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369th 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 1 and 2 November 2012, 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 366th Report (November 2012), which was approved by the Governing Body at its 316th Session.
3. On that occasion, the Committee made the following recommendations:
 - (a) The Committee deeply regrets that, despite the time that has elapsed since the previous examination of this case, the Government has once again failed to reply 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 is deeply concerned by the Government's lack of cooperation in providing information on the follow-up given to the Commission of Inquiry recommendations, which it had accepted, and urges it 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) The Committee urges the Government to take the necessary measures to ensure that all cases of non-registration of 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 requests the Government to provide a copy of the Supreme Court decision on the refusal to register "Razam" organization and to indicate whether the BITU has applied for the registration of its primary trade union at the "Kupalinka" and if so, the outcome of the registration procedure.
 - (d) The Committee requests the Government to provide its observations on the alleged refusal by the company management to provide the BITU primary trade union at the "Granit" enterprise with a legal address, needed for the registration purposes, and refusals by other landlords to rent an office space to the independent trade union due to the pressure from the local authorities.

- (e) 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 urges the Government to take the necessary measures to amend the Decree in consultation with the social partners.
- (f) The Committee urges the Government to provide its observations on the alleged summon of Mr Yaroshuk to the Office of the Prosecutor-General.
- (g) The Committee once again requests the Government to ensure that an independent investigation into all outstanding 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.
- (h) The Committee requests the Government to provide its observations on the alleged anti-union dismissals of Mr Stakhaevich, Mr Karyshev and Mr Pavlovski without delay as well as all relevant court decisions regarding their reinstatement cases.
- (i) 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”, “Belaeronavigatsia”, “MLZ Universal”, “Belaruskaliy” and “Granit” companies, and at the Brest State Pedagogical University.
- (j) The Committee requests the Government to provide its observations on the BITU allegation concerning the detention of the Chairperson of its Soligorsk regional organization.
- (k) 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 in line with the right of employers’ and workers’ organizations to organize their activities.
- (l) 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.
- (m) 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.
- (n) 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.
- (o) 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.

- (p) 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.
- (q) The Committee expects that the Government will provide full details on the steps taken to fully implement all outstanding recommendations without further delay.
- (r) The Committee urges the Government to intensify its efforts to ensure that freedom of association is 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.

4. The Government submitted its reply in communications dated 16 January and 8 May 2013.
5. The Committee has examined the information contained in the Government's communication. 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. The Government's reply on measures taken to implement the recommendations of the Commission of Inquiry

6. In its communication dated 16 January 2013, the Government provides the following information regarding the situation at "Granit" enterprise. According to the Government, by its letter dated 15 June 2012, the Belarusian Congress of Democratic Trade Unions (CDTU) informed the secretariat of the Council for the Improvement of Legislation in the Social and Labour Sphere ("the Council") of the situation at "Granit" enterprise. In particular, the CDTU alleged obstacles to the creation of a primary trade union organization of the Belarusian Independent Trade Union (BITU) at the enterprise, as the management had refused to provide the primary organization with premises to use as a legal address. In addition, the CDTU has complained about the unlawful dismissal of the union's Chairperson, Mr Stakhaevich. Having studied the materials submitted by the CDTU concerning the creation of a BITU primary organization at "Granit", the Council's secretariat considered it necessary to request the CDTU to supply additional information to demonstrate that the primary organization had been formed on 24 December 2011 (in particular, the union was asked to specify when and where the union-founding assembly had been held and who had taken part in it). The Government explains that this request was motivated by the following ambiguous information on the subject. On 26 December 2011, a letter from the Chairperson of the BITU was sent to the Director-General of the enterprise informing him of the establishment of the BITU primary trade union and of the election of Mr Stakhaevich as its Chairperson. The BITU Chairperson stated that the primary organization had been registered with the BITU executive committee and that the enterprise's management should have provided premises and a telephone so that the organization could carry out its activities, along with a letter confirming the organization's legal address so that it could be registered with the local authorities. An extract from the minutes of the BITU executive committee meeting, in which four people (all from the BITU) had participated, was enclosed with the letter. Not a single person from the primary organization established had been mentioned in this document. The Government points out that the founding document confirming the creation of the primary organization, that is a copy of the minutes of the founding assembly, was not enclosed with the letter. In this regard, the enterprise's management replied that it did not have complete information on the creation of the BITU primary organization. The

