



## FOR DEBATE AND GUIDANCE

### NINTH ITEM ON THE AGENDA

# **Measures taken by the Government of Belarus to implement the recommendations of the Commission of Inquiry established to examine the observance 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)**

## **I. Background to the present report**

1. A complaint under article 26 of the ILO Constitution against the Government of Belarus for non-observance 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), was submitted on 18 June 2003 by 14 Workers' delegates to the International Labour Conference.
2. At its 288th Session (November 2003), the Governing Body decided to refer the complaint to a Commission of Inquiry. The Commission issued a detailed report<sup>1</sup> containing numerous recommendations relating to freedom of association and collective bargaining, which was then presented to the Governing Body at its 291st Session (November 2004).
3. At its 291st Session, the Governing Body took note of the report of the Commission of Inquiry, its recommendations and the deadline of 1 June 2005 for the implementation of a number of its recommendations. It decided that the implementation of the Commission's recommendations should be followed up by the Committee on Freedom of Association.
4. Subsequently, the Committee on Freedom of Association first examined this matter in its 339th Report (November 2005), which was approved by the Governing Body at its

<sup>1</sup> See: *Trade union rights in Belarus*: Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by the Government of the Republic 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), July 2004.

294th Session and for the second time, in its 341st Report (March 2006), which was approved by the Governing Body at its 295th Session.

5. On the latter occasion, the Committee, inter alia, felt obliged:

... to express in the strongest terms its deep concern that, rather than making good faith efforts to implement the recommendations of the Commission of Inquiry, the Government was on a path to eliminating all remnants of an independent trade union movement in Belarus, apparently hoping that in this way there in effect would be no further sources of complaint. The Committee could only, therefore, reiterate its previous recommendations and urged the Government in the strongest of terms to take appropriate and concrete measures immediately so as to ensure that workers may form and join organizations outside the FPB freely and without pressure or intimidation on the part of enterprise management or the public authorities and that these organizations may exercise their activities without Government interference.<sup>2</sup>

6. At its 95th Session (June 2006), in the framework of its examination of the measures taken by the Government of the Republic of Belarus to give effect to the provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Committee on the Application of Standards of the International Labour Conference, inter alia:

... deplored the continued failure by the Government to implement the recommendations of the Commission of Inquiry and shared the sense of urgency deriving from the comments of the Committee of Experts in relation to the survival of any form of independent trade union movement in Belarus. It deplored the fact that it had to note that nothing the Government had said demonstrated an understanding of the gravity of the situation investigated by the Commission of Inquiry, or the necessity of rapid action to redress the effects of these severe violations of the most basic elements of the right to organize. It called upon the Government to take concrete steps for the implementation of these recommendations so that real and tangible progress could be noted by the November session of the Governing Body. If no such progress could be noted, the Committee trusted that the Governing Body would begin to consider, at that time, whether further measures under the ILO Constitution should be considered. The ILO should make available any technical assistance the Government might request provided that such assistance was needed for the concrete implementation of the recommendations of the Commission of Inquiry and the Committee of Experts. The Committee further trusted that the situation of independent trade unions in Belarus would be closely monitored by the ILO and that appropriate action would be taken in the event of repressive measures by the Government.

The Committee requested the Government to provide a full report on all measures taken to implement the recommendations of the Commission of Inquiry for examination at the forthcoming session of the Committee of Experts.

The Committee decided to include its conclusions in a special paragraph of its report. It also decided to mention this case as a case of continued failure to implement the Convention.<sup>3</sup>

7. No further substantive information had been received from the Government at the time the present document was completed that would indicate concrete measures taken with a view to giving effect to the Commission's recommendations. However, on 19 and 20 October 2006, the Government will send a high-level mission to Geneva to discuss the implementation of the recommendations.

<sup>2</sup> See Committee on Freedom of Association, 341st Report, para. 53(a).

<sup>3</sup> See International Labour Conference, 95th Session (Geneva, 2006), *Provisional Record* No. 24, Part Two.

## II. Measures to be considered by the Governing Body

8. The Committee on the Application of Standards of the International Labour Conference made explicit reference to the agenda of the current session of the Governing Body and expressed its trust that the Governing Body would begin to consider, at that time, whether further measures under the ILO Constitution should be considered. It is therefore for the Governing Body to consider whether other measures should be recommended to the Conference under article 33.
9. Article 33 of the Constitution states that “in the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry ... the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith”. This article is the result of an amendment adopted in 1946 with the purpose of removing reference solely to the economic sanctions that could be imposed on a Member in the event of its failing to carry out the recommendations of a Commission of Inquiry. The intention of the article was to leave the Governing Body full discretion to adapt its action to the circumstances of the particular case. This article was the basis for the referral of the case of Myanmar to the International Labour Conference in 2000.
10. Application of article 33 of the Constitution implies, on the one hand, that the item be placed on the agenda of the International Labour Conference and, on the other, that the Governing Body has at its disposal information allowing it to adopt those recommendations of the Conference which it considers appropriate to secure compliance with the Commission of Inquiry’s recommendations on the part of the Member in question. This information concerns both the nature of the measures that the Governing Body might recommend to the Conference for adoption by the latter and the Member’s failure to comply with the Commission of Inquiry’s recommendations.
11. In view of the seriousness of the consequences, which could result from applying article 33, and of the reasons leading to its application, it is necessary to place a specific item on the agenda of the Conference. The Governing Body could thus consider the placing on the agenda of the 96th Session of the Conference (June 2007) of an item entitled: “Action recommended by the Governing Body under article 33 of the Constitution – Implementation of the recommendations contained in the report of the Commission of Inquiry: *Trade union rights in Belarus*”. For this, an item for decision should be placed on the agenda of the March 2007 Session of the Governing Body.
12. The provisions of article 33 do not stipulate the nature of the measures that the Governing Body may recommend for adoption by the Conference where a Member flagrantly and persistently fails to carry out its obligations. As noted above, the 1946 constitutional amendment was intended to broaden the range of measures that might be recommended. While the range of measures is extremely broad, the Governing Body should nevertheless base its decision on two criteria. The first ensues from the recommendations of the Commission of Inquiry themselves: that the measure to be taken must correspond to the objectives of the Commission’s recommendations. The second criterion ensues from article 33 itself and concerns the fact that the measures must be deemed by the Governing Body to be appropriate for securing compliance with the recommendations of the Commission of Inquiry.
13. If the Governing Body would consider placing this question on the agenda of the 96th Session of the International Labour Conference, the Office can submit to the 298th Session of the Governing Body in March 2007 a paper detailing the various options, taking account of the views put forward during this preliminary examination of the question, in

order to enable it at that session to adopt recommendations under article 33 of the Constitution. Given that it is a question of freedom of association, it would seem appropriate that any assessment of the situation would be done by the Committee on Freedom of Association and reported by it to the Governing Body.

14. The Governing Body might wish to give guidance on the procedure and actions its wishes to see undertaken.

Geneva, 2 October 2006.

*Submitted for debate and guidance.*