established with an international workers' or employers' organization. Legislation which prohibits the acceptance by a national trade union or employers' organization of financial assistance from an international workers' or employers' organization, unless approved by the Government, and provides for the banning of any organization where there is evidence that it has received such assistance, is not in conformity with this right. Although there were no specific allegations as to the practical application of [the] Decree, the Commission reiterates the conclusions made by [the] supervisory bodies that the previous authorization required for foreign gratuitous aid and the restricted use for such aid [...] is incompatible with the right of workers' and employers' organizations to organize their own activities and to benefit from assistance that might be provided by international workers' and employers' organizations".*
51. *The Commission of Inquiry, finding that the law was not in conformity with Convention No. 87, had requested the Government to amend the Law on Mass Activities. The Committee recalls that under the Law, which establishes a procedure for mass events, the application to hold an event must be made to the local executive and administrative body. While the decision of that body can be appealed in court, the Law does not set out clear grounds on which a request may be denied. A trade union that violates the procedure for organizing and holding mass events may, in the case of serious damage or substantial harm to the rights and legal interests of other citizens and organizations, be liquidated for a single violation. In this context, "violation" includes a temporary cessation of organizational activity or the disruption of traffic, death or physical injury to one or more individuals, or damage exceeding 10,000 times a value to be established on the date of the event. The Committee recalls that it had requested the Government to amend the legislation, in particular by abolishing the sanctions imposed on trade unions or trade unionists for a single violation of the Law and setting out clear grounds for the denial of requests to hold trade union mass events, bearing in mind that any such restriction should be in conformity with freedom of association.*
52. *The Committee notes with deep regret that the Law on Mass Activities was not amended along the lines of its previous requests. The Committee notes the Government's reiteration that because a violation of the procedure for organizing and/or holding a mass event may entail a serious threat to public order, the national legislation establishes certain liability, including liquidation of an organization for a single violation if the mass event results in serious damage or substantial harm to the rights and legal interests of other citizens and organizations. The Government points out that the above should not be interpreted as a deterrent to the exercise by citizens and trade unions of their right to freedom of peaceful assembly. The Government adds that the decision to terminate activities of an organization may only be taken by the*

Supreme Court and indicates that to date, there have been no decisions on the liquidation of trade unions for violation of the procedure for organizing and conducting mass events.

- 53.** *The Committee further notes the Government's reply to the previous allegation of the BKDP that the introduction of notification procedures for the organization and holding of mass events in permanent locations imposes on the organizers the format of the event. In this respect, the Government indicates that the organizers have the right to determine the format of the planned event themselves. Thus, if the planned format allows the event to be held in one of the specially designated permanent locations, the organizers may use the notification procedure; if not, the organizers need to receive permission to hold such an event. The above is aimed not at restricting the organizers in choosing the format of the event, but rather at eliminating excessive interference by state bodies in the process and thus at creating additional guarantees for the realization by citizens of the right to assembly. At the same time, certain restrictions on individual rights and freedoms are a means of legal protection of public order and public safety, morality, public health and the rights and freedoms of other persons. Thus, the Government considers that the legislation in force is in conformity with the principles of freedom of association and freedom of assembly.*
- 54.** *The Committee also recalls that it had previously noted with regret the adoption by the Council of Ministers (pursuant to the Law on Mass Activities) of the regulation on the procedure of payment for services provided by the internal affairs authorities in respect of protection of public order, expenses related to medical care and cleaning after holding a mass event (Ordinance No. 49, which entered into force on 26 January 2019). The Committee noted that according to the regulation, once a mass event is authorized, the organizer must conclude contracts with the relevant territory internal affairs bodies, health services facilities and cleaning facilities regarding, respectively, protection of public order, and medical and cleaning services. The regulation provides for the fees in relation to protection of public services as follows: three base units for an event with the participation of up to ten people; 25 base units for an event with the participation of 11 to 100 people; 150 base units for an event with the participation of 101 to 1,000 people; and 250 base units for an event with the participation of more than 1,000 people. The Committee notes that the current base unit is set at 27 Belarusian rubles (US\$11). If the event is to take place in an area which is not a "permanent designated area" the above fees are to be multiplied by a coefficient of 1.5. In addition to the above fees, the regulation provides for the expenses of the specialized bodies (medical and cleaning services) that must be paid by the organizer of the event. According to the regulation, these shall include: salary of employees engaged in the provision of services taking into account their category, number and time spent on the mass event; mandatory insurance contributions; the cost of supplies and materials including medicine, medical products and detergents; indirect expenses of specialized bodies; and taxes, fees, other obligatory payments to the republican and local budgets provided by law. The Committee notes with deep regret that the regulation was amended on 3 April 2020 by the Ordinance of the Council of Ministers No. 196 so as to provide that the above-mentioned various contracts have to be concluded by an organizer prior to filing a request for authorization to hold an event.*
- 55.** *Reading these provisions alongside those forbidding the use of foreign gratuitous aid for the conduct of mass events, the Committee is bound to conclude that trade unions' capacity for carrying out demonstrations related to their socio-economic interests would appear to be extremely limited if not non-existent in practice. The Committee notes with regret that at this stage, it appears that the Government has no intention of changing the existing procedure for receiving and using foreign gratuitous aid, nor amending the Law on Mass Activities. The Committee, considering that the right to organize public meetings and demonstrations constitutes an important aspect of trade union rights, once again urges the Government, in*

