



## **Governing Body**

311th Session, Geneva, June 2011

**GB.311/4/2**

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### FOURTH ITEM ON THE AGENDA

## **Reports of the Committee on Freedom of Association**

### **361st Report of the Committee on Freedom of Association**

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

### A. Introduction

1. The Committee of Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 26 and 27 May 2011, under the chairmanship of Professor Paul van der Heijden.
2. Subsequent to the decision of the Governing Body, at its 291st Session, that the implementation of the recommendations of the Commission of Inquiry established to examine the observance by the Government of Belarus of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), should be followed up by the Committee on Freedom of Association, the Committee last examined this matter in its 352nd Report (November 2008), which was approved by the Governing Body at its 303rd Session.
3. On that occasion, the Committee made the following recommendations:
  - (a) The Committee urges the Government to provide information in respect of the steps taken to ensure the immediate registration of the primary-level organizations that were the subject of the complaint and to ensure that the workers in those enterprises where the primary-level organizations have been wound down are rapidly and duly informed of their right to form and join organizations of their own choosing without interference and that the registration of any such newly created organization is rapidly effectuated.
  - (b) The Committee urges the Government to take the necessary measures to ensure that the cases of non-registration of the BFTU organizations in Mogilev and Baranovichi, including their primary-level trade unions, as well as Mogilev city primary organization, “Avtopark No. 1” and “Ental” primary organizations in Gomel, Smolevichi primary trade union and Rechitsa district trade union of the REWU are reconsidered by the registering authorities without delay. The Committee further requests the Government to provide information on the decision taken in respect of the registration of the “Razam” organization.
  - (c) The Committee expects that the Law on Trade Unions will be in full conformity with the provisions of Conventions Nos 87 and 98. Pending the drafting of the new trade union legislation, in the light of the fact that the requirement of legal address, as provided for in Decree No. 2, continues to pose difficulties with the registration of trade unions, the Committee once again requests the Government to take the necessary measures to immediately amend the Decree.
  - (d) The Committee requests the Government to ensure that an independent investigation into all of the new allegations of interference and pressure is carried out without delay by a body having the confidence of all parties concerned. If it is found that the alleged measures were taken against trade unionists for having exercised their trade union rights or their participation in legitimate trade union activities, the Committee expects that those who suffered from anti-union acts will be fully compensated and that appropriate instructions will be given to the relevant authorities so as to avoid any recurrence of such acts.
  - (e) The Committee continues to urge the Government to pursue more vigorously, on the one hand, the instructions to be given to enterprises in a more systematic and accelerated manner so as to ensure that enterprise managers do not interfere in the internal affairs of trade unions and, on the other, instructions to the Prosecutor-General, Minister of Justice

and court administrators that complaints of interference and anti-union discrimination shall be thoroughly investigated. The Committee further requests the Government to ensure an independent investigation into all alleged instances of interference and anti-union discrimination at “Polymir”, “Grodno Azot”, “Frebor”, “Belarusneft-Osobino”, “Avtopark No. 1” and “Mogilev ZIV” companies, and at the Brest State Pedagogical University.

- (f) The Committee urges the Government to immediately redress the situation of those workers who have suffered consequences for cooperating with the Commission of Inquiry and refers specifically in this respect to Messrs Gaichenko, Dukhomenko, Obukhov, Shaitor and Sherbo. It further requests the Government to clarify whether the rights and benefits acquired through Mr Stukov’s years of employment were maintained.
  - (g) The Committee requests the Government to indicate the measures taken to implement the recommendations made by the United Nations Special Rapporteur on the independence of judges and lawyers.
  - (h) The Committee once again urges the Government to take the necessary measures to amend Decree No. 24 so as to ensure that employers’ and workers’ organizations may benefit freely, and without previous authorization, from the assistance which might be provided by international organizations in order to carry out activities, including strikes.
  - (i) The Committee requests the Government to conduct independent investigations into the alleged cases of refusal to hold pickets and meetings and to bring the attention of the relevant authorities to the right of workers to peaceful demonstration to defend their occupational interests.
  - (j) The Committee once again urges the Government to take the necessary measures to immediately amend the Law on Mass Activities so as to bring it into line with the right of employers’ and workers’ organizations to organize their activities.
  - (k) The Committee requests the Government to provide full details on the steps taken to implement the above recommendations.
  - (l) The Committee calls upon the Government to continue its cooperation with the Office, as well as social dialogue with all partners, including the trade unions outside of the FPB, to implement all the recommendations of the Commission of Inquiry and ensure that any legislative changes will conform to this objective.
- 4.** The Radio and Electronic Workers’ Union (REWU) submitted new information relating to the recommendations of the Commission of Inquiry in communications dated 18 November 2008, 5 March, 14 May and 1 June 2009, and 3 June 2010, the Belarusian Independent Trade Union (BITU) sent new allegations in communications dated 22 October 2010 and 20 January 2011.
- 5.** In light of the time that has elapsed since its previous examination of this case and the additional information provided by the national trade unions, at its meeting in March 2011 [see 359th Report, para. 10], the Committee requested the Government to send its observations as a matter of urgency so that that could examine the follow-up measures taken with respect to the recommendations of the Commission of Inquiry at its next meeting. To date, no observations have been provided by the Government.
- 6.** The Committee has examined the new allegations submitted by the REWU and the BITU. 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**