Government further points out that for a significant period thereafter, neither the CDTU nor the BITU, in letters to various bodies, provided a copy of the minutes of the founding assembly at which the primary organization had been established. On 28 February 2012, the BITU sent a complaint, copied to the Ministry of Labour and Social Protection, to the enterprise management in connection with its refusal to provide premises to serve as a legal address. While the communication enclosed two extracts from minutes of the BITU executive committee's meetings and correspondence with the enterprise's management, the minutes of the founding assembly were not enclosed. On 17 May 2012, the CDTU submitted a complaint to the Council; however, the minutes of the founding assembly were not enclosed with this information either. The minutes of the founding assembly were only provided with the information sent to the Council's secretariat on 15 June 2012. The Government points out that the minutes listed only 16 people as the founders of the primary organization, while supposedly 200 workers at the enterprise had expressed their wish to join the BITU. Some workers have also claimed that their signatures on documents were obtained by union representatives in an underhand manner, without explaining properly what demands had been submitted to the employer. In its communication dated 8 May 2013, the Government informs that on 26 March 2013, the Council held a meeting to discuss, among other matters, the situation at "Granit". The Government indicates that the meeting was attended by all of its members (the Government was represented by the Ministry of Labour and Social Protection, Ministry of Justice, Prosecutor-General's Office, Department of State Labour Inspectorate, and the National Labour Arbitration; employers' associations were represented by the Confederation of Industrialists and Entrepreneurs (Employers) and the Business Union of Entrepreneurs and Employers named after M.S. Kunyavsky; and trade unions were represented by the Federation of Trade Unions of Belarus (FPB) and the CDTU). The meeting was also attended by Mr Litvinko, Secretary-Treasurer of the "Granit" BITU primary organization. The Council discussed in detail the union's allegation that the enterprise management refused to provide the primary organization with premises, telephone and a letter proving the legal address. The Government indicates that despite the CDTU claims, the majority of the Council's members supported the position that there have been no violations in the action of the company's administration. The majority of the Council raised doubts about the establishment of the BITU primary trade union organization at "Granit" on 24 December 2011 and the validity of the BITU letter dated 26 December 2011 requesting the enterprise management to provide the union with the facilities. According to the Government, Mr Litvinko, who supposedly was one of the organizers of the primary union, could not reliably confirm the fact of the establishment, on 24 December 2011, of the primary organization, stating that he had forgotten the place and the time of its founding meeting. Thus, the majority of the Council's members considered justifiable the fact that following receipt of the BITU communication dated 26 December 2011, the enterprise management requested the union to provide additional information regarding the establishment of the primary organization. The Government points out that the information has not been provided and that, to date, the BITU has not approached the registration authorities concerning the registration or recording of the primary organization at "Granit". The Council was therefore of the view that unless new information is provided, it would be inappropriate to continue the discussion of this case. Concerning the allegation that landlords in Mikashevichi have refused to rent premises to the "Granit" BITU primary organization for use as a legal address, the Government notes that the CDTU has not provided any further information on such specific instances and no such cases are known to the Government.

7. With regard to the complaint concerning the dismissal of Mr Stakhaevich, the Government indicates that the matter has been examined by the judicial authorities following the CDTU's submission to the Luninets District Court, which turned down the claim. The CDTU appealed to the Judicial College for Civil Affairs of the Brest Regional Court, but the appeal was not upheld and the District Court's ruling stood unchanged. The judicial

authorities thereby recognized the legality of the employer's actions in dismissing Mr Stakhaevich. The Government forwards judicial decisions in the cases of Mr Stakhaevich, Mr Karyshev and Mr Pavlovski, as per the Committee's request. The Government stresses that discrimination on the grounds of a worker's trade union membership is not permitted at "Granit". Moreover, the enterprise ensures direct transfer of union dues both for members of the branch union belonging to the FPB and for workers who have declared BITU membership. Since April 2012, pursuant to workers' requests submitted to the enterprise's accounting unit, union dues of three workers are being transferred to the union's current account in Soligorsk.