consultation with the social partners, to amend the Law on Mass Activities and the accompanying regulation, as well as Decree No 3 on the registration and use of foreign gratuitous aid in the very near future and requests the Government to provide information on all measures taken in this respect as soon as possible. The Committee recalls that the amendments should be directed at abolishing the sanctions imposed on trade unions or trade unionists for a single violation of the respective legislation; at setting out clear grounds for the denial of requests to hold trade union mass events, bearing in mind that any such restriction should be in conformity with freedom of association; and at widening the scope of activities for which foreign financial assistance can be used. The Committee requests the Government to provide information on all measures taken to that end and invites the Government to avail itself of ILO technical assistance in this respect.

56. The Committee notes the information provided by the Government regarding the cases of Messrs Fedynich and Komlik, leaders of the REP union, found guilty in 2018 of tax evasion and use of foreign funds without officially registering them with the authorities as per the legislation in force, as well as on the allegations related to this case, that the equipment seized during searches in the REP union and BNP premises had not been returned. The Committee notes the Government's indication that it cannot provide court judgments as per the Committee's request as the legislation in force does not provide for such a possibility, which implies that court decisions and judgments are not public. The Committee recalls that in many cases, it has asked the governments concerned to communicate the texts of any judgments that have been delivered together with the grounds adduced therefor. The Committee has emphasized that when it requests a government to furnish judgments in judicial proceedings, such a request does not reflect in any way on the integrity or independence of the judiciary. The very essence of judicial procedure is that its results are known, and confidence in its impartiality rests on their being known [see **Compilation**, paras 179 and 180]. The Committee recalls that the International Covenant on Civil and Political Rights, in Article 14, states that everyone shall be entitled to a fair and public hearing. The Committee emphasizes that the right to a fair and public hearing implies the right for the judgment or decision to be made public and that the publicizing of decisions is an important safeguard in the interest of the individual and of society at large. The Committee also recalls that the absence of guarantees of due process of law may lead to abuses and result in trade union officials being penalized by decisions that are groundless. It may also create a climate of insecurity and fear which may affect the exercise of trade union rights [see **Compilation**, para. 171]. The Committee requests the Government to take all necessary steps, including legislative, if necessary, to ensure the right to a fair trial. The Committee once again requests the Government to provide copies of judgments in the cases of Messrs Fedynich and Komlik so that it may examine the allegations in full knowledge of the facts.
57. Regarding the seized and unreturned data storage devices, the Committee notes the Government's indication that the information contained therein will be used to conduct further investigations into possible similar crimes committed by these persons in the period 2012–18. While noting this information, the Committee observes that the data contained in the storage devices could have been copied and returned to the union thereby avoiding the situation where a union is deprived of administrative and financial information necessary for the conduct of its activities. The Committee requests the Government to provide information on the outcome of this new investigation.
58. The Committee recalls that it had previously strongly encouraged the Government, together with the social partners, as well as other stakeholders (for example, Ministry of Justice, Office of the Prosecutor-General, judiciary and Belarusian National Bar Association) to continue working together towards building an efficient non-judicial dispute resolution mechanism which could deal with labour disputes involving individual, collective and trade union matters.



*Noting the Government's stated interest in working thereon, the Committee requests the Government to keep it informed of the measures taken or envisaged in this regard.*

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- 59.** *The Committee considers that the current situation in Belarus remains far from ensuring full respect for freedom of association and the application of the provisions of the Convention. The Committee expresses its serious and deep concern that the recent developments as examined above appear to indicate steps backward on some of the previously achieved progress in implementing the Commission of Inquiry's recommendations. The Committee therefore urges the Government to pursue its efforts and expects that the Government, with the assistance of the ILO and in consultation with the social partners, will take the necessary steps to fully implement all outstanding recommendations without further delay.*

