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Report of the Committee on Freedom of Association

402nd Report of the Committee on Freedom of Association

▶ Contents

	Paragraphs
Measures taken by the Government of the Republic of Belarus to implement the recommendations of the Commission of Inquiry	1–78
A. Introduction	1–6
B. New allegations relating to the recommendations of the Commission of Inquiry	7–18
C. The Government’s reply on measures taken to implement the recommendations of the Commission of Inquiry	19–67
D. The Committee’s conclusions.....	68–77
The Committee’s recommendations	78

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

► A. Introduction

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, from 9 to 11 March 2023, under the chairmanship of Mr Evance Kalula.
2. Subsequent to the decision of the Governing Body, at its 291st Session (November 2004), that the implementation of the recommendations of the Commission of Inquiry established to examine the observance by the Government of Belarus of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), should be followed up by the Committee on Freedom of Association, the Committee last examined this matter in its 398th Report (March 2022), which was approved by the Governing Body at its 344th Session.
3. On that occasion, the Committee made the following recommendations:
 - (a) The Committee urges the Government to take the necessary measures to ensure that no person is detained in connection with his or her participation in a peaceful industrial action or protest. The Committee further urges the Government to take the necessary measures to ensure that all persons who have been arrested and/or detained for their participation in a peaceful industrial action or protest are adequately compensated for damages suffered. It requests the Government to indicate all measures taken to that end. The Committee once again stresses the need to ensure an impartial and independent judiciary and justice administration in general in order to guarantee that investigations into these grave allegations are truly independent, neutral, objective and impartial. Accordingly, the Committee requests the Government to take the necessary measures, including legislative, if necessary, to supply copies of the relevant court decisions upholding detention and imprisonment of workers and trade unionists. The Committee also requests the BKDP to provide any judicial decisions in its possession concerning its members.
 - (b) The Committee refers to recommendation 8 of the Commission of Inquiry on Belarus, which considered that adequate protection or even immunity against administrative detention should be guaranteed to trade union officials in the performance of their duties or when exercising their civil liberties (freedom of speech, freedom of assembly, etc.). The Committee firmly urges the Government to investigate without delay each alleged instance of intimidation or physical violence through an independent judicial inquiry and invites the complainants to provide any additional information in its disposal to facilitate such investigations. It requests the Government to provide detailed information on their outcome. Further in this respect, the Committee, with reference to the recommendations of the Commission of Inquiry, stresses the need to ensure an impartial and independent judiciary and justice administration in general in order to guarantee that investigations into these grave allegations are truly independent, neutral, objective and impartial.
 - (c) The Committee once again recalls its specific request to the Government to amend its legislation, in consultation with the social partners, to ensure that workers are protected against any acts of discrimination for simply having peacefully exercised their right to strike to defend their occupational and economic interests, which do not only concern

better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions. The Committee urges the Government to provide information on all measures taken or envisaged to that end.

- (d) The Committee urges the Government to ensure that all workers who have participated in the industrial actions referred to in this case will be reinstated in their jobs without loss of pay. The Committee requests the Government to provide information on all measures taken in this respect.
- (e) The Committee expects the Government to take, in consultation with the social partners, the necessary measures in order to adopt specific legislative provisions affording an adequate protection against cases of non-renewal of contracts for anti-union reasons. It requests the Government to provide information on all steps taken to that end.
- (f) The Committee considers that the issue of legal address and registration of trade union organizations more generally, especially those affiliated to the BKDP, remains an issue of concern and thus once again requests the Government to put the issue of registration of trade union organizations, including the question of legal address requirement, on the agenda of the tripartite Council. The Committee expects the Government to provide detailed information on the outcome of the discussion by the tripartite Council.
- (g) The Committee once again urges the Government to refrain from any interference with the establishment of trade unions in private companies, in particular from demanding the setting up of trade unions under the threat of liquidation of private companies otherwise; to clarify publicly that the decision whether or not to set up a trade union in private companies is solely at the discretion of the workers in these companies; and to refrain from showing favouritism towards any particular trade union in private companies. The Committee expects that all steps in this regard will be taken without delay.
- (h) The Committee once again urges the Government, in consultation with the social partners, to amend the Law on Mass Activities and the accompanying Regulation, as well as Decree No. 3 on the registration and use of foreign gratuitous aid in the very near future and requests the Government to provide information on all measures taken in this respect as soon as possible. The Committee recalls that the amendments should be directed: at abolishing the sanctions imposed on trade unions or trade unionists for a single violation of the respective legislation; at setting out clear grounds for the denial of requests to hold trade union mass events, bearing in mind that any such restriction should be in conformity with freedom of association principles; and at widening the scope of activities for which foreign financial assistance can be used. The Committee further requests the Government to repeal the above-mentioned amended provisions of the Criminal Code in order to bring them into compliance with the Government's international obligations regarding freedom of association. The Committee requests the Government to provide information on all measures taken to that end and invites the Government to avail itself of ILO technical assistance in this respect.
- (i) The Committee strongly encourages the Government, together with the social partners, as well as other stakeholders (for example, Ministry of Justice, Office of the Prosecutor-General, judiciary and Belarusian National Bar Association) to continue working together towards building an efficient, non-judicial dispute resolution mechanism which could deal with labour disputes involving individual, collective and trade union matters. It requests the Government to keep it informed of the measures taken or envisaged in this regard.
- (j) The Committee firmly expects that the Government will fully engage with the social partners, the ILO, as well as relevant national institutions and bodies, with a view to improving the functioning, procedures and the work of the tripartite Council aimed at enhancing its impact in addressing the issues stemming from the recommendations of the Commission of Inquiry and other ILO supervisory bodies.
- (k) The Committee urges the Government to pursue its efforts and expects that the Government, with the assistance of the ILO and in consultation with the social partners,

will take the necessary steps to fully implement all outstanding recommendations and ensure effective implementation of the ratified Conventions without further delay.

- (l) Noting with deep regret the serious retreat on the part of the Government from its ILO constitutional obligations and its commitment to implement the Commission of Inquiry recommendations 17 years ago, the Committee draws this serious situation to the attention of the Governing Body so that it may consider any further measures to secure compliance therewith.
4. By communications dated 15 March, 20 April and 5 December 2022, and 18 January 2023, the International Trade Union Confederation (ITUC) submitted new allegations of violation of freedom of association in the country. By its communication dated 7 April 2022, IndustriAll Global Union submitted additional allegations of violation of freedom of association.
 5. The Government submitted its reply in a communication dated 2 February 2023.
 6. The Committee submits for the approval of the Governing Body the conclusions it has reached concerning the measures taken to implement the recommendations of the Commission of Inquiry.

► B. New allegations relating to the recommendations of the Commission of Inquiry

7. In their communications dated 15 March, 7 and 20 April, and 5 December 2022, and 18 January 2023, the ITUC and IndustriALL Global Union provide information on the situation of trade union rights and allege new violations of freedom of association in the country.
8. In particular, the ITUC informs that on 12 October 2021, the President of Belarus signed Decree No. 6, which amended Decree No. 5 of 15 December 2014 “On strengthening the requirements for management personnel and employees of organizations”. The new Decree establishes an obligation for state bodies and companies with over 50 per cent state ownership to request a reference letter from the previous jobs of the applicant. The letter, the content of which is set by the decision of the Council of Ministers of the Republic of Belarus No. 585 of 14 October 2021, must provide, among other information, data on “interaction with a trade union”, as well as information on whether the applicant called on other workers to stop working. The ITUC alleges that as the amendment applies to all state bodies and the largest companies operating in Belarus, the new legislation creates a serious risk of discrimination in access to employment of all workers affected by the sanctioning of the pro-democratic protests as well as all those affiliated or associated with the independent trade unions, including the Congress of Democratic Trade Unions (BKDP) and its affiliates.
9. In its communication dated 15 March 2022, the ITUC alleges repressions against primary trade unions affiliated to independent trade unions in Belarus, which resulted in a considerable decrease in trade union membership. It alleges, in particular, that Messrs Ihar Povarau and Yauhen Hovar of the Belarusian Metallurgical Plant (BMZ) primary trade union affiliated to the Belarusian Independent Trade Union (BNP) are detained and further lists the names of workers from the “Workers’ Movement” (“Rabochy Rukh”) and indicates that they are facing treason and terrorism charges punishable by up to 20 years of imprisonment:
 - Mr Valiantsin Tseranevich, vice-chairperson of the Grodno Azot BNP primary organization;
 - Mr Uladzimir Zhurauka, of the same union (for going on strike);