8. With regard to the summoning of Mr Yaroshuk to the Office of the Prosecutor-General, as described in the CDTU's communication dated 15 February 2012 to the Committee on Freedom of Association, the Government indicates that, in February 2012, the Office of the Prosecutor-General investigated the activities of the CDTU leader, Mr Yaroshuk, in connection with public statements concerning his intention to approach international trade union organizations to propose economic sanctions against the Republic of Belarus. It was established that Mr Yaroshuk's statements concerning sanctions intended to limit exports of Belarusian goods had been published on various Internet sites. In order to prevent any unlawful action, the head of the department for monitoring the implementation of national legislation and the legality of legal acts of the Office of the Prosecutor-General explained to Mr Yaroshuk the provisions of section 361 of the Criminal Code (incitement to acts intended to harm the internal security of Belarus, its sovereignty, territorial integrity, national security or defensive capability) and section 369-1 of the Criminal Code (discrediting the Republic of Belarus), and the consequences of ignoring these provisions of criminal legislation. Mr Yaroshuk gave written assurances that he would not commit any act intended to discredit the Republic of Belarus or harm its national security, and also that he would not call on international organizations to boycott Belarusian domestic goods.
9. With regard to the registration of trade unions, according to the Government, as at 1 October 2012, 37 trade unions, of which 33 are national, were registered in Belarus. A total of 23,016 trade union organizational units were registered (or recorded). In 2012, there were no instances of refusal to register a trade union or to register (or record) an organizational unit. The Government points out that section 28 of the Law on Trade Unions stipulates that employers provide trade unions operating at their undertakings with the necessary equipment, premises, transport and means of communication to carry out their activities, pursuant to the collective agreements. In this regard, the Government points out that the legislation does not oblige trade union organizations to have premises and a legal address exclusively on the employer's premises and indicates that more than 15 primary organizations currently have their legal address elsewhere.
10. In response to the Committee's request, the Government indicates that the BITU has not approached the registration authorities regarding the registration of the primary organization at the "Kupalinka" enterprise. The Government also provides a copy of the Supreme Court's decision not to examine the complaint regarding the refusal to register the trade union "Razam".
11. Regarding Presidential Decree No. 24 of 28 November 2003 concerning the use of foreign gratuitous aid, the Government indicates that, in 2012, the FPB and the Mogilev provincial organization of the Belarus Agricultural Machinery Workers' Union registered free foreign aid of US\$23,031 (directed at the provision of social assistance) with the Department of Humanitarian Activities of the Office of Presidential Affairs. There were no instances of trade unions being refused registration of foreign aid.

12. With regard to social partnership and plans to improve legislation so as to implement the recommendations of the Commission of Inquiry, the Government indicates that the national legislation promotes the conditions necessary for trade unions to achieve their aims to defend social and labour interests. The FPB and the CDTU currently operate in Belarus. Despite the fact that their membership figures are very different (the FPB has 4 million members and the CDTU has 10,000), both associations have the opportunity to work with the Government and employers' associations in various social dialogue bodies. Both are members of the National Council on Labour and Social Issues, the Council for the Improvement of Legislation in the Social and Labour Sphere and the tripartite working group established by the latter. Both organizations participate in the preparation of general agreements with the Government and employers' associations. In this respect, the Government indicates that a General Agreement for 2011–13 between the Government and national employers' and workers' organizations was signed on 30 December 2010. In accordance with the provisions of the Agreement, it applies to all employers (and their associations), trade unions (and their associations) and workers in the Republic of Belarus. Thus, both the FPB and the CDTU, regardless of their representativeness, enjoy the guarantees provided by the General Agreement. Furthermore, social dialogue is being developed at the branch, regional and enterprise levels. As at 1 January 2012, 544 agreements (one general, 46 branch and 497 local) were in force across the country, along with 18,273 collective agreements; at the various levels (national, branch, provincial, district and municipal) there were 302 councils for labour and social issues. In ten years, the number of agreements has increased by 50 per cent, the number of collective agreements has gone up by 40 per cent and the number of councils has doubled. The legislation does not restrict the rights of trade unions (regardless of the number of their members) to bargain collectively. For example, at enterprises such as "Belaruskaliy" and the Mozyr Oil Refinery, the FPB trade unions, as well as the CDTU trade unions, participate in collective bargaining.