### **REWU**

7. In its communications dated 18 November 2008, 5 March, 14 May and 1 June 2009, and 3 June 2010, the REWU reports that violations of the rights of its members continue to occur in the Republic of Belarus.
8. In particular, the REWU explains that in February 2009, the REWU applied for registration of its municipal primary trade union organizations in Mogilev, Gomel and Vitebsk. By its decision dated 26 February 2009, the Mogilev city council denied request for registration of the Mogilev municipal primary trade union for the third time. The first refusal to register this organization, in November 2008, was based on the absence of a legal address. In respect to this first refusal, the REWU alleges that the Mogilev city executive committee summoned landlords to the committee in order to exert pressure to withdraw their letters of guarantees confirming legal addresses of trade union organizations. Following that, a private entrepreneur sent a letter to the city executive committee in which she explained her refusal to provide REWU Mogilev municipal primary trade union with a legal address. With regard to the last round of refusals, the REWU further indicates that the Gomel city council also refused to register the Gomel municipal primary trade union on 25 February 2009, thus registration was denied for the second time. On 13 April 2009, the Vitebsk city council informed the union of its decision not to register the Vitebsk municipal primary organization. The REWU explains that in the three cases, the registration was denied because the authorities considered that their membership list included workers who shared no common occupational interest as required under section 1 of the Law on Trade Unions and point 1.1 of the REWU's statutes.
9. The REWU indicates that in January 2009, following a tripartite seminar organized in collaboration with the ILO and with a view to increase effectiveness of the Council for the Improvement of Legislation in the Social and Labour Spheres, new regulations of the Council were drafted so as to include in its work all interested parties (seven trade union members, seven employer members and seven Government representatives). However, only the Congress of Democratic Trade Unions (CDTU) and the Federation of Trade Unions of Belarus (FPB) have permanent seats. Despite the fact that many instances of violations of trade union rights examined by the ILO supervisory bodies concern the REWU, the latter was not included in the Council's membership. The REWU further indicates that on 30 April 2009, a meeting of the Council was held to discuss the cases of refusals to register CDTU and REWU primary trade unions. A REWU representative was invited to the meetings to provide information with respect to the three abovementioned cases of refusal, but was given no right to vote with respect to the decision taken.
10. The REWU alleges that during the meeting, it transpired that in all cases, the registration was denied based on the views of the Ministry of Justice expressed in a statement by the Head of the Department for Public Associations of the Ministry of Justice. According to the REWU, in his statement, the Ministry of Justice official considered that the executive bodies of the REWU municipal primary organizations included members who work in different sectors of the economy, pensioners or persons who have been dismissed; these persons could not share common occupational interests. The REWU points out, however, that the registering authorities confirmed that all the documents submitted for registration by the union fulfilled the legislative requirements. The REWU indicates that the Council considered that the refusals to register the Gomel and Mogilev primary organizations were legitimate, as members of these organizations did not share common interests, as defined in section 1 of the Law on Trade Unions. Under this section, a trade union comprises

citizens who are united by common occupational interests in the manufacturing or non-manufacturing sectors. The REWU indicates that according to its statutes, workers of any branch of economic activity, institution or organization, of any form of ownership, or individuals who have been dismissed, pensioners and students may become its members. According to the REWU, the Council considered this provision of the REWU's statutes legitimate. The union further explains that citizens residing in the three abovementioned cities are its full members, their common occupational interest being salaried employment. They have voluntarily joined the REWU, as in their opinion, the union defends their rights and represents their labour and socio-economic interests. In accordance with the REWU's statutes, trade union members may elect and be elected to its executive bodies. By virtue of section 4.1 of its statutes, the REWU's organization is based on industrial and/or geographical principle. The three municipal primary trade unions are organized following the geographical principle, just as its other organizations in various regions of the country: the Minsk, Brest, Grodnensk and Borisov municipal primary organizations and the Rechitsa district primary organization. The REWU considers that the registering authorities have no right to dictate to a trade union how it should structure and organize its membership. In the REWU's view, the Ministry of Justice set a precedent encouraging the refusal of registration of organizations structured in accordance with the geographical principle, which effectively hinders the union's right to freely organize its own structures and undermines the union's very existence. The REWU therefore considers that the Council's decision of 30 April 2009 is in violation of Convention No. 87, the national legislation and REWU's statutes.