- Mr Andrei Paheryla, of the same union (for going on strike);
 - Mr Siarhei Shelest, of the same union (for going on strike);
 - Mr Aliaksandr Kapshul, trade union lawyer and vice-chairperson of the BNP primary trade union at Naftan; and
 - Mr Aliaksandr Hashnikau, of the BMZ primary trade union.
- 10.** The ITUC further alleges repression against the Free Metalworkers' Union (SPM) primary trade union leaders and activists. The ITUC alleges that nearly all chairpersons of the SPM primary trade unions were fired from the major companies, some activists were fired and detained, and some have been forced to flee the country to avoid prosecution. The ITUC alleges, in particular, that on 17 November 2021, Mr Artyom Zhernak, the chairperson of a primary trade union, was detained by the state security committee and his apartment was searched twice. Mr Zhernak remains in custody. A search was also conducted at the home of Ms Alla Tsvirko; under the threat of criminal prosecution, she was forced to flee Belarus, as was the SPM press secretary, Mr Sergey Gultsov. On 21 October 2021, Mr Nikolai Shibeko was detained, his home searched, and equipment seized. On 22 October 2021, state security officers arrested Messrs Pavel Gaiduk and Daniil Vosinsky. They were sentenced to 10 and 15 days of detention, respectively, and fired after their release. On the same day, Mr Alexander Mogilevich was taken to the state security committee for interrogation. On 3 November 2021, Mr Viktor Verovsky, whose contract with the enterprise he was working at had not been extended, was sentenced to 45 days of detention. State security officers searched the home of Mr Andrei Komlik-Yamatin; he was forced to flee the country. The home of Mr Alexander Smolsky was searched three times and he had to leave Belarus under the threat of criminal prosecution. At the end of 2021, after prolonged pressure and threats, the labour contract of Mr Alexey Gubich, the SPM chairperson of a primary trade union was not extended; after his departure, four members of an SPM primary trade union were deprived of bonus payments. On 7 December 2021, Mr Viktor Mikhalchik was detained in Grodno for two days and later fined BYN800 (US\$310).
- 11.** In its communication dated 7 April 2022, IndustriALL Global Union alleges that more than 200 members of the Radio Electronic Workers' Union (REP Union) have been subjected to various administrative penalties, many sentenced to imprisonment. The complainant reports that there has been an increase in interrogations of union activists, and that illegal installation of video and listening devices in trade union offices, and pressure on union members to leave the union have become widespread. It alleges, in particular, that the police brutally broke into the house of Ms Zinaida Mikhniuk, the head of the Brest regional organization of the REP Union and searched her house and the Brest office of the trade union. On the day of the communication, she was in the Brest remand centre. Her organization was deregistered.
- 12.** In addition, IndustriALL Global Union reports that on 21 March 2022, the office of the BNP primary trade union at Naftan oil company was searched and turned upside down. Equipment, including union computers, documentation and union flags, were seized by the police. Trade union activist Ms Nina Barysava was detained for a night, her home was searched and her phone was taken by the police. The apartments of Mr Gennadz Vorona, the vice-chairperson of the BNP primary trade union and Ms Maryna Satsukevich, the BNP lawyer, were also searched. Ms Volha Brytsikava, the BNP primary trade union chairperson, was detained after receiving three terms of 15 days of administrative arrest.
- 13.** Furthermore, IndustriALL Global Union alleges that on 24 March 2022, Mr Aleksandr Yevdokimtchik, the SPM deputy head was arbitrarily detained for 15 days. This detention

followed the one on 24 February 2022, when the police broke into the SPM office in Minsk and confiscated private telephones of those present in the office, as well as computer hard drives. When Mr Yevdokimchik asked the people in plain clothes who were searching the office to introduce themselves and explain the reasons of their acts, instead of receiving explanations, he was brutally detained and at a trial four days later convicted for hooliganism, allegedly committed at the police station, and spent 17 days in jail.

14. IndustriALL Global Union also alleges violation of trade union rights at the Grodno Azot enterprise and in particular, that the enterprise management is resorting to the security services to intimidate the BNP primary trade union members and to undermine the legitimate rights of workers to carry out trade union activities. The complainant alleges that between 4 and 6 April 2022, all 157 members of the BNP primary trade union were ordered to come to the security service of the company and in the presence of the deputy CEO on security and human resources asked to show and surrender their personal mobile phones. Trade union members were asked to install Telegram application on their phones, which allowed to identify all Telegram chats ever attended by the phone owner. After interrogation by the State Investigative Committee, the union members were asked to sign a protocol in which they promise "... not to take part in the work of extremist Telegram channels, and not to share information with extremists ...".
15. In its communication dated 20 April 2022, the ITUC alleges that the leaders of the BKDP – Mr Aliaksandr Yarashuk, the chairperson, Mr Siarhei Antusevich, deputy chairperson, Mr Aliaksandr Bukhvostau, the SPM chairperson, and Mr Mikalaj Sharakh, the SPB chairperson – were arrested on 19 April 2022, together with other trade union activists (Ms Yana Malash, Ms Hanna Dus, Ms Iryna Bud-Husaim, Ms Elena Yeskova, Messrs Vitali Chychmarou, Vadzim Payvin, Mikhail Hromau, Ihar Komlik, Yury Beliakou, Vasil Berasneu, Hennadz Fiadynich, Dzmitry Barodka, Miraslau Sabchuk, Aleh Padalinski). The ITUC further alleges that the BKDP, the SPM and the REP Union premises and homes of trade union leaders and employees were searched.
16. In its communication dated 5 December 2022, the ITUC points out that since April 2022, the Belarusian Government has engaged in a systematic pattern of repression against the independent trade unions in the country, arbitrarily arresting and detaining trade union leaders and members; intimidating and harassing them; arbitrarily dissolving trade unions; raiding their offices and confiscating their properties. It indicates that following the Supreme Court decision of July 2022, all independent trade unions – the BKDP and four major trade unions – were forcibly dissolved. It further alleges that 37 trade unionists were detained and expresses concerns regarding the conditions of their detention. According to the ITUC, several trade union leaders stood trials in November 2022. It provides in this respect the following information:
 - Mr Andrei Khanevich, chairperson of the Grodno Azot BNP primary trade union was sentenced to five years' imprisonment. Earlier in 2022, the regional court declared the independent trade union an extremist organization and banned its activities.
 - Ten BNP members, including Mr Valiantsin Tseranevich, the deputy chairperson of the Grodno Azot BNP primary organization, were due to appear in court as part of the Rabochy Rukh case. They are accused of creating and participating in an extremist formation and treason, punishable by up to 15 years of imprisonment.
 - Mr Aliaksandr Mishuk, the BNP vice-chairperson and the chairperson of the Belaruskali primary trade union organization, was sentenced to two and a half years of imprisonment.

- Mr Mikhail Hromau, the SPM secretary was sentenced to two and a half years of restricted freedom under home confinement.
 - Mr Vitaly Chychmarou, was sentenced to three years of restricted freedom under home confinement.
 - Ms Yanina Malash, an SPM activist, was sentenced to one and a half years in a penal colony.
 - Messrs Vasily Berasneu, Hennadz Fiadynich and Vatslau Areshka, REP Union leaders, are accused of creating and participating in an extremist formation and calling for actions aimed at harming the national security of Belarus, inciting social hatred. The hearing was held behind closed doors on 25 November 2022.
 - Mr Siarhei Sliazhkov, a BNP activist who was accused of insulting Lukashenko (section 368(1) of the Criminal Code) and inciting other social hatred and discord (section 130(1) of the Criminal Code) was sentenced to three years in prison.
- 17.** The ITUC alleges that other trade union leaders remain under the permanent threat of arbitrary arrest and detention:
- Ms Volha Brytsikava, the chairperson of the Naftan BNP primary organization, was once again detained on 2 November 2022, in Novopolotsk, for “distribution of extremist materials”. The Novopolotsk court found the trade union leader guilty and sentenced her to 15 days of administrative arrest. While serving her sentence, she was judged and sentenced for another term of 15 days, which brought the total number of days in jail in 2022 to 105 days.
 - Mr Aleh Davidzenka, one of the members of the SPB primary organization of the Belarusian Academy of Science, was arrested on 6 November 2022. According to the ITUC, he was arrested because his name was on the list of members of the primary organization that the SPB sent to the local administration for registration. In this respect, the ITUC notes with serious concern that the lists submitted in good faith by independent trade unions to obtain re-registration are now used by the KGB to persecute and arbitrarily arrest trade union leaders and members.
- 18.** In its communication dated 18 January 2023, the ITUC informs that on 26 December 2022, the Minsk City Court sentenced Mr Yarashuk to four years of imprisonment, his deputy Mr Antusevich to two years and Ms But-Husaim to one and a half years. They were found guilty of actions that grossly violate public order (section 342(1) of the Criminal Code), and Mr Yarashuk was also found guilty of calling for measures aimed at harming the national security of Belarus (section 361(3) of the Criminal Code). The ITUC further informs that on 5 January 2023, the Minsk City Court sentenced the leaders of the REP Union as follows: Mr Fiadynich was sentenced to nine years of reinforced regime imprisonment, Mr Berasneu was sentenced to nine years in a medium security prison, while Mr Areshka was sentenced to eight years of imprisonment in a general regime prison. All were found guilty of calling for measures aimed at harming the national security of Belarus (section 361(3) of the Criminal Code), incitement of other social hatred (section 130(3) of the Criminal Code) and the creation of an extremist formation or participation in it (section 361(1) and (3) of the Criminal Code). The Rep Union leaders’ trial was held behind closed doors. The ITUC also indicates that the authorities have failed to give access to a humanitarian visit to imprisoned trade unionists to ascertain their conditions of arrest and detention.