13. The Government indicates that it understands that the social partnership system needs further improvement. Disputes between trade unions can become a particular problem in the constructive development of social dialogue. If a large and a small trade union are both competing for the same workers and for the right to conclude a collective agreement, conflicts between them are practically unavoidable. International experience shows that a stable and just collective labour relations system must be based not only on the goodwill of participants, but, above all, on clear legal provisions (or judicial rulings) that prevent unfair competition among trade unions operating at the same enterprise or within the same branch or geographical area. The Ministry of Labour and Social Protection highlighted the need to resolve this issue at the meeting of the tripartite working group on 10 April 2012, and the Council's meeting on 17 May 2012. Clearer regulation of relations between social partners will help to ease the strain, establish constructive relations and, eventually, regulate all the issues raised by the Commission of Inquiry. In accordance with a resolution approved by the Council, the parties were requested to submit suggestions for improving legislation by 1 September 2012. The social partners are now examining the suggestions for amending legislation that governs collective labour relations. In accordance with ILO principles, the new standards should lay down clear rules on cooperation between employers and trade unions in concluding collective agreements, including where there are several unions at the same enterprise. In its communication dated 8 May 2013, the Government indicates that the FPB has submitted to the Council a draft law to amend the Law on Trade Unions and the Labour Code, which the Council discussed at its meeting in March 2013. The Government explains that the most important innovation of the draft legislation is the proposal to confer the right to bargain collectively and conclude collective agreements only to trade unions which comply with the representativity criteria established by the legislation. The majority of the Council's members supported the proposal to further examine this issue within the tripartite working group of the Council. However, according to the Government, some CDTU representatives opposed all discussion of the FPB

proposals either by the Council or its tripartite working group. Finally, the Government indicates that the Council supported the proposal made by the Ministry of Labour and Social Protection to cooperate with the ILO on that matter. The Government is therefore counting on ILO assistance in this endeavour.

C. The Committee's conclusions

14. *The Committee notes the information transmitted by the Government in reply to the allegations submitted by the CDTU, as examined by the Committee at its November 2012 meeting [see 366th Report].*
15. *The Committee notes the information provided by the Government on the number of registered trade unions in the country and its indication that there have been no instances of refusal to register a trade union or to register (or record) its organizational units. The Committee recalls that it has been urging 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 had been wound down were 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. The Committee regrets that no information has been provided by the Government in this respect. It further regrets that no information has been provided on the measures taken to ensure that all cases of non-registration of the Radio and Electronic Workers' Union (REWU) primary organizations in Mogilev, Gomel and Vitebsk are reconsidered by the registering authorities without delay. The Committee therefore reiterates its previous recommendations and requests the Government to keep it informed in this respect. The Committee also invites the complainant organizations to provide all relevant information in this respect.*
16. *In reply to its previous request for information, the Committee notes the Government's indication that the BITU has not applied for the registration of its primary trade union at "Kupalinka" enterprise.*
17. *The Committee further recalls that it had requested the Government to provide a copy of the Supreme Court decision in the case of refusal to register "Razam" organization. The Committee notes a copy of the Supreme Court's decision in the "Razam" case and understands that by its decision, the Court left without examination the case of refusal to register "Razam" organization submitted by three petitioners. According to the Court, pursuant to Decree No. 2, at least 500 founding members from the majority of regions are needed in order to establish a trade union at the national level; this implies that only founding members could be given the authority to represent the interests of the union in the process of registration or in court. The Court considered that the decision by the founding assembly to admit to trade union membership one of the petitioners, to elect him or her to the union's office and to mandate him or her to represent, together with other persons, the interests of the union before the registering authorities and the courts was without any legal ground. The Committee expresses its concern at this new interpretation of paragraph 3 of Decree No. 2, which appears to create additional obstacles to registration and impede the right of trade unions to elect their representatives and to organize their administration in full freedom enshrined in Article 3 of the Convention.*
18. *With regard to the situation of trade union rights at "Granit" enterprise, the Committee recalls the CDTU's allegation that the management of the enterprise refused to provide the BITU primary organization with the legal address required, pursuant to Decree No. 2, for registration of trade unions. In this respect, the Committee notes the Government's*