11. The REWU further indicates that in all three cases, the union filed complaints before appropriate courts against the unlawful actions of the registering authorities. With regard to the Mogilev primary trade union organization, the court rejected the complaint on 23 April 2009. The Court in Gomel rested its arguments mainly on whether any common occupational interest could be discerned among the members of the union leadership and founders. The Vitebsk court also examined whether the members of trade union leadership worked in the electronics industry. As of 1 June 2009, the cases in Gomel and Vitebsk were still pending. The REWU considers that these cases demonstrate that the courts are taking marching orders from the Ministry of Justice, which oversees the work of the court system.
12. It further alleges that on 18 May 2010 the Brest regional office of the REWU and the safe located therein were broken into by the police without prior notification to the regional trade union leader. The union legal adviser was not allowed to be present during the search, although he was present at the scene. The office was searched for four hours. Along with the computers, some 200 copies of the union newsletter and the seal of the registered union of the Brest Tsvetotron plant were seized. Following the raid, the office was sealed and for 48 hours employees were unable to enter. The union's operations in the region were effectively paralysed and the trade union organization at the Brest Tsvetotron plant has been prevented from carrying out banking transactions and normal office operations. Appeals to the Prosecutor General have been unsuccessful.

### **BITU**

13. In its communications dated 22 October 2010 and 20 January 2011, the BITU informs that trade union rights continue to be violated. In particular, the BITU alleges that the legal address requirement for the purpose of registering primary trade union organizations remains a major obstacle to the functioning of the union. By way of example, the BITU explains that in June 2009, its primary trade union organization at "Delta Style" company was formed. However, in order to obtain state registration of the primary organization so as to ensure that it can bargain collectively, the union must have premises and a corresponding legal address. The BITU indicates that it was not possible to resolve the

question of obtaining union premises from the employer through negotiations, as the employer claimed that no suitable premises were available. On 11 September 2009, the BITU sent a letter to the General Director of the “Kupalinka” enterprise requesting the employer to fulfil its obligations under section 28 of the Law on Trade Unions, i.e. to provide premises required for the normal functioning of the primary organization under the terms of its by-laws, and second, to provide a check-off facility following workers’ written authorization. The BITU alleges that while an agreement was concluded with regard to bank transfers and transfers were made in August 2009, this facility was subsequently blocked by the enterprise’s General Director. In October 2009, complaints in this respect were submitted to the Head of the Presidential Administration, the General Prosecutor and the Council of Ministers asking for help in resolving the issue of failure by the employer to provide premises and legal address and to restore a check-off facility and requesting to prosecute the employer for violation of trade union legislation.

14. With regard to the registration procedure, the BITU explains that once the primary union found the legal address outside of the enterprise’s territory, it submitted its document for registration on three occasions. For the first time, the authorities refused to register the union on 25 May 2010 on the grounds that the union submitted its documents after the established time period had expired and that the documents were not signed by the authorized persons. The union then had a second constituent assembly on 1 June 2010 and once again submitted the documents for registration. Forty days later (instead of 30, as provided for in the legislation), the district executive committee requested the union to submit detailed minutes of its constituent assembly containing a list of trade union members and persons invited. This resulted in the director of the enterprise asking trade union members to write explanatory notes concerning their participation in the trade union founding meeting. Under the pressure, 30 trade union members left the union. When the chairperson of the BITU regional organization inquired into actions of the employer, the director of the enterprise explained that she was acting on the instruction of the authorities.
15. On 4 August 2010, the chairperson of the Soligorsk BITU regional organization met with “Delta Style” seamstresses, members of the BITU, to discuss this situation. The enterprise management called the police. She was then brought to the police regional office and instructed to write an explanation with regard to her presence at the “Delta Style” entrance gate. On 27 August 2010, by the decision of the Soligorsk court, she was found guilty of infringement of the order of carrying out of meetings set forth by the Law on Mass Activities and has been fined. Although, according to the BITU, the penalty was minimal, the trade union leader has nevertheless been punished for an attempt to meet members of the primary organization. The BITU considers important to point out that upon learning of pressure been exerted on their trade union leader, the 30 workers who filed applications to leave the union, withdrew them. The union applied for the registration for the third time, but once again this was turned down. According to the BITU, the authorities pointed out that the primary trade union organization requested registration without first joining the BITU regional organization. The BITU explains, however, that according to its constitution, once a primary trade union is created only then can it decide to join a regional organization. The authorities pointed to other following “infringements”: the election of a chairperson of the auditing committee did not appear in the minutes of the constituting assembly (the union explains that while the names of three members of the committee appeared in the minutes, it was decided that they would decide among themselves who would head the committee, therefore election of the auditing committee’s chairperson was not discussed by the assembly as a whole, and thus, the minutes do not mention it); and the fact that two members of the union no longer worked at the enterprise (the union explains that two workers resigned, but that occurred only after the union documents were submitted for registration).