## ▶ The Committee's recommendations

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- 60.** **In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:**
- (a) **The Committee urges the Government to take all necessary measures to implement the recommendations of the Commission of Inquiry, to prevent the occurrence of human rights violations and ensure full respect for workers' rights and freedoms. The Committee further urges the Government to take measures for the release of all of trade unionists who remain in detention and the dropping of all charges related to participation in peaceful protests and industrial actions. The Committee requests the Government to take the necessary measures to ensure that the affected persons are adequately compensated for damages suffered. It requests the Government to indicate all measures taken to that end. The Committee also requests the Government to supply copies of the relevant court decisions upholding detention and imprisonment of workers and trade unionists and to provide a list of the affected persons.**
- (b) **The Committee refers to recommendation No. 8 of the Commission of Inquiry on Belarus, which considered that adequate protection or even immunity against administrative detention should be guaranteed to trade union officials in the performance of their duties or when exercising their civil liberties (freedom of speech, freedom of assembly, etc.). The Committee urges the Government to investigate without delay all alleged instances of intimidation or physical violence through an independent judicial inquiry, in order to shed light on the facts and circumstances surrounding these acts, and to identify those responsible, punish the guilty parties and thus prevent the repetition of similar events. The Committee requests the Government to provide information on all measures taken to this end. Further in this respect, the Committee, with reference to the recommendations of the Commission of Inquiry, stresses the need to ensure an impartial and independent judiciary and justice administration in general in order to guarantee that investigations into these grave allegations are truly independent, neutral, objective and impartial. The Committee recalls the Commission of Inquiry recommendation calling upon the Government to implement the recommendations made by the United Nations Special Rapporteur on the independence of judges and**

lawyers and requests the Government to indicate the steps it has taken to ensure that the above allegations are investigated by an independent body.

- (c) The Committee requests the Government to amend its legislation, in consultation with the social partners, to ensure that workers are protected against any acts of discrimination for simply having peacefully exercised their right to strike to defend their occupational and economic interests, which do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions. The Committee requests the Government to provide information on all measures taken or envisaged to that end.
- (d) The Committee requests the Government to take the necessary measures to ensure that no person is detained in connection with his or her participation in a peaceful strike. The Committee further requests the Government to take the necessary measures to ensure that all persons who have been arrested and/or detained for their participation in a peaceful strike are adequately compensated for the damages suffered. It requests the Government to indicate all measures taken to that end.
- (e) The Committee requests the Government to reply to the ITUC allegations regarding dismissals and withdrawal of bonuses and to ensure that those workers who suffered these measures as a result of participation in a peaceful strike are reinstated. It requests the Government to provide information on the measures taken in this respect.
- (f) The Committee urges the Government to refrain from showing favouritism towards any given trade union and to put an immediate stop to the interference in the establishment of trade union organizations. The Committee requests the Government to provide information on all measures taken to that end.
- (g) The Committee requests the Government to take, in consultation with the social partners, the necessary measures in order to adopt specific legislative provisions affording an adequate protection against cases of non-renewal of contracts for anti-union reasons. It requests the Government to provide information on all steps taken to that end. The Committee further requests the Government to provide its observations to the ITUC of other detailed allegations of anti-union discrimination.
- (h) The Committee urges the Government, as a member of the tripartite Council, to submit the Committee's comments on the issue of registration for the Council's consideration at one of its meetings as soon as possible. The Committee expects the Government to inform it of the outcome of the discussion.
- (i) The Committee once again urges the Government, in consultation with the social partners, to amend the Law on Mass Activities and the accompanying Regulation, as well as Decree No 3 on the registration and use of foreign gratuitous aid in the very near future and requests the Government to provide information on all measures taken in this respect as soon as possible. The Committee recalls that the amendments should be directed: at abolishing the sanctions imposed on trade unions or trade unionists for a single violation of the respective legislation; at setting out clear grounds for the denial of requests to hold trade union mass events, bearing in mind that any such

restriction should be in conformity with freedom of association; and at widening the scope of activities for which foreign financial assistance can be used. The Committee requests the Government to provide information on all measures taken to that end and invites the Government to avail itself of ILO technical assistance in this respect.

- (j) The Committee requests the Government to take all necessary steps, including legislative, if necessary, to ensure the right to a fair trial. The Committee once again requests the Government to provide copies of judgments in the cases of Messrs Fedynich and Komlik so that it may examine the allegations in full knowledge of the facts and further requests it to provide information on the outcome of the new investigations into these trade union leaders.
- (k) The Committee strongly encourages the Government, together with the social partners, as well as other stakeholders (for example, Ministry of Justice, Office of the Prosecutor-General, judiciary and Belarusian National Bar Association) to continue working together towards building an efficient, non-judicial dispute resolution mechanism which could deal with labour disputes involving individual, collective and trade union matters. It requests the Government to keep it informed of the measures taken or envisaged in this regard.
- (l) The Committee urges the Government to pursue its efforts and expects that the Government, with the assistance of the ILO and in consultation with the social partners, will take the necessary steps to fully implement all outstanding recommendations without further delay.