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

19. In its communication dated 2 February 2023, the Government indicates at the outset that it deeply regrets that the ILO supervisory bodies continue to base their position on the situation in Belarus solely on the information and complaints from the BKDP, and unconstructive and politically biased international trade union associations and human rights structures. In the Government's view, this unilateral approach leads to a situation in which the ILO supervisory bodies' understanding of the situation in the country, as well as their conclusions and recommendations, are based on unsupported accusations against the Belarusian authorities. The Government points out that in forming their position, the ILO supervisory bodies erroneously assume that the protests of 2020 were caused by economic and/or social reasons, were peaceful and legitimate, and oriented towards the protection of civil and trade union rights and freedoms. The Government reiterates that purely political events of 2020 were unrelated to social dialogue processes in the world of work or the exercise of trade union rights and freedoms, and thus should not serve as a basis for assessing compliance with Convention No. 87. According to the Government, the protests of 2020 were illegal, far from peaceful, artificially stimulated by destructive external forces and aimed at unconstitutional seizing of power. The protesters' demands – the dismissal of the President, the holding of new elections and the exoneration of citizens who had broken the law – had no objective connection with the exercise of trade union rights protecting labour, social and economic interests of citizens.
20. The Government indicates that strikes as a legal means of resolving collective labour disputes between employers and employee representative bodies have not been announced or carried out and purely politically motivated protests have affected only a small proportion of employees and have had absolutely no economic or social connotations. There have been no demands concerning the regulation of labour and socio-economic relations made to employers and the authorities. The attempts to organize an alleged strike movement in flagrant violation of the existing legal procedure aimed at stopping the work of the largest enterprises that form the basis of the Belarusian economy, i.e. to implement purely political objectives by exerting pressure on the legitimate authorities by undermining the economic potential and social well-being of the country.
21. Regarding the Committee's recommendations, the Government points out that it had previously provided its detailed replies thereon and expresses regret that these have not been taken into account. The Government therefore reiterates the information it had previously provided.

Recommendations (a)–(d): Measures taken against trade unionists and workers who have taken part in protests and work stoppages

22. The Government indicates that in light of the above, all calls by the ILO supervisory bodies for the release of all lawfully detained trade unionists, dropping of charges against them, compensation for the alleged damage, reinstatement in employment, etc., have no objective basis. The Government reiterates that any allegation that trade unionists in Belarus were allegedly persecuted for carrying out lawful trade union activities, for taking part in peaceful protests and lawful strikes are untrue and incorrect.
23. The Government points out that as of 1 January 2023, there were 20 trade unions in Belarus and 28,272 organizational structures of trade unions. Trade unions, their leaders, members

and activists are free to carry out their lawful activities aimed at defending and protecting workers' labour, social and economic rights and interests, raising living standards and social protection of citizens, including in cooperation with the authorities and within the framework of the social partnership system. The Government indicates that the competent authorities had legitimate grounds for prosecuting a number of citizens whose actions were unlawful. Illegal attempts to block the work of individual enterprises had nothing to do with workers exercising their right to hold lawful strikes to resolve collective labour disputes and/or meet demands of an economic or social nature. In doing so, individual workers abstained from working, refused to perform the work as per their employment contracts and took action to stop the work of the enterprises. The prosecution of persons named in the complaints is unrelated to anti-union discrimination; thus, according to the Government, there is no basis to dismiss the charges against them, to provide them with compensation and/or reinstate them.

- 24.** Regarding the calls to guarantee the right to a fair trial and to ensure impartiality, independence and openness of the judicial system, the Government emphasizes that the principle of the rule of law applies in Belarus and the State guarantees the rights and freedoms of citizens as set out in the Constitution, laws and international commitments of Belarus. All are equal before the law and are entitled to equal protection of rights and legitimate interests. Pursuant to article 60 of the national Constitution, everyone is guaranteed protection of rights and freedoms by a competent, independent and impartial court in the manner and within the time limits determined by the legislation. Decisions and actions or omissions of state bodies and officials that infringe rights and freedoms may be appealed to the courts. In administering justice, judges are independent. Any interference in the activities of judges in administering justice is inadmissible and punishable by law. The Government further explains that judicial hearings are public, unless closed hearings are required by law; court orders are binding on all citizens and officials and the parties can exercise their right of appeal.
- 25.** Regarding the Committee's reference to recommendation No. 8 of the Commission of Inquiry, according to which, adequate protection or even immunity from administrative detention should be guaranteed to trade unionists in the performance of their duties or the exercise of their civil liberties, the Government indicates that in no way this recommendation refers to the exemption of trade unionists from liability in the event of unlawful acts committed by them. Moreover, the need for workers and employers and their organizations to respect the rule of law in the exercise of the rights recognized by Convention No. 87 is laid down in its article 8(1).
- 26.** The Government recalls that trade union rights are enshrined in the legislation (Law on Trade Unions) and are implemented in practice. Employers (their associations), state bodies, economic entities, public associations and officials must respect the rights of trade unions. In order to carry out their statutory tasks, trade unions have the right to organize and hold rallies, street marches, demonstrations and other collective action in defence of their members' interests. Trade unions have the right to organize and hold strikes in accordance with the law. When strikes are initiated by trade unions, political demands are prohibited.
- 27.** The Government indicates that the information on the outcome of investigations carried out in connection with the alleged unlawful acts by the law enforcement officers (arbitrary detention, arrests, physical abuse and intimidation) was provided in the framework of the sixth periodic report of the Government on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in August 2022.

Recommendation (e): Protection in cases of non-renewal of contracts for anti-union reasons

28. The Government refers to the information it had previously provided and reiterates that discrimination on trade union grounds is prohibited (section 14 of the Labour Code and relevant provisions of the Law on Trade Unions). Persons who believe that they have been discriminated against in employment relationships are entitled to apply to a court. Trade unions have the right, at the request of their members and other citizens, to take legal action to protect their labour and socio-economic rights and interests. To that end, trade unions may establish trade union legal services and other bodies whose competence is determined by the statutes of trade unions and national legislation. Citizens' complaints and allegations of discrimination in employment relations, including discrimination on the grounds of trade union membership, are carefully considered by the courts. Furthermore, the social partners are able to address and discuss problematic issues, including possible complaints of anti-union discrimination, within the social partnership bodies operating in the country – the tripartite National Council on Labour and Social Issues (NCLSI) and the tripartite Council for improvement of legislation in the social and labour sphere (tripartite Council).
29. The Government further reiterates that by accepting a contractual form of employment and signing a contract, employees confirm their agreement and intention to be in an employment relationship with the employer for the duration of the contract and their agreement and willingness to terminate the employment relationship at the end of the contract period. As in other legal systems, in Belarus, the termination of the employment relationship at the end of a fixed-term contract is not considered to be a dismissal. In this respect, the law does not oblige the employer to justify his or her reluctance to extend the employment relationship after the expiry of the contract. The expiry of the contract is in itself sufficient grounds for termination. Therefore, if an employer has decided not to re-employ the employee after the expiry of the contract, there is no need for any further justification on this point. The issue of forcing the employer to enter into a new contract with an employee cannot be resolved, including in court (except for categories of employees for whom special protective measures are established by law). The Government points out that the legislation governing labour contracts is improving and refers in this respect to the amendment of the Labour Code which increased the duration of renewed contracts.

Recommendation (f): Consideration by the tripartite Council of the registration of trade unions (their organizational structures)

30. The Government indicates that the possibility of implementing the relevant proposals of the Committee may be considered when the tripartite Council resumes its work. The Government reiterates that the tripartite Council can consider an issue if there is a genuine evidence of concern submitted to it by the parties (or one of the parties). Otherwise, there would be no basis for the members of the tripartite Council to consider and discuss the relevant agenda item.
31. Regarding the registration procedure, the Government reiterates that the legislation sets out trade union registration procedure. In order to increase the ability of trade unions to obtain a legal address, in addition to the employer's address, trade unions can locate themselves in other places. The Government once again points out that the practice shows that the legal address requirement is not an obstacle to the registration of trade unions. Cases of denial of state registration are isolated and the vast majority of these are not related to the lack of proof of legal address. The main reasons for denying registration are non-compliance with the

procedure for establishing of trade union organizations and submitting all the necessary information and documents to the registering authorities. The documents for state registration of a trade union may be resubmitted once all shortcomings have been rectified; the refusal to register does not amount to a ban on establishing a trade union. In view of the above, allegations that the legal address requirement is an insurmountable obstacle to trade union activities has no objective basis.