16. The BITU alleges that while the authorities no longer resort to creating yellow unions, as was the case in the past, their efforts are now directed at not allowing the development of new union structures, be it through the legal address requirement, or through the use of the contractual form of employment. With regard to the latter, the BITU refers, in particular, to the alleged threats of non-renewal of contracts with members and leaders of the BITU primary trade union at “Belaeronavigatsia”, the “Avtopark No. 1”, and “Grodno Azot” enterprise and the dismissals of trade union leaders and members at the Rail Transport Directorate of “Belaruskaliy” and Krasnoslobodsk TB Hospital. In respect of the two dismissal cases, the Belarusian Independence Party (BNP) indicates that it will appeal the decision of the regional court which ordered the review of the Soligorsk court which had demined that the dismissal at the Rail Transport Directorate of “Belaruskaliy” illegal. With regard to the second case, the BITU indicates that following the decision of the Supreme Court, a trade union member was reinstated.
17. The BITU also alleges that following management’s pressure, in January 2010, workers began leaving their union at the “MLZ Universal” company. Workers leaving the union were promised a 10 per cent pay rise. Similar pressure was exerted on members of the BITU primary trade union at “Grodno Azot”. The BITU further alleges instances of trade representatives not being allowed to access their members at their workplaces at “MLZ Universal”.
18. Finally, the BITU describes an attack on the chairperson of its primary trade union at “Belshina” by the agents of the State Inspectorate for Animal and Plant Protection which occurred on 16 November 2010 in his house. While the prosecutor promised that an impartial investigation would be carried out and those responsible for abuse of authority punished, the BITU expresses its outrage at the outcome of that investigation, which has, allegedly resulted in the prosecution of the trade union leader.

### **C. The Committee’s conclusions**

19. *The Committee regrets that, despite the time that has elapsed since the previous examination of this case, the Government has not replied to the Committee’s previous recommendations and to the new allegations of violations of freedom of association rights in the country, although it has been invited on several occasions, to present its comments and observations on the case. The Committee urges the Government to be more cooperative in the future.*
20. *The Committee notes the information submitted by the complainants in respect of the implementation of the recommendations of the Commission of Inquiry, as well as the new allegations of violation of trade union rights. The Committee further notes the discussions on this subject that took place in the Conference Committee on the Application of Standards in June 2009 and 2010. It further notes the observations of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) which examined the measures taken by the Government to implement the recommendations of the Commission of Inquiry at its 2008, 2009 and 2010 sessions.*
21. *In view of the absence of the Government’s reply, the Committee is bound to reiterate its previous recommendations (a), (c), (g), (h), (i), (j) and (l). It expects that the Government will provide full details on the steps taken to fully implement all outstanding recommendations without further delay.*
22. *The Committee recalls that one of the key recommendations of the Commission of Inquiry concerned the right for organizations outside the FPB structures to register their organizations. It also recalls that further to the trade union organizations mentioned in the 2004 report of the Commission, it continued to note with concern new cases of*

non-registration (recommendations (a)–(b)). In this respect, the Committee notes the following information contained in the CEACR 2009 observation on the application of Convention No. 87:

... The [CEACR] recalls that it had previously noted with regret the absence of action by the Government to register trade union organizations, the registration of which had been requested by the ILO supervisory bodies (i.e. those primary-level organizations that were the subject of the complaint before the Commission of Inquiry, as well as organizations of the Radio and Electronic Workers' Union (REWU) in Mogilev, Gomel, Smolevichi and Rechitsa and its primary trade union at "Avtopark No. 1"; two regional organizations of the Belarusian Free Trade Union (BFTU) in Mogilev and Baranovichi; and the Belarusian Trade Union of Individual Entrepreneurs "Razam", a partner organization of the CDTU.