indication that the enterprise management acted in accordance with the law as the BITU failed to submit the minutes of the founding meeting. The Committee notes that in its January 2013 communication, the Government indicates that when the CDTU filed a complaint with the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere on this matter, on 17 May 2012, the minutes of the founding meeting submitted to the Council were signed only by 16 people, whereas 200 employees were said to have expressed a wish to join the BITU. Furthermore, according to the Government, some employees have stated that union representatives deceived them into signing the papers, without giving adequate explanations of the demands made to the employer. In its 8 May 2013 communication, the Government indicates that the majority of members of the Council, having discussed the matter at the Council's meeting on 26 March 2013, raised doubts about the establishment of the BITU primary trade union and considered that the actions of the enterprise management were justifiable. The Government submits, in particular, that the Secretary-Treasurer of the primary trade union, present at the Council's meeting could not remember the place and the time of the union's founding meeting. The Committee further notes the Government's indication that to date, the BITU has not approached the registration authorities concerning the registration or recording of its primary trade union organization. While noting what appears to be contradictory information about the establishment of the BITU primary organization, as referred to by the Government in its two communications, the Committee recalls, on the one hand that, while Decree No. 2 provides for a 10 per cent minimum membership requirement for establishment of a trade union, this requirement is not applicable to primary trade unions and understands that the decision even by 16 workers would be sufficient to establish a primary trade union. On the other hand, the Committee understands that due to the legal address requirement set forth by Decree No. 2, and in view of the refusal by the enterprise management to provide a letter confirming the legal address, the BITU could not apply for the registration of its primary trade union.

19. In the light of the above, the Committee expresses its concern that the requirements imposed by Decree No. 2 (legal address and 10 per cent minimum membership requirements) continue to hinder the establishment and functioning of trade unions in practice. The Committee notes 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 therefore once again urges the Government to take the necessary measures to amend the Decree in consultation with the social partners, so as to ensure that the right to organize is effectively guaranteed. The Committee requests the Government to provide information on all progress made in this respect. The Committee expects that the BITU primary trade union at "Granit" enterprise will be registered without delay and requests the Government to take all necessary measures to that end.
20. The Committee notes the judicial decisions in the cases of Mr Stakhaevich, Mr Karyshev and Mr Pavlovski, allegedly dismissed by the "Granit" enterprise management for their trade union activities. The Committee recalls that all three abovementioned workers were elected trade union officers. The Committee understands that the case of Mr Pavlovski has been dismissed on the grounds of failure to respect the prescribed time within which the complaint should have been filed with the Court. In the case of Mr Stakhaevich, the Committee notes that the complainant argued that he was fired in violation of the legislation pursuant to which the employer should have informed and received an authorization from the relevant trade union. According to the Court, Mr Stakhaevich claimed to be a member of the BITU primary trade union; however, as this trade union was not registered (recorded) and was not a party to a collective agreement, the employer could not seek this union's permission to dismiss Mr Stakhaevich. Finally, in the case of Mr Karyshev, the Committee notes that, while the complainant alleged anti-union discrimination, the Court considered that this allegation had not been "objectively

sustained". In this regard, the Committee considers that one of the main difficulties in relation to allegations of anti-union discrimination relates to the burden of proof. In practice, placing on workers the burden of proving that the act in question occurred as a result of anti-union discrimination may constitute an insurmountable obstacle to establishing liability and ensuring an appropriate remedy. In view of the above, and the compound effect the non-registration of the primary trade union at the enterprise had on at least one case of dismissal, the Committee is bound to express its deep regret at the absence of sufficient protection for the exercise of trade union rights in the country. Noting that the case of the registration of the BITU primary trade union will be examined by the Council, the Committee expects that this body will also examine the abovementioned dismissal cases and, should it be found that they were dismissed for their activities in the BITU primary trade union, the Government will ensure their reinstatement. If reinstatement is not possible for objective and compelling reasons, the Committee requests the Government to take the necessary measures to ensure that the workers concerned are paid an adequate compensation which would represent a sufficiently dissuasive sanction for anti-union discrimination.