Recommendation (g): Alleged favouritism towards certain trade union structures and interference in the establishment of trade unions

- 32.** In relation to the complaints by the BKDP and the ITUC about state support for the Federation of Trade Unions of Belarus (FPB), as well as the Committee's recommendations to refrain from showing favouritism towards any trade union and interference in the establishment of trade unions, the Government refers to the existing legislative framework which guarantees the right of citizens (as well as of foreign citizens and stateless persons) to voluntarily establish and join trade unions of their own choosing. The decision to form a trade union is therefore made solely by the employees themselves. Trade unions may, in turn, form and join republican level trade unions on a voluntary basis. Republican level trade union associations may, according to the procedure laid down in their statutes, establish territorial (regional, city, district) and other trade union structures. A prerequisite for the functioning of trade unions – their independence – is enshrined in section 3 of the Law on Trade Unions. Trade unions independently draft and approve their statutes, determine their structure, elect their governing bodies, organize their activities, and hold meetings, conferences and congresses. In accordance with their statutory objectives and tasks, trade unions have the right to cooperate with trade unions in other countries and to join international and other trade union associations and organizations of their choice.
- 33.** The Government points out that membership or non-membership in trade unions does not entail any restrictions on their labour, socio-economic, political or personal rights and freedoms guaranteed by the national legislation. The activities of trade unions may be restricted only in cases that are prescribed by the legislation in the interests of national security, public order or the rights and freedoms of others. Employers (their associations), state bodies, economic entities, public associations and officials must respect the rights of trade unions. Moreover, trade unions and employers' associations in Belarus carry out their activities and cooperate with the Government within the framework of the social partnership system. As independent and autonomous decision-makers, trade unions and employers' associations are actively involved in the development and implementation of the State's social and economic policies. Tripartite advisory bodies have been set up and operate successfully at all levels (national, sectoral, regional, city and district). For a number of years, the three parties have been concluding general agreements reflecting their agreed positions and commitments on economic policy, income and living standards, social protection, labour market development, labour protection and social partnership. The General Tariff Agreement for 2019–2021, which has been extended by the agreement between the parties for a further three-year period from 2022 to 2024, is the 16th of its kind and applies to all employers and their associations, all trade unions and their associations, as well as to all employees.
- 34.** The Government indicates that the State's commitment to fundamental principles and rights at work, its openness to dialogue and constructive cooperation with the social partners are a good basis for building a strong and effective socio-economic model capable of meeting new challenges. Today, the FPB is the national trade union centre, which unites 15 sectoral trade unions, 6 regional and Minsk city associations of trade unions, 137 district and city associations

of trade unions, and represents about 4 million people. For many years, the FPB has been a representative and active social partner of the State in the development, improvement and implementation of social and economic policies. In making considerable efforts to protect the labour, social and economic rights of citizens, the FPB constantly raises before the authorities the most urgent, acute or problematic issues encountered by workers in the exercise of their rights. In defending the interests of citizens, the FPB-affiliated trade unions regularly contact and actively cooperate with the authorities, including at the highest levels of the Government.

35. The Government emphasizes that the national legislation does not contain provisions obliging trade unions to create a single national trade union centre. The unification of the trade unions operating in the country within a single, strong and influential FPB took place upon their own initiative. The Government points out that this practice is fully in line with ILO principles and takes place in many countries around the world.
36. In view of the Committee's conclusions and recommendations, the Government deeply regrets that the ILO supervisory bodies perceive the recognition of the FPB's active role in the social partnership system, the broad-based constructive interaction between the authorities and the trade union centre, as well as the Government's position that private business should not create obstacles for workers exercising their right to form primary trade unions as favouritism. The Government strongly disagrees with such an interpretation by the ILO supervisory bodies and explains that the FPB has an important place in the country's social partnership system.

Recommendation (h): Amendments to legislation governing the receipt and use of gratuitous foreign aid and the procedure for organizing and holding public events

37. The Government refers to its detailed and reasoned position submitted to the Committee on previous occasions. The Government deeply regrets that its arguments concerning the possible destructive effects of the implementation of the recommendations of the ILO supervisory bodies aimed at weakening the State's control over funds coming into the country from abroad and absolving trade unions violating the legislation setting out the procedure for the organization and holding of public events are not taken into account.
38. The Government reiterates that the procedure established in the country for the receipt of foreign aid is unreasonably linked to Articles 5 and 6 of Convention No. 87. The Government considers that these Articles contain no provisions on the right of trade unions to freely receive financial or other forms of assistance for political and propaganda work among the population. Furthermore, the legislation of the country does not prohibit trade unions from receiving foreign gratuitous aid. However, the legislation defines the conditions for its use and provides that such aid must be duly registered. The registration procedure is not complicated and is carried out in a short period of time. There is no evidence that trade unions have been refused to receive foreign aid. The Government considers that allowing outside forces to sponsor public events in the country could destabilize the socio-political and socio-economic situation, which, in turn, would have an extremely negative impact on society and the well-being of citizens. The prohibition on the receipt and use of foreign aid for political purposes is based on the interests of national security and is more than justified.
39. The Government further considers that the arrangements in place for the organization and holding of public events do not contradict the principles of freedom of association and are fully compatible with the provisions of the International Covenant on Civil and Political Rights. The provisions of the legislation penalizing breaches of the procedure for organizing and holding

a mass event that have caused serious negative consequences are aimed at preventing socially dangerous and unlawful acts that pose a real threat to the life and health of citizens. When holding public events, trade unions have a duty to respect public order and a priori must not allow any action that would make the event lose its peaceful character and cause serious harm to citizens, society and the State. The penalties provided for by the legislation to be imposed on the organizers of mass events which caused substantial damage, harmed the rights and interests of citizens, organizations and state or public interests are not and should not be interpreted as a deterrent to the exercise by citizens and trade unions of their right to freedom of peaceful assembly. A decision to terminate the activities of a trade union for violation of the legislation on mass events that have caused serious damage, substantial harm to the rights and interests of citizens, organizations, society and the State may only be taken by a court.

40. The Government indicates that the amendments to the Law on Mass Events do not contain any norms prohibiting citizens from exercising their guaranteed right to peaceful assembly to protect their rights and legitimate interests. The amendments are directed against the organization, preparation and commission of acts which infringe upon the independence, territorial integrity, sovereignty of the State, the foundations of the constitutional order and public security through the organization of mass disturbances, vandalism involving damage or destruction of property, seizure of buildings and structures, and other acts which grossly violate public order.
41. The Government further indicates that the amendments introduced into the Criminal Code were not intended to infringe upon the rights of citizens and trade unions to organize and hold mass events of a peaceful nature, rather, it was a necessary step towards improving the national legal framework in order to bring it into line with the current situation in the country, as well as the serious challenges that Belarus has had to face due to the unprecedented planned attack on the State by unfriendly forces. Taking into account the unprecedented political and economic pressure exerted on Belarus to undermine its economic potential, slow down its development and reduce the living standards of its citizens, the Government believes that loosening liability for violating the procedure for holding mass events and lifting restrictions on the use of foreign financial aid for political and campaigning activities will contribute to creating conditions for increasing external destructive influence on Belarus.

Recommendations (i) and (j): Improvements to the labour dispute resolution system and the work of the tripartite Council

42. The Government reaffirms its interest in continuing to work with the social partners and the ILO to improve the labour dispute resolution system. The Government appreciates the assistance of the Office in improving the work of the tripartite Council, which was established with the advisory support of the ILO as a body to address the implementation of the Commission of Inquiry recommendations and other issues of cooperation with social partners, including the handling of grievances. The Government reiterates its willingness to further improve the functioning of the tripartite Council (or to establish another appropriate structure) and would welcome any assistance of the Office in this regard.

Recommendation (k): Implementation of the recommendations of the Commission of Inquiry

43. The Government deeply regrets the negative assessment by the ILO supervisory bodies of its efforts to build constructive collaboration with the social partners and the International Labour Office. The Government indicates that it has always paid and continues to pay due attention to

the observations and recommendations of the ILO supervisory bodies. At the same time, it believes that the ILO supervisory bodies should take a more balanced and critical approach to the complaints received and avoid basing their position and assessments on unsubstantiated information. The Government further reiterates that it has taken a number of specific and targeted steps to implement in full some of the recommendations and achieve significant progress with regard to others; at all times, it remained committed to the agreements reached and the plans developed jointly with the ILO. The Government recalls that as a result of the 2014 ILO direct contacts mission, a number of activities aimed at implementing specific recommendations of the Commission of Inquiry have taken place. The Government expresses its interest in continuing to engage with the ILO, both on the implementation of the recommendations and on other issues in line with the aims and objectives of the ILO. The Government reaffirms its commitment to fundamental principles and rights at work and expresses its willingness to engage in a constructive dialogue with the social partners and the ILO with due regard for the realities and national interests of the country.

44. The Government provides the following information on the alleged termination of activities of certain trade union organizations, criminal cases and cases of administrative offences against trade unionists.