The [CEACR] takes note of the Government's indication that at its sitting of 30 April 2009 the Council discussed the issue of trade union registration and reached the following decisions, agreed upon by all members of the Council:

- The Council noted registration of the primary REWU organizations in Smolevichi and Rechitsa.
- The primary trade union of the Belarus Independent Trade Union (BITU) at the "Belshina" enterprise could not be registered due to the absence of confirmation of its legal address. The Council recommended to the administration of the enterprise, the Confederation of Industrialists and Entrepreneurs (Employers) (CIE(E)), the BITU, the CDTU and the local executive body to find a solution to the question of legal address in this case.
- The Council took note of the information provided by a Ministry of Justice representative that no request for registration was submitted by the BFTU regional organization in Baranovichi.
- The Council noted the reasons for denial of registration of the BFTU regional organization in Mogilev and "Razam" union.
- In the Council's opinion, refusals to register the REWU territorial structures in Gomel and Mogilev were justified because their members were not bound by common interests by virtue of the nature of their work, as required by section 1 of the Law on Trade Unions.
- The Council noted that the abovementioned grounds for refusal were not applicable to the REWU primary trade union at "Avtopark No. 1" as all its members were employed at the same enterprise.

The [CEACR] notes with **interest** the registration of the primary REWU organizations in Smolevichi and Rechitsa. It further notes with **interest** that, following the Council's decision, suitable premises for the legal address of the "Belshina" enterprise union were found and that this organization was re-registered in October 2009.

23. The Committee further notes from the CEACR 2010 observation on the application of Convention No. 87 that the CDTU, alleges that its proposals concerning registration of trade union organizations are ignored and not considered and refers to the refusal to register the "Razam" trade union, confirmed by the Supreme Court. The Committee further notes the allegations of refusal to register BITU primary trade union organization at the "Delta Style" enterprise as well as the information provided by the REWU with regard to the refusals to register its municipal primary trade unions in Mogilev, Gomel and Vitebsk.
24. The Committee notes the BITU's allegation that one of the main obstacles to the registration is the absence of legal address. The Committee regrets to note that the legal address requirement continues to hinder the establishment and functioning of trade unions despite the recommendation of the Commission of Inquiry to amend the relevant provisions of Decree No. 2, its rules and regulations so as to eliminate any obstacles that might be caused by this requirement. Noting with deep regret that despite the numerous requests by



*the ILO supervisory bodies, there have been no tangible measures taken by the Government to amend the Decree, nor have there been any concrete proposals to that effect, the Committee once again urges the Government to take the necessary steps to amend Decree No. 2 in consultation with the social partners so as to ensure that the right to organize is effectively guaranteed. The Committee requests the Government to indicate all measures taken in this respect.*

- 25.** *With regard to alleged repeated refusals to register “Delta Style” BITU primary trade union, without the benefit of the Government’s observations thereon, the Committee can only conclude that the actions of the authorities as described by the union appear to go beyond a simple formality and are tantamount to obtaining previous authorization from the public authorities for the establishment and functioning of a trade union. This, in the Committee’s opinion, would undeniably constitute an infringement of Convention No. 87.*
- 26.** *With regard to the REWU municipal primary organizations, the Committee notes the information provided by the REWU, as well as the information examined by the CEACR (above) as to the reasons for the refusal of registration given to the union in 2009. The Committee understands that the justification for refusal was that their members and elected leaders were not bound by common interests by virtue of the nature of their work, as required by section 1 of the Law on Trade Unions and REWU’s statutes. In this respect, the Committee understands that the REWU’s statutes provide that its primary trade union organizations can be created according to either the industrial or geographical principle. In this respect, the REWU refers to a number of organizations created and registered following the geographical principle. The Committee further understands that the statutes of the REWU allow workers of any branch of economic activity, institution or organization, of any form of ownership, or individuals who have been dismissed, pensioners and students to become members of the REWU. The Committee notes that according to the REWU, the Council, as well as the registering authorities and courts considered this provision legitimate. The Committee further understands that the right of the union to open its membership to workers of other professions had been previously accepted by the Government. In fact, the Committee recalls the amendments of January 2006 to the REWU’s statutes aimed at opening membership to workers employed in the automobile and agricultural machinery sector.*
- 27.** *The Committee further notes that section 1 of the Law on Trade Unions reads as follows:*

