

## Committee on the Application of Standards

**Date:** 19 May 2021

*Governments appearing on the preliminary list of individual cases have the opportunity, if they so wish, to supply on a purely voluntary basis, written information before 20 May 2021.*

### ▶ Information on the application of ratified Conventions supplied by governments on the preliminary list of individual cases

#### Belarus

#### Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

**(Ratification: 1956)**

The Government has provided the following written information.

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

##### General comments

The Government of Belarus takes note that, due to the deferral of the 2020 ILC Session owing to the difficult epidemiological situation, during the first part of the 109th Session of the ILC in May – June 2021 the discussion in the Committee on the Application of Standards will be based on both the Committee of Experts' 2020 observations and the additional comments of the Committee, outlined in its 2021 report.

In this regard, the Government regrets that there has been a significant change in the tone of the Committee of Experts' comments prepared in 2021 regarding the country's compliance with Convention No. 87 and the implementation of the recommendations of the Commission of Inquiry, as compared to the position of the Committee set out in its 2020 report. At the same time, in the Government's opinion, a significant negative shift in assessments of the situation in Belarus in the 2021 report of the Committee of Experts is associated exclusively with the political events that took place in the country after the elections of the President of the Republic of Belarus held on August 9, 2020. As a result, on the basis of unverified information from the Belarusian Congress of Democratic Trade Unions (BCDTU) and the International Trade Union Confederation (ITUC) regarding the events that took place after the elections, it was precisely in the 2021 comments that the Committee of Experts included the so-called "double footnote", which means the

automatic inclusion of Belarus in the list of countries for consideration by the Committee on the Application of Standards at the 109th Session of the ILC.

In the Government's opinion, this approach is unacceptable.

Events that were of a purely political nature and were in no way connected with the processes of social dialogue in the world of work should not and cannot be the basis for assessing the situation with the country's compliance with ILO Convention No. 87.

The Government emphasizes that external forces interested in destabilizing the situation in the country took an active organizational and financial part in the preparation and conduct of illegal street actions that took place after the elections of the President of the Republic of Belarus. The main demands put forward by the protesters included the resignation of the Head of State and the holding of new elections. The political structures created with the support from abroad were actually paving the way for an unconstitutional transition of power in the country.

The Government notes the groundlessness of statements about the peaceful nature of the protests. Those mass events were carried out in violation of the law and posed a serious threat to public order, safety, health and life of citizens. During the protest actions, numerous facts of active resistance to the legal demands of law enforcement officials were recorded, associated with the manifestation of aggression, the use of violence, damage to official vehicles, blocking the movement of vehicles, causing damage to infrastructure facilities.

The State, for its part, took all the necessary measures to ensure law and order, did not allow chaos and destabilization of the situation in the country and ensured the safety of citizens.

The Government draws attention to the fact that in the information submitted to the ILO the BCDTU and the ITUC are deliberately attempting to link illegal protest actions with the alleged strike movement in the country. This clearly shows the desire of the BCDTU and the ITUC to unreasonably involve these issues in the sphere of ILO competence.

In this regard, the Government emphasizes that this approach is inconsistent with the real events that took place in Belarus at the end of 2020.

In practice, the protest moods affected only a small part of the workers. The country's enterprises continued their work, strikes as a way to resolve collective labour disputes between employers and representative bodies of workers were not announced.

At the same time, some workers, under the slogan of participation in strikes, which were not announced or organized in accordance with the law, skipped work and refused to perform functions stipulated by their employment contracts. The Labour Code of the Republic of Belarus provides for disciplinary measures, up to dismissal, for such actions.

The Government explains that the application of disciplinary measures to employees is attributed by labour legislation exclusively to the competence of the employer.

Thus, the Government informs that the citizens mentioned in the BCDTU and ITUC complaints, who allegedly suffered for participation in peaceful protests and strikes, were imposed administrative and disciplinary penalties for committing specific illegal actions. This has nothing to do with the persecution of workers and trade union activists for the exercise of their civil or trade union rights and freedoms.

The Government insists that using purely political events to assess the country's implementation of the recommendations of the Commission of Inquiry is completely unreasonable and counterproductive. This can become a serious obstacle to the further

development of well-established constructive interaction both within the country and with ILO experts on the implementation of recommendations.

At the same time, the Government emphasizes that over the past years there has been obvious progress in the development of social dialogue in the republic. As part of its work on the implementation of the recommendations of the Commission of Inquiry, the Government is strictly following the agreements reached and the plans developed jointly with the International Labor Office (the Office). Thus, together with the social partners and the Office, the Government has fully implemented the proposals of the direct contacts mission, which worked in Belarus in 2014.

Currently, the main platform for making decisions on the implementation of the recommendations of the Commission of Inquiry is the tripartite Council for the Improvement of Legislation in the Social and Labor Sphere (the Council), the concept of which was developed jointly with the Office. The Government, employers' associations and trade unions are represented on the Council on an equal basis. On the part of trade unions, the Council includes both representatives of the Federation of Trade Unions of Belarus (FTUB), the largest trade union centre in the country, and the BCDTU.

Within the framework of the social partnership system, the Government is taking targeted steps to establish constructive cooperation with all parties, including the BCDTU, which is represented not only in the abovementioned Council, but also in the National Council for Labour and