Termination of activities of certain trade union organizations

45. The Government provides the following information on the 2022 decisions of the Supreme Court which terminated the activities of certain trade union organizations pursuant to section 5(2) of the Law on Trade Unions, by virtue of which, the activities of trade unions may be terminated in cases where they contradict the national Constitution and other pieces of legislation and cause harm to the State or public interests.
46. By the decision of the Supreme Court of 12 July 2022, the activity of REP Union, registered on 22 January 1991, was terminated. The hearings were public. The Prosecutor-General argued that the activities of the REP Union contradicted the national Constitution and other laws, were carried out in violation of the organization's statutes and were aimed at actively participating and promoting illegal activities. During the trial, it was confirmed that the leaders and members of the REP Union were actively involved in destructive activities and unauthorized mass events, as evidenced by the numerous administrative and criminal charges brought against members of the union. It was established that the acting chairperson of the union, Mr Bereznev, and trade union members Messrs Fedynich and Oreshko posted on the praca.by.info website, on behalf of the trade union, insulting and discrediting information containing calls to unlawful actions. By decision of the court of the Leninski district of Brest of 24 February 2022, the above-mentioned official website and certain publications on it were declared extremist materials. Despite the existence of an enforceable court ruling, these union members failed to take steps to remove extremist materials from the site and continued to administer the website by posting new similar publications, which was the basis for the decision to recognize the group as an extremist group and ban its activities.
47. On 6 May 2022, the investigating bodies brought charges against Messrs Beresnev, Fedynich and Oreshko for committing a crime under section 342(1) of the Criminal Code (organization and preparation of actions that violate public order or active participation in them) and chose detention as a preventive measure. Criminal charges were also brought against the chairperson of the Gomel regional branch of the REP Union, Mr Sudalenko (under section 342(2) of the Criminal Code) and the chairperson of the Brest regional branch of the REP trade union Mr Mikhniuk – under section 368(1) of the Criminal Code (insulting the President of the Republic of Belarus).

48. The Government indicates that since 2020, members of the REP Union have repeatedly been held administratively liable for violating the procedure for organizing and holding mass events, as confirmed by court rulings on administrative offences. In addition, gross violations of the law were also committed by the leadership of the REP Union with regard to the use of foreign gratuitous aid. In this respect, the Government indicates that the acting REP Union chairperson, Mr Beresnev, contrary to the requirements of points 4 and 7 of the presidential Decree of 25 May 2020 No. 3 "About foreign gratuitous aid" has intentionally allowed the trade union to use during the period from 1 June 2021 to 19 April 2022 US\$16,000 received from IndustriALL Global Union, before obtaining a certificate confirming its registration. According to the decision of the Department of Financial Investigations of the State Control Committee of 25 April 2022, Mr Beresnev was found guilty of an administrative offence under section 24.14(1) of the Code on Administrative Offences (CAO) on violation of the order of use of foreign aid. Furthermore, according to the Government, in violation of subparagraphs 3.3.2 and 3.3.3 of paragraph 3 of the REP Union statutes providing for the obligation of members to comply with the statutes and pay membership fees, to participate in the work of the trade union and its organizational structures, a number of citizens were accepted as members of the trade union without their knowledge and consent. In this respect, the Government indicates that in 2022, five people applied to the Office of the Prosecutor requesting to verify whether they were members of the REP Union, despite having never applied for the membership, not participated in its activities, not attending its meetings and not having paid their membership dues. The investigation confirmed the facts as reported by these five people and some of REP union organizational structures were thus deregistered on the grounds of violation of the legislation and of the union's statutes. In light of the above, the Supreme Court ruled that the activities of the REP Union should be terminated.
49. By its decision of 12 July 2022, the Supreme Court has terminated the activity of the BNP, registered on 25 November 1991. The case was heard in open court. The claim of the Prosecutor-General was justified by the fact that the activity of the BNP contradicted the Constitution and other laws of Belarus and was aimed at active participation in destructive and illegal activities and unauthorized mass events. In April 2022, at the initiative of the prosecutor's office of Vitebsk region, the activity of the primary organization of the BNP at Naftan was terminated for violations of the law. By a decision of the Hrodna Leninski district court of 25 April 2022 "Nezalezhniy Azot chat" in telegram messenger of the primary organization of the BNP at Grodno Azot was declared extremist because it contained not only messages with extremist materials from other internet resources and telegram channels, recognized as extremist, but also calls to unauthorized mass actions. On 10 May 2022, the Grodno regional court declared that primary organization extremist. The content of the materials seized from the primary trade union indicates the direct involvement of its chairperson and members in the attempt to organize an illegal shutdown of the company to make political demands.
50. By its decision of 14 July 2022, the Supreme Court terminated the activity of the SPM registered since 16 October 1995. The case was heard in open court. The Government explains that pursuant to section 1 of the Law on Trade Unions, a trade union is a voluntary public organization that brings together citizens bound together by common interests in order to protect their labour, social and economic rights and interests. According to paragraph 2.1 of the SPM statutes, the main purpose of the trade union is to unite workers to jointly defend their rights and legitimate interests, ensure fair wages, health protection and other social guarantees. However, the SPM's activities were politicized, contrary to the legislation in force and its own statutes. The materials of the case confirmed that the leaders and members of the SPM were directly involved in destructive activities and unauthorized mass events since 2020.

Criminal proceedings were initiated against a number of the leaders. The Government indicates that it was further established that the SPM leadership had committed gross violations of the law when using foreign aid. In particular, Mr Bukhvostov, the chairperson, in violation of the legislation in force, had deliberately allowed the union to use, during the period from 1 January 2021 to 19 April 2022, €39,200 received from the IndustriALL Global Union in foreign grants without the necessary registration, for which he was held administratively liable in a ruling dated 25 April 2022. Furthermore, the SPM contravened its own statutes by failing to ensure systematic control over the payment of membership dues. The procedure of expulsion from the trade union in respect of members who did not pay their membership fees for more than three months was not implemented by the union leadership in order to maintain its nominal number necessary for the formal functioning of the union. In addition, to avoid a decrease in the SPM membership, citizens without their personal knowledge and consent were added to its membership.

- 51.** By its decision of 14 July 2022, the Supreme Court terminated the activity of the SPB, registered since 20 August 2003. The representative of the SPB did not attend the public hearing. In this case, the Prosecutor-General pointed out that the SPB performed functions not in line with the role of trade unions and that its members have been actively involved in destructive activities aimed at unconstitutional change of power in Belarus and were found guilty of distributing information included in the national list of extremist materials, as well as for the placement of materials depicting Nazi symbols on the internet. In addition, on 25 April 2022, Mr Sharakh, former chairperson of the FPB, was found guilty of using foreign gratuitous aid from 1 August 2021 to 19 April 2022 before the certificate confirming its registration was issued. According to the Government, when questioned by the court, Mr Sharakh confirmed the violation of the procedure of using foreign aid received from the ITUC. The court also found violations of the law committed by the SPB primary organizations (documents that did not correspond to the actual composition of the elected body were submitted to the registering body for registration purposes; the addresses of premises were provided as legal address without the consent of their owners, etc.). According to the Gomel City Executive Committee, the Zhlobin and Svetlogorsk District Executive Committees, the SPB primary organizations registered in Gomel and in Zhlobin and Svetlogorsk districts have not been active since 2003; the SPB primary trade union organization of entrepreneurs and wage earners in Pinsk has not been active for over 15 years. A number of primary trade union organizations of the SPB (including regional organizations) have been deregistered by local executive and administrative bodies.
- 52.** By its decision of 18 July 2022, the Supreme Court terminated the activity of the BKDP, registered since 19 December 1997 for violating section 1 of the Law in Trade Unions and its own statutes. The court determined that instead of performing its functions of protecting labour, social and economic rights and interests of its members and preventing illegal strikes and stoppages, the BKDP leaders and members were actively involved in destructive activities, illegal strikes and unauthorized mass events aimed at unconstitutional change of power. The BKDP representative did not appear in court. The Government points out that article 5(3) of the Belarus Constitution prohibits the creation and activities of political parties, as well as other public associations which aim at a violent change of the constitutional order or conduct propaganda of war, social, national, religious and racial enmity. According to sections 22 and 25 of the Law on Trade Unions, trade unions have the right to organize and hold strikes in accordance with the law; when strikes are called by trade unions, it is prohibited to make political demands. In order to carry out their statutory tasks, trade unions have the right to organize and hold, in accordance with the law, rallies, street marches, demonstrations and other collective actions to defend the interests of their members. These provisions are reflected in the BKDP statutes. The Government indicates that the written materials submitted

to the court confirmed that in violation of the requirements of the Law on Trade Unions, the BKDP chairperson Mr Yaroshuk, his deputy Mr Antusevich, and chief accountant Ms But-Gusaim, using the union's attributes, repeatedly took part in unauthorized street marches in Minsk, which caused disruption of public transport. At the same time, when participating in protest actions, they used the attributes of the trade union organization. The BKDP leaders repeatedly posted on social networks appeals addressed to the workers of industrial enterprises to organize illegal strikes for political purposes. On 6 May 2022, the investigating authorities brought charges against Messrs Yaroshuk and Antusevich and Ms But-Gusaim under section 342(1) of the Criminal Code. During a search of the place of work and residence of the accused, unregistered protest symbols and paraphernalia were found and seized. On 12 April 2022, during an inspection of Mr Yaroshuk's email account, it was established that he had repeatedly posted public messages to foreign NGOs and international companies to organize an economic blockade of Belarus by refusing to sign contracts, sponsor sports and cultural projects and prevent the transit of goods through the territory of Belarus. Furthermore, the BKDP deputy chairperson authorized the union to use €30,000 received from the ITUC before obtaining the certificate confirming the registration of foreign gratuitous aid, for which he was found guilty under the CAO.