*Article 1. Trade Unions*

*Trade union (hereinafter - the union) is a voluntary public organization uniting citizens, including students in higher, secondary and vocational-technical schools, bound by common interests due to their activities in both the manufacturing and non-production areas, to protect labour and socio-economic rights and interests arising from the generally recognized principles of international law and established the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, Conventions the International Labour Organization and other duly ratified by the Republic of Belarus international treaties.*

*The Committee notes that nothing in this section would appear to prohibit the establishment of unions with a membership consisting of workers of different professions and occupations, as claimed by the REWU.*

- 28.** *The Committee therefore urges the Government to take the necessary measures to ensure that all of the abovementioned cases of non-registration of the BITU and REWU primary organizations are reconsidered by the registering authorities without delay and requests the Government to keep it informed in this respect. The Committee requests the Government to provide a copy of the Supreme Court decision on the “Razam” case.*

29. *The Committee recalls that it had previously expressed concern at the allegations of interference and anti-union pressure by the authorities submitted by the REWU and the CDTU, including allegations of arrest and detention of trade union leaders and members, alleged beating of a REWU activist, alleged KGB pressure on the REWU organizations in Mogilev, etc. [see 352nd Report, para. 68]. The Committee notes with concern new allegations submitted by the REWU and the BITU, including the allegations of a search of REWU's regional organization's office in Brest and seizure of its computers, documents and seal and a physical attack on the chairperson of the BITU primary trade union at "Belshina" by the agents of the State Inspectorate for Animal and Plant Protection. The Committee requests the Government to ensure that an independent investigation into all outstanding and new allegations of interference and pressure is carried out without delay by a body having the confidence of all parties concerned. If it is found that the above alleged measures were taken against trade unionists for having exercised their trade union rights or their participation in legitimate trade union activities, the Committee expects that those who suffered from anti-union measures will be fully compensated and that appropriate instructions will be given to the relevant authorities so as to avoid any recurrence of such acts.*
30. *The Committee recalls that it had previously requested the Government to carry out an independent investigation into the alleged instances of interference and anti-union discrimination at "Polymir", "Grodno Azot", "Frebor", "Belarusneft-Osobino", "Avtopark No. 1" and "Mogilev ZIV" companies, and the Brest State Pedagogical University. The Committee notes with regret the new allegations of interference and anti-union discrimination, including through the abusive use of the contractual form of employment, at the "Delta Style" enterprise, "Belaeronavigatsia", Rail Transport Directorate of "Belaruskaliy", "MLZ Universal". It further notes with regret the allegation that the violations at "Grodno Azot" and "Avtopark No. 1" continued. The Committee therefore reiterates its previous request for an independent investigation to be carried out without delay into all alleged instances of interference and anti-union discrimination. It requests the Government to keep it informed in this respect. The Committee continues to urge the Government to pursue more vigorously, on the one hand, the instructions to be given to enterprises in a more systematic and accelerated manner so as to ensure that enterprise managers do not interfere in the internal affairs of trade unions and on the other, instructions to the Prosecutor-General, Minister of Justice and court administrators that complaints of interference and anti-union discrimination shall be thoroughly investigated.*
31. *With regard to the Committee's request to redress the situation of those workers who have suffered consequences for cooperating with the Commission of Inquiry and, specifically, Messrs Gaichenko, Dukhomenko, Obukhov, Shaitor and Sherbo, and to clarify whether the rights and benefits acquired through Mr Stukov's years of employment were maintained, the Committee notes with interest the following information contained in the 2009 CEACR observation on the application of Convention No. 98:*

*... The Committee [CEACR] takes note of the Government's indication that at its sitting of 14 May 2009 the tripartite Council discussed cases of termination of employment of Messrs Gaichenko, Dukhomenko, Obukhov, Shaitor, Shcherbo and Stukov (listed in the 352nd Report of the Committee on Freedom of Association). According to the Government, these workers were invited to the Council's meeting and the necessary measures were taken to ensure that employers did not obstruct their participation in the meeting and that the workers were given a day off for that purpose. The Government indicates that Mr Gachenko declined the invitation of the Council as he was satisfied with his employment at the "Naftan" enterprise in Novopolotsk. The Committee notes the minutes of the meeting provided by the Government and, in particular, the following conclusions, agreed upon by all members of the Council:*