21. The Committee also expects that the Council will address the issue of effective protection against acts of anti-union discrimination in law and in practice. The Committee requests the Government to keep it informed in this regard.
22. The Committee recalls that, in its last examination of this case, it had noted with concern the allegation submitted by the CDTU regarding the summoning of its Chairperson, Mr Yaroshuk, to the Office of the Prosecutor-General. The Committee notes the explanation provided by the Government in this respect and, in particular, its indication that, in February 2012, the Office of the Prosecutor-General investigated the activities of the CDTU leader in connection with his public statements, which have been published on various Internet sites, concerning his intention to approach international trade union organizations to propose economic sanctions against Belarus. Such statements, according to the Office of the Prosecutor-General, infringe upon provisions of section 361 of the Criminal Code (incitement to acts intended to harm the internal security of Belarus, its sovereignty, territorial integrity, national security or defensive capability) and section 369-1 of the Criminal Code (discrediting the Republic of Belarus). According to the Government, following the explanation provided to Mr Yaroshuk on the consequences of ignoring these provisions of the criminal legislation, the CDTU Chairperson gave written assurances that he would not commit any act intended to discredit the Republic of Belarus or harm its national security, and also that he would not call on international organizations to boycott Belarusian domestic goods. The Committee recalls that it had already noted the concerns raised by Belarusian independent trade unions over the provisions of the Criminal Code on discrediting the Republic of Belarus in 2006 [see 341st Report and January 2006 mission report appearing in annex to that Report]. The Committee regrets to note that the same legislative provisions would appear to continue to affect the exercise by trade union leaders of their right to express their opinions and views. The Committee recalls that the freedom of expression which should be enjoyed by trade unions and their leaders should also be guaranteed when they wish to criticize the Government's economic and social policy [see **Digest of decisions and principles of the Freedom of Association Committee**, fifth (revised) edition, 2006, para. 157]. The Committee expects that the Government will take all necessary measures in order to ensure that the relevant authorities abstain from any action that would prevent trade unions and their representatives from exercising their right to express opinions on the situation of trade union rights in the country or the Government's economic and social policies. It requests the Government to provide information on the concrete measures taken to that effect.

23. *With regard to the Commission of Inquiry's request to amend Decree No. 24 concerning the use of foreign gratuitous aid, the Committee notes the Government's indication that there have been no instances of refusal to register the receipt of foreign gratuitous aid by trade union. The Committee recalls that this piece of legislation provides that foreign gratuitous aid, in any form, cannot be used towards the preparation and carrying out of public meetings, rallies, street processions, demonstrations, pickets, strikes, designing and disseminating campaign material, as well as running seminars and other forms of mass campaign of the population and that violation of this requirement by trade unions and other public associations can result in the termination of their activities. The provision of such aid by representative bodies of foreign organizations and international non-governmental organizations on the territory of Belarus can result in the termination of the activities of such bodies. The commentary to the Decree emphasizes that "even a single violation can bring about the elimination of a public association, fund or other non-profit organization". The Committee recalls that it has considered that these provisions of the Decree are incompatible with Articles 5 and 6 of the Convention and once again urges the Government to take the necessary measures to amend the Decree so that national workers' and employers' organizations may receive assistance, even financial, from international workers' and employers' organizations in pursuit of their legitimate aims, including through means of strikes. It requests the Government to keep it informed of any measure taken in this respect.*
24. *The Committee notes that, in the Government's view, the national social partnership system needs further improvement as disputes between trade unions could hinder constructive development of social dialogue. The Government explains that if a large and a small trade union are both competing for the same workers and for the right to conclude a collective agreement, conflicts between them are practically unavoidable. It is therefore the Government's intention to amend the legislation that governs collective labour relations – the Law on Trade Unions and the Labour Code – with a view to laying down clear rules on cooperation between employers and trade unions in concluding collective agreements, including where there are several unions at the same enterprise. The Committee notes, in particular, the Government's indication that at its 26 March 2013 meeting, the Council discussed the proposal submitted by the FPB to amend the legislation so as to provide that only unions which satisfy representativity criteria could bargain collectively and conclude collective agreements. While noting that, according to the Government, trade unions are involved in this process, the Committee expresses its concern that the focus appears to have been placed on the area that was not in itself the subject of the recommendations of the Commission of Inquiry, without having already addressed the important pending recommendations. It once again recalls in this respect that this Committee, as well as the Commission of Inquiry, have been urging the Government to address the issues of registration and the right of employers' and workers' organizations to organize their activities without previous authorization through amending the abovementioned Presidential Decrees Nos 2 and 24 and the Law on Mass Activities, as a matter of priority. The Committee wishes to draw the Government's attention to the previous examination of this case when it considered the Government's intention to amend the trade union legislation, without dealing first with these matters, to be countering to the spirit of recommendations. Moreover, the Committee considered that introducing important changes to the trade union legislation in respect of the determination of trade union representativeness can only be understood as an attempt to eliminate any independent voices within the trade union movement in Belarus [see 339th and 341st Reports]. The Committee requests the Government to keep it informed of all developments in respect of its legislative initiatives affecting trade union rights.*