53. The Government indicates that copies of the decisions in the above cases were sent by the Supreme Court to those legally interested in the outcome of the case in accordance with the provisions of the Code of Civil Procedure. There is no provision for sending copies of the decision to other persons.

Information on criminal cases and cases of administrative offences

54. With regard to the criminal cases and cases of administrative offences, the Government provides the following information.
55. On 26 December 2022, Ms But-Gusaim was found guilty of participation in group actions violating public order and which are associated with disobedience to the legal demands of the authorities, causing disruption to transport and the functioning of enterprises (section 342(1) of the Criminal Code). She was sentenced to one and a half years of imprisonment to be served in a penal colony of general regime.
56. Mr Antusevich was found guilty on the same charges and sentenced under the same provision to two years of imprisonment to be served in a penal colony of general regime.
57. Mr Yaroshuk was found guilty on the same charges and sentenced to two years of imprisonment. He was also found guilty of publicly calling for seizure of power, violent change of constitutional order and committing other acts designed to harm national security and disseminating materials containing such calls on the internet; he was sentenced to three years of imprisonment under section 361(3) of the Criminal Code. In accordance with section 72(2) of the Criminal Code (on combination of sentences), Mr Yaroshuk was sentenced to a total of four years of imprisonment to be served in a penal colony of general regime. The verdict has not entered into force.
58. On 5 January 2023, Messrs Fedynich, Beresnev and Oreshko were found guilty of distribution of materials, which contained public calls to commit actions aimed at harming national security of Belarus, committed through mass media and the internet. Mr Fedynich was sentenced to seven years of imprisonment, Messrs Beresnev and Oreshko to six years of imprisonment each under section 361(3) of the Criminal Code. They were also found guilty of deliberately inciting social hatred and discord under section 130(3) of the Criminal Code and were sentenced as follows: Mr Fedynich to eight years of imprisonment, while Messrs Beresnev and Oreshko were

sentenced to seven. Mr Fedynich was further found guilty of establishing and leading an extremist organization and was sentenced, under section 361-1(1) of the Criminal Code, to five years of imprisonment, while Mr Beresnev was found guilty of directing an extremist group and sentenced under section 361-1(1) of the Criminal Code to four years of imprisonment. Mr Oreshko was found guilty of joining an extremist formation for the purpose of committing an extremist crime (participation in an extremist formation) and was sentenced, under section 361-1(3) of the Criminal Code, to four years of imprisonment. In accordance with section 72(2) of the Criminal Code, Messrs Fedynich and Beresnev were sentenced to nine years of imprisonment to be served in a strict regime correctional labour colony, while Mr Oreshko was sentenced to eight years of imprisonment to be served in a strict regime penal colony. The verdict has not entered into force.

59. On 6 May 2022, Mr Khanevich was found guilty of storage for distribution of information products included in the national list of extremist materials; under section 19.11(2) of the CAO he was sentenced to a ten-day administrative detention and his mobile phone was confiscated. The ruling came into force. On 16 November 2022, Mr Khanevich was found guilty of promotion of extremist activities, committed by an official using his official powers. He was sentenced to five years of imprisonment in a penal colony with a strengthened regime under section 361-4(2) of the Criminal Code. The verdict has not entered into force.
60. The criminal case against Mr Terenevich for committing crimes under sections 356(1) and 361-1(3) of the Criminal Code is still pending before the Gomel regional court since 29 August 2022.
61. On 15 November 2022, Mr Mishuk was found guilty of public calls for seizure of power, violent change of constitutional order and other actions aimed at harming national security, i.e. committing a crime under section 361(1) of the Criminal Code. The court sentenced him to two and a half years of imprisonment in a penal colony. On 20 January 2023, the verdict was upheld on appeal by the Judicial Board for Criminal Cases of the Supreme Court.
62. Mr Gromov was found guilty of disobedience and resistance to a lawful order or demand of an official of a state body in the exercise of his official powers on 21 April 2021 and sentenced, pursuant to section 24.3 of the CAO, to an administrative penalty in the form of a fine of 5 basic units, or 145 rubles. The ruling came into legal force. On 25 November 2022, Mr Gromov was convicted for active participation in group actions, which grossly violated public order and were connected to disobedience to legal demands of representatives of authorities and entailed disruption of transport and functioning of enterprises; pursuant to section 342(1) of the Criminal Code he was sentenced to restriction of freedom without placement in an open type institution for a term of two and a half years. The sentence has entered into force.
63. On 11 November 2022, Mr Chichmarev was found guilty of active participation in the group actions, which violated the public order and were connected to disobedience to the lawful demands of the authorities, which caused disruption of transport and functioning of enterprises; pursuant to section 342(1) of the Criminal Code, he was sentenced to three years of restricted freedom without being sent to an open type correctional facility. The judgment of the Judicial Board for Criminal Cases of Minsk City Court of 17 January 2022 amended the verdict of the district court: the reference to confiscation of the mobile phone was excluded from the operative part; the phone was returned to Mr Chichmarev. The rest of the verdict was left unchanged.
64. On 25 January 2021, Ms Malash was found guilty of violating the established order for holding pickets; pursuant to section 24.23(3) of the CAO, she was subjected to an administrative penalty in the form of a fine in the amount of fifty basic units. The ruling came into force. On 15 November 2022, Ms Malash was found guilty of active participation in the group actions,

grossly violating public order and associated with disobedience to the legitimate demands of the authorities, which had caused disruption of transport and functioning of enterprises; pursuant to section 342(1) of the Criminal Code, she was sentenced to one and a half years of imprisonment to be served in a penal colony under the general regime. The sentence has not yet entered into force.

65. On 2 March 2022, Ms Britikava was found guilty of participating in a picket that was carried out in violation of the Law on Mass Events. She was sentenced to 15 days of an administrative detention pursuant to section 24.23(1) of the CAO. On 12 March 2022, this decision was confirmed on appeal. On 3 March 2022, Ms Britikava was found guilty of participating in a picket in violation of the same legislation and sentenced to 15 days of administrative arrest; this decision was confirmed on appeal on 24 March 2022. On 10 March 2022, Ms Britikava was once found guilty of participating in a picket in violation of the law and sentenced to 15 days of administrative arrest. On 15 April 2022, Ms Britikava was found guilty of participating in a picket in violation of the same law and sentenced to 15 days of administrative arrest. On 27 April 2022, Ms Bratikava was found guilty of participating in a picket in violation of the same law and sentenced to 15 days of administrative arrest. On 3 November 2022, she was found guilty of distributing information included in the national list of extremist materials on her Facebook personal page and sentenced to 15 days of administrative arrest under section 19.11(2) of the CAO. On 11 November 2022, the decision was upheld on appeal.
66. On 29 December 2022, Mr Davydenko was found guilty of participation in a group action, which violated the public order and related to disobedience to the lawful demands of the authorities, which caused disruption of the work of transport and functioning of enterprises; in accordance with section 342(1) of the Criminal Code he was sentenced to three years of restricted freedom without being placed in an open-type corrective facility. Proceedings in the criminal case against Mr Davydenko under section 398(1) of the Criminal Code have been discontinued. The court ruling has entered into force.
67. On 24 November 2022, Mr Slezhov was found guilty of public insult of the President of Belarus and sentenced to one and a half years of imprisonment pursuant to section 368(1) of the Criminal Code. He was also found guilty of acting intentionally with a view to inciting social hatred and discord and sentenced to two and a half years of imprisonment. Two sentences combined represent three years of imprisonment to be served in a penal colony under the general regime. The verdict has not entered into legal force.