- *The Council noted that the abovementioned workers were not experiencing any pressure from their respective employers.*
- *The Council took note of Mr Shcherbo's desire to work in his previous post and decided to assist him in obtaining a post of an electrical train driver at Minsk Metro.*
- *The Council noted that Mr Shaitor left the enterprise on 6 April 2009 and at the time of the meeting was unemployed. It was decided to ask the state employment service for assistance in getting him employed in his previous post or any other acceptable position.*
- *The Council noted that Messrs Dukhomenko and Obukhov no longer wished to work at their previous workplaces unless they were reinstated with full compensation. Noting that under the current legislation it was impossible to reinstate them in their previous posts, Mr Dukhomenko was offered assistance with his entrepreneurial activities, while Mr Obukhov, who was satisfied with his current employment, was informed of opportunities for further training.*
- *The Council discussed the situation of Mr Stukov who was currently employed at the Polotsk-Steklovolokno company. In April 2004 he was dismissed for causing material loss to his employers as established by the court. He was subsequently allowed back to his previous post in May 2004. Because of his dismissal, Mr Stukov lost his entitlement to a special length-of-service payment. The Council therefore decided to apply to the company for restoration of his full entitlements relating to the length of service which had been interrupted by his dismissal in April 2004.*
- *The Council emphasized that it would continue examining the issues relating to the protection of trade union members from discrimination and considered it appropriate to discuss existing legal mechanisms for protecting citizens from anti-union discrimination in the light of national legislation and international labour standards.*

*The Committee notes with **interest** the Government's indication that, following the Council's decision, an agreement was reached with the Minsk Metro authority regarding the appointment of Mr Shcherbo, that Mr Shaitor has been hired as a driver at the Polotsk Dairy Combine and that full length-of-service entitlement was restored to Mr Stukov.*

**32.** *The Committee notes with concern the BITU allegation that the chairperson of its Soligorsk regional organization was detained by the police on 4 August 2010 and subsequently found guilty of committing an administrative offence and fined. According to the BITU, the court had decided that having met members of the union near the entrance gate of the company, the trade union leader had violated the Law on Mass Activities. The BITU explains that following the allegations of pressure exercised on its trade union members, the chairperson met with several women workers (on their way to their workplaces) near the entrance. Recalling that the right to meet with workers and trade union members without interfering in the ordinary process of work is an essential aspect of trade union rights, that the exercise of legitimate trade union activities should not be dependent on registration, and that authorities should refrain from any interference which would restrict this right or impede its exercise, unless public order is disturbed or its maintenance seriously and imminently endangered thereby, the Committee requests the Government to provide its observations on the BITU allegation. In this connection, the Committee recalls that for a number of years it has been requesting the Government to amend the Law on Mass Activities and regrets that no information has been provided by the Government on concrete measures taken in this respect. Furthermore, referring to its previous examination of the case, the Committee once again requests the Government to conduct independent investigations into the alleged cases of refusal to authorize the BITU and the REWU to hold pickets and meetings and to bring the attention of the relevant authorities to the right of workers to peaceful demonstration to defend their occupational interests and to keep it informed in this respect.*

**33.** *The Committee notes the allegations concerning denial of certain facilities to trade unions (in particular, premises, check-off facilities and access to the workplaces). The Committee notes that the Law on Trade Unions provides for such facilities to be afforded to trade*

unions and their leaders. In particular, section 23(2) of the Law provides for the right of a access to the workplace and section 28 for other facilities, such as premises, equipment, etc. to be allocated on a basis of an agreement. The Committee notes that in one case, the agreement on check-off facilities was allegedly not respected by the employer. The Committee therefore requests the Government to examine the cases of alleged denial of facilities to trade unions and its leaders with a view to determining the violations of the legislation or any agreement concluded in this respect, and to take the necessary measures to redress the situation. Furthermore, if following this examination, it has been determined that no agreement with regard to allocation of premises had been concluded between a union and the employer, the Committee requests the Government to take the necessary measures in order to encourage the parties to find a mutually acceptable solution. The Committee requests the Government to keep it informed in this respect.

34. The Committee urges the Government to take the necessary measures to ensure that all of the abovementioned alleged instances of violation of trade union rights are brought to the attention of the tripartite Council without further delay and requests the Government to keep it informed of the outcome of the discussions.
35. The Committee notes with regret that no substantial progress has been made by the Government towards implementing the recommendations of the Commission of Inquiry and improving the situation of trade union rights in the country. The Committee urges the Government to intensify its efforts to ensure that freedom of association and collective bargaining are fully and effectively guaranteed in law and in practice and expects that the Government will intensify its cooperation with the Office, as well as social dialogue with all partners, including the trade unions outside of the FPB, to implement without delay all the recommendations of the Commission of Inquiry and ensure that any legislative changes will conform to this objective.