25. *While duly recognizing the efforts made by the Government to provide material for the Committee's consideration, the Committee nonetheless regrets that the Government submits no information on the measures taken to implement the remaining recommendations, which it therefore is bound to reiterate. It expects that the Government will provide full details on the steps taken to fully implement all outstanding recommendations without further delay.*

The Committee's recommendations

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

- (a) *The Committee once again urges the Government to provide information in respect of the steps taken to ensure the immediate registration of:*
 - (i) *the primary-level organizations that were the subject of the complaint; and*
 - (ii) *REWU primary organizations in Mogilev, Gomel and Vitebsk.*

It further once again urges the Government 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. The Committee requests the Government to keep it informed in this respect. It also invites the complainant organizations to provide all relevant information in this regard.

- (b) *With regard to the situation at "Granit" enterprise, the Committee expects that:*
 - (i) *the BITU primary trade union will be registered without delay; and that*
 - (ii) *the tripartite Council will examine the cases of dismissal of Mr Stakhaevich, Mr Karyshev and Mr Pavlovski and should it be found that they were dismissed for their activities in the BITU primary trade union, the Government will take the necessary measures to ensure their reinstatement; if reinstatement is not possible for objective and compelling reasons, the Committee requests the Government to take the necessary measures to ensure that the workers concerned are paid an adequate compensation which would represent a sufficiently dissuasive sanction for anti-union discrimination.*

The Committee requests the Government to keep it informed in this respect.

- (c) *The Committee requests the Government to examine the issue of effective protection against acts of anti-union discrimination in law and in practice in the framework of the tripartite Council and to keep it informed of the outcome.*

- (d) *The Committee expects that the Government will take all necessary measures in order to ensure that the relevant authorities abstain from any action that would prevent trade unions and their representatives from exercising their right to express opinions on the situation of trade union rights in the country or Government's economic and social policies. It requests the Government to provide information on the concrete measures taken to that effect.*
- (e) *The Committee once again urges the Government to take the necessary measures to amend Presidential Decree No. 2 in consultation with the social partners, so as to ensure that the right to organize is effectively guaranteed.*
- (f) *The Committee once again urges the Government to take the necessary measures to amend Decree No. 24 so that national workers' and employers' organizations may receive assistance, even financial, from international workers' and employers' organizations in pursuit of their legitimate aims, including through means of strikes. It requests the Government to keep it informed of any measure taken in this respect.*
- (g) *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 in line with the right of employers' and workers' organizations to organize their activities.*
- (h) *The Committee requests the Government to keep it informed of all developments in respect of legislative initiatives affecting trade union rights.*
- (i) *The Committee once again requests the Government to ensure that an independent investigation into all outstanding 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.*
- (j) *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", "Belaeronavigatsia", "MLZ Universal", "Belaruskaliy" and "Granit" companies, and at the Brest State Pedagogical University.*

- (k) The Committee requests the Government to provide its observations on the BITU allegation concerning the detention of the Chairperson of its Soligorsk regional organization.*
- (l) 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.*
- (m) 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.*
- (n) 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.*
- (o) The Committee urges the Government to intensify its efforts to ensure that freedom of association is 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 2013

(Signed) Professor Paul van der Heijden
Chairperson