► D. The Committee's conclusions

68. *The Committee notes the allegations transmitted by the ITUC and IndustriALL Global Union as outlined in their communications dated 15 March, 7 and 20 April, and 5 December 2022, and 18 January 2023. The Committee notes that they concern the decision of the Supreme Court to terminate the activities of the BKDP and its affiliates and the arrest, detention, prosecution, administrative and criminal sanctions against trade union leaders and members. The Committee further notes that the Government reiterates its reply to the Committee's recommendations and provides a detailed response to the ITUC and IndustriALL Global Union new allegations.*
69. *With regard to its outstanding recommendations, the Committee notes with deep regret that the Government reiterates the information it had previously provided and once again indicates that the BKDP, ITUC and IndustriALL Global Union allegations are politically motivated and that they do not represent the reality on the ground. The Committee notes with deep regret that the Government once*

again refutes the merits of each of the Committee's previous recommendations and justifies its actions with regard to all of the previously and recently alleged violations of civil liberties and trade union rights. The Committee understands therefrom that the Government has no intention of implementing its longstanding recommendations. The Committee further notes with deep regret the Government's indication that it has no intention of amending the legislation in force, as requested by this Committee and other ILO supervisory bodies, including the Commission of Inquiry, whose recommendations the Government accepted nearly 20 years ago. The Committee notes that the Government now considers that amending the legislation would undermine national security and the sovereign interests of the State. The Committee recalls that the function of the International Labour Organization in regard to freedom of association and the protection of the individual is to contribute to the effectiveness of the general principles of freedom of association, as one of the primary safeguards of peace and social justice. In fulfilling its responsibility in the matter, the Organization must not hesitate to discuss at the international level cases which are of such a character as to affect substantially the attainment of the aims and purposes of the ILO as set forth in the Constitution of the Organization, the Declaration of Philadelphia and the various Conventions concerning freedom of association. By virtue of its Constitution, the ILO was established in particular to improve working conditions and to promote freedom of association in the various countries. Consequently, the matters dealt with by the Organization in this connection no longer fall within the exclusive sphere of States and the action taken by the Organization for the purpose cannot be considered to be interference in internal affairs, since it falls within the terms of reference that the ILO has received from its Members with a view to attaining the aims assigned to it [see **Compilation of decisions of the Committee on Freedom of Association**, sixth edition, 2018, paragraphs 1 and 2]. The Committee further recalls that for a number of years the ILO supervisory bodies, including this Committee, have been drawing the Government's attention to the International Labour Conference 1970 resolution concerning trade union rights and their relation to civil liberties, which emphasizes that the rights conferred upon workers' and employers' organizations must be based on respect for civil liberties, as their absence removes all meaning from the concept of trade union rights. The Committee considers that the failure of the Government to acknowledge, address and redress very serious allegations of violation of civil liberties or to act on the repeated specific requests of the ILO supervisory bodies, including those made by this Committee, reinforces the reality of wilful government non-compliance with its obligations stemming from its membership in the Organization. In these circumstances, the Committee reiterates its outstanding recommendations and expects that the Government will engage with the ILO with a view to fully implement them without further delay.

70. The Committee notes with utmost concern the further deterioration in the situation of freedom of association in the country, as alleged by the ITUC and IndustriALL Global Union and attested by the information provided by the Government. The Committee notes the Government's indication that since 2020, the activities of certain trade unions became highly unconstructive and politicized. Instead of performing their tasks of protecting citizens' labour and socio-economic rights and interests, taking action to warn workers against participation in illegal protest actions of a political nature at their enterprises and informing their members of the illegal nature of such actions, which in a number of cases posed a serious threat to public order and the safety of the population, representatives of the BKDP and leaders and members of its affiliated trade unions participated in destructive acts and unauthorized mass activities aimed at achieving regime change by unconstitutional means. These trade unions, according to the Government, indulged in behaviour which contradicted the Constitution and other pieces of national legislation and which focused not on their statutory tasks and objectives but on active participation in illegal activities and their popularization. At the petition of the Prosecutor-General, the Supreme Court issued rulings to discontinue the activities of the BKDP, SPB, SPM, BNP and the REP Union. The Court established that

instead of defending the labour and socio-economic rights of workers, the leaders and a number of members of these trade unions participated actively in destructive activities and mass events which violated public order, and also distributed information material with extremist content. In its verdicts, the Supreme Court found violations of the national Constitution, the Law on Trade Unions and other national laws and regulations on matters concerning the receipt and use of foreign gratuitous aid, and organization and conduct of mass events.

- 71.** *In relation to these new allegations and in addition to reiterating its previous recommendations, the Committee considers it necessary to recall that the Commission of Inquiry had requested the Government to amend Presidential Decree No. 24 (2003) on Receiving and Using Foreign Gratuitous Aid. For a number of years, the Committee has been asking the Government to abolish the sanctions imposed on trade unions (liquidation of an organization) for a single violation of the Decree and to widen the scope of activities for which foreign financial assistance can be used so as to include events organized by trade unions. The Committee recalls that Decree No. 24 had been superseded by Presidential Decree No. 5 (2015) and then by Decree No. 3 of 25 May 2020, under which the foreign gratuitous aid could still not be used to organize or hold assemblies, rallies, street marches, demonstrations, pickets or strikes, or to produce or distribute campaign materials, hold seminars or carry out other forms of activities aimed at “political and mass propaganda work among the population”, and that a single violation of the Regulation still bore the sanction of possible liquidation of the organization. The Committee recalls that this Committee as well as the Committee of Experts on the Application of Conventions and Recommendations (CEACR) have previously observed that the broad expression “political and mass propaganda work among the population” when applied to trade unions may hinder the exercise of their rights as it is normal and inevitable for trade unions to take a stand on questions having political aspects that affect their socio-economic interests, as well as on purely economic or social questions. The Committee further recalls that the Commission of Inquiry had requested the Government to amend the Law on Mass Activities, under which, a trade union that violates the procedure for organizing and holding mass events may, in the case of serious damage or substantial harm to the rights and legal interests of other citizens and organizations, be liquidated for a single violation. Following its 2021 amendment, the Law makes an organization responsible if its leaders and members of their governing bodies make public calls for organizing a mass event before permission to organize the event is granted. Reading these provisions alongside those forbidding the use of foreign gratuitous aid for the conduct of mass events, the Committee had previously concluded that trade unions’ capacity for carrying out demonstrations related to their socio-economic interests would appear to be extremely limited if not non-existent in practice.*
- 72.** *The Committee recalls that the right to express opinions, including those criticizing the Government’s economic and social policy, is one of the essential elements of the rights of occupational organizations [see **Compilation**, paragraph 245]. The Committee reiterates its previous request to amend without further delay and in consultation with the social partners, Decree No. 3, the Law on Mass Activities and the accompanying Regulation, as per the outstanding recommendations of the Commission of Inquiry, this Committee, the CEACR and the Conference Committee on the Application of Standards (CAS). The Committee recalls that it had requested the Government, in particular, to repeal the provision allowing sanctions to be imposed on trade unions or trade unionists for a single violation of the Law and to set out clear grounds for the denial of requests to hold trade union mass events, bearing in mind that any such restriction should be in conformity with freedom of association. The Committee deplores the July 2022 court decisions discontinuing the activities of the BKDP and its affiliate organizations at all levels, which referred to the above-mentioned legislation, and the fact that these organizations have now ceased to operate in the country.*

73. *The Committee had further noted that the Criminal Code was amended in 2021 so as to introduce the following restrictions and associated penalties: repeated violations of the procedure for organizing and holding of mass events, including public calls therefor, are punishable by arrest, or restraint of liberty or imprisonment of up to three years (section 342-2); insult of a government official is punishable by a fine and/or restriction of liberty or imprisonment for up to three years (section 369); the penalty for “discrediting the Republic of Belarus” was increased from two to four years’ imprisonment with a fine (section 369-1); section 369-3 of the Criminal Code has been retitled from “violation of procedure for organizing and holding of mass events” to “public calls for the organization or conduct of an illegal meeting, rally, street procession, demonstration or picketing, or the involvement of persons in such mass events”, which became an offence punishable by up to five years of imprisonment. The Committee once again requests the Government to repeal the above-mentioned provisions of the Criminal Code in order to bring them into compliance with the Government’s international obligations regarding freedom of association.*
74. *The Committee expresses its deep concern that trade union leaders and activists, including Mr Yaroshuk, the BKDP chairperson and a member of the ILO Governing Body, remain in detention having been sentenced under the above-mentioned and other sections of the Criminal Code as follows:*
- *Mr Yaroshuk was found guilty of participation in group actions violating public order and which are associated with disobedience to the legal demands of the authorities, causing disruption to transport and the functioning of enterprises (section 342(1) of the Criminal Code) and calls, through mass media or internet, for sanctions or other actions aimed at harming national security of Belarus (section 361(3) of the Criminal Code) and sentenced to a total of four years of imprisonment.*
 - *Mr Antusevich was found guilty under section 342(1) of the Criminal Code and sentenced to two years of imprisonment.*
 - *Ms But-Gusaim was found guilty under section 342(1) of the Criminal Code and sentenced to one and a half years of imprisonment.*
 - *Messrs Fedynich, Beresnev and Oreshko were found guilty of: (1) distribution of materials, which contained public calls to commit actions aimed at harming national security of Belarus, committed through mass media and internet; (2) deliberately inciting social hatred and discord (section 130(3) of the Criminal Code); and (3) establishing and participating in an extremist organization (section 361-1 of the Criminal Code) and were sentenced as follows: Messrs Fedynich and Beresnev to nine years of imprisonment, and Mr Oreshko to eight years of imprisonment.*
 - *Mr Khanevich, in addition to a ten-day administrative detention under section 19.11(2) of the CAO (storage for distribution of information products included in the national list of extremist materials), was found guilty of facilitating extremist activities and was sentenced to five years of imprisonment under section 361-4(2) of the Criminal Code.*
 - *Mr Mishuk was found guilty under section 361(1) of the Criminal Code and was sentenced to two and a half years of imprisonment.*
 - *Mr Gromov, in addition to receiving a fine under section 24.3 of the CAO for disobeying and resisting a lawful order or demand of an official of a state body in the exercise of his official powers, was found guilty of violations provided for under section 342(1) of the Criminal Code and sentenced to restriction of freedom for two and a half years without placement in an open type institution.*