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

36. In the light of its forgoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:
- (a) The Committee regrets that, despite the time that has elapsed since the previous examination of this case, the Government has not replied to the Committee's previous recommendations and to the new allegations of violations of freedom of association rights in the country, although it has been invited on several occasions, to present its comments and observations on the case. The Committee urges the Government to be more cooperative in the future.
- (b) The Committee once again urges the Government to provide information in respect of the steps taken to ensure the immediate registration of the primary-level organizations that were the subject of the complaint and to ensure that the workers in those enterprises where the primary-level organizations have been wound down are rapidly and duly informed of their right to form and join organizations of their own choosing without interference and that the registration of any such newly created organization is rapidly effectuated.
- (c) In the light of the fact that the requirement of legal address, as provided for in Decree No. 2, continues to pose difficulties with the registration of trade unions, the Committee once again requests the Government to take the

*necessary measures to immediately amend the Decree in consultation with the social partners.*

- (d) The Committee urges the Government to take the necessary measures to ensure that all cases of non-registration of the BITU primary organization at “Delta Style” and REWU primary organizations in Mogilev, Gomel and Vitebsk are reconsidered by the registering authorities without delay and requests the Government to keep it informed in this respect. The Committee also requests the Government to provide a copy of the Supreme Court decision on the refusal to register “Razam” organization.*
- (e) The Committee requests the Government to ensure that an independent investigation into all outstanding and new allegations of interference and pressure is carried out without delay by a body having the confidence of all parties concerned. If it is found that the above alleged measures were taken against trade unionists for having exercised their trade union rights or their participation in legitimate trade union activities, the Committee expects that those who suffered from anti-union measures will be fully compensated and that appropriate instructions will be given to the relevant authorities so as to avoid any recurrence of such acts.*
- (f) The Committee continues to urge the Government to pursue more vigorously, on the one hand, the instructions to be given to enterprises in a more systematic and accelerated manner so as to ensure that enterprise managers do not interfere in the internal affairs of trade unions and, on the other, instructions to the Prosecutor-General, Minister of Justice and court administrators that complaints of interference and anti-union discrimination shall be thoroughly investigated. The Committee further requests the Government to ensure an independent investigation into all alleged instances of interference and anti-union discrimination at “Polymir”, “Grodno Azot”, “Frebor”, “Belarusneft-Osobino”, “Avtopark No. 1”, “Mogilev ZIV”, “Delta Style”, “Belaeronavigatsia”, “MLZ Universal” and “Belaruskaliy” companies, and at the Brest State Pedagogical University.*
- (g) The Committee requests the Government to indicate the measures taken to implement the recommendations made by the United Nations Special Rapporteur on the independence of judges and lawyers.*
- (h) The Committee once again urges the Government to take the necessary measures to amend Decree No. 24 so as to ensure that employers’ and workers’ organizations may benefit freely, and without previous authorization, from the assistance which might be provided by international organizations in order to carry out activities, including strikes.*
- (i) The Committee requests the Government to provide its observations on the BITU allegation concerning detention of the chairperson of its Soligorsk regional organization.*
- (j) The Committee once again urges the Government to take the necessary measures to immediately amend the Law on Mass Activities so as to bring it into line with the right of employers’ and workers’ organizations to organize their activities.*

- (k) *The Committee requests the Government to conduct independent investigations into the alleged cases of refusal to hold pickets and meetings and to bring the attention of the relevant authorities to the right of workers to peaceful demonstration to defend their occupational interests.*
- (l) *The Committee requests the Government to examine the cases of alleged denial of facilities to trade unions and its leaders with a view to determining the violations of the legislation or any agreement concluded in this respect, and to take the necessary measures of redress. Furthermore, when following this examination, it has been determined that no agreement with regard to allocation of premises had been concluded between a union and an employer, the Committee requests the Government to take the necessary measures in order to encourage the parties to find a mutually acceptable solution. The Committee requests the Government to keep it informed in this respect.*
- (m) *The Committee urges the Government to take the necessary measures to ensure that all of the alleged instances of violation of trade union rights are brought to the attention of the tripartite Council without further delay and requests the Government to keep it informed of the outcome of the discussions.*
- (n) *It expects that the Government will provide full details on the steps taken to fully implement all outstanding recommendations without further delay.*
- (o) *The Committee urges the Government to intensify its efforts to ensure that freedom of association and collective bargaining are fully and effectively guaranteed in law and in practice and expects that the Government will intensify its cooperation with the Office, as well as social dialogue with all partners, including the trade unions outside of the FPB, to implement without delay all the recommendations of the Commission of Inquiry and ensure that any legislative changes will conform to this objective.*

Geneva, 7 June 2011

(Signed) Professor Paul van der Heijden  
Chairperson

Point for decision: Paragraph 36