- *Mr Chichmarev was found guilty of violations provided for under section 342(1) of the Criminal Code and sentenced to three years of restricted freedom without being sent to an open type correctional facility.*
 - *Ms Malash, in addition to a fine under section 24.23(3) of the CAO for violating the established order for holding picket, was found guilty of violations provided for under section 342(1) of the Criminal Code and sentenced to one and a half years of imprisonment.*
 - *Mr Davydenko was found guilty of violations provided for under section 342(1) of the Criminal Code and sentenced to three years of restricted freedom without being placed in an open-type corrective facility.*
 - *Mr Slezhov was found guilty of public insult of the President of Belarus (section 368(1) of the Criminal Code) and of acting intentionally with a view to inciting social hatred and discord, and sentenced to three years of imprisonment.*
 - *The criminal case against Mr Terenevich for committing crimes under sections 356(1) (treason) and 361-1(3) of the Criminal Code is still pending before the Gomel regional court since 29 August 2022.*
- 75.** *The Committee deplores the Government's unwillingness to immediately release trade union leaders and members as urged by this Committee, the Conference Committee on the Application of Standards (CAS), the CEACR and the ILO Governing Body.¹ Accordingly, this Committee urges the Government to immediately release all trade union leaders and members arrested for participating in peaceful assemblies or for exercising their civil liberties and their legitimate trade union activities, and to drop all related charges. The Committee also urges the Government to give access, as a matter of urgency, to visitors, including officials of the ILO, to ascertain the conditions of arrest and detention and the welfare of the above-mentioned persons.*
- 76.** *The Committee deplores the effect of the dissolution of the BKDP on the work of the NCLSI and of the tripartite Council. With the dissolution of the BKDP, the only representation of workers' voice in these structures is now the FPB. The Committee had previously noted the publicly expressed support for the FPB from state authorities at the highest level and urged it to refrain from showing favouritism towards any particular trade union. The Committee recalls in this respect – as it has before in this case – the importance of ensuring an atmosphere in which trade union organizations, whether within or outside the traditional structure, are able to flourish in the country. In these circumstances, the Committee questions the continuing legitimacy of the NCLSI and the tripartite Council. The Committee considers that the development of free and independent organizations and negotiation with all those involved in social dialogue is indispensable to enable a government to confront its social and economic problems and resolve them in the best interests of the workers and the nation [see **Compilation**, paragraph 62].*
- 77.** *The Committee recalls that in its 2004 report, the Commission of Inquiry considered that its recommendations should be implemented without further delay and that the majority of its recommendations should be completed at the latest by 1 June 2005. The Committee deplores that over 18 years later, the recent developments indicate continuing steps backward as all space for the safe existence of an independent trade union movement in Belarus has virtually disappeared. The Committee urges the Government to abandon its policy of destroying the independent trade union movement and silencing the free voices of workers. The Committee once again urges the Government*

¹ GB.346/INS/13(Rev.1).

to engage with the ILO with a view to fully implement all outstanding recommendations of the ILO supervisory bodies without further delay.

▶ The Committee's recommendations

78. In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:
- (a) The Committee urges the Government to take the necessary measures to ensure that no person is detained in connection with his or her participation in a peaceful industrial action or protest. The Committee further urges the Government to take the necessary measures to ensure that all persons who have been arrested and/or detained for their participation in a peaceful industrial action or protest are adequately compensated for damages suffered. It requests the Government to indicate all measures taken to that end. The Committee once again stresses the need to ensure an impartial and independent judiciary and justice administration in general in order to guarantee that investigations into these grave allegations are truly independent, neutral, objective and impartial. Accordingly, the Committee requests the Government to take the necessary measures, including legislative, if necessary, to supply copies of the relevant court decisions upholding detention and imprisonment of workers and trade unionists. The Committee also requests the BKDP to provide any judicial decisions in its possession concerning its members.
 - (b) The Committee refers to recommendation 8 of the Commission of Inquiry on Belarus, which considered that adequate protection or even immunity against administrative detention should be guaranteed to trade union officials in the performance of their duties or when exercising their civil liberties (freedom of speech, freedom of assembly, etc.). The Committee firmly urges the Government to investigate without delay each alleged instance of intimidation or physical violence through an independent judicial inquiry and invites the complainants to provide any additional information at its disposal to facilitate such investigations. It requests the Government to provide detailed information on their outcome. Further in this respect, the Committee, with reference to the recommendations of the Commission of Inquiry, stresses the need to ensure an impartial and independent judiciary and justice administration in general in order to guarantee that investigations into these grave allegations are truly independent, neutral, objective and impartial.
 - (c) The Committee once again recalls its specific request to the Government to amend its legislation, in consultation with the social partners, to ensure that workers are protected against any acts of discrimination for simply having peacefully exercised their right to strike to defend their occupational and economic interests, which do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions which affect their members interests. The Committee urges the Government to provide information on all measures taken or envisaged to that end.
 - (d) The Committee urges the Government to ensure that all workers who have participated in the industrial actions referred to in this case will be reinstated in their jobs without loss of pay. The Committee requests the Government to provide information on all measures taken in this respect.

- (e) The Committee expects the Government to take, in consultation with the social partners, the necessary measures in order to adopt specific legislative provisions affording an adequate protection against cases of non-renewal of contracts for anti-union reasons. It requests the Government to provide information on all steps taken to that end.
- (f) The Committee once again urges the Government to refrain from any interference with the establishment of trade unions in private companies, in particular from demanding the setting up of trade unions under the threat of liquidation of private companies otherwise; to clarify publicly that the decision whether or not to set up a trade union in private companies is solely at the discretion of the workers in these companies; and to refrain from showing favouritism towards any particular trade union in private companies. The Committee expects that all steps in this regard will be taken without delay.
- (g) The Committee once again urges the Government, in consultation with the social partners, to amend the Law on Mass Activities and the accompanying Regulation, as well as Decree No. 3 on the registration and use of foreign gratuitous aid in the very near future and requests the Government to provide information on all measures taken in this respect as soon as possible. The Committee recalls that the amendments should be directed at: abolishing the sanctions imposed on trade unions or trade unionists for a single violation of the respective legislation; setting out clear grounds for the denial of requests to hold trade union mass events, bearing in mind that any such restriction should be in conformity with freedom of association principles; and widening the scope of activities for which foreign financial assistance can be used. The Committee further requests the Government to repeal the above-mentioned amended provisions of the Criminal Code in order to bring them into compliance with the Government's international obligations regarding freedom of association. The Committee requests the Government to provide information on all measures taken to that end and invites the Government to avail itself of ILO technical assistance in this respect.
- (h) The Committee strongly encourages the Government, together with the social partners, as well as other stakeholders (for example, Ministry of Justice, Office of the Prosecutor-General, judiciary and Belarusian National Bar Association) to continue working together towards building an efficient, non-judicial dispute resolution mechanism which could deal with labour disputes involving individual, collective and trade union matters. It requests the Government to keep it informed of the measures taken or envisaged in this regard.
- (i) The Committee firmly expects that the Government will fully engage with the social partners, the ILO, as well as relevant national institutions and bodies, with a view to improving the functioning, procedures and the work of the tripartite Council aimed at enhancing its impact in addressing the issues stemming from the recommendations of the Commission of Inquiry and other ILO supervisory bodies.
- (j) The Committee urges the Government to pursue its efforts and expects that the Government, with the assistance of the ILO, will take the necessary steps to fully implement all outstanding recommendations and ensure effective implementation of the ratified Conventions without further delay.
- (k) Noting that the leaders and activists of independent trade unions have been sentenced to various terms of imprisonment, the Committee, with reference to the

above-mentioned decision of the Governing Body, urges the Government to immediately release all trade union leaders and members arrested for participating in peaceful assemblies or for exercising their civil liberties and their legitimate trade union activities, and to drop all related charges. The Committee urges the Government to give access, as a matter of urgency, to visitors, including officials of the ILO, to ascertain the conditions of arrest and detention and the welfare of the persons named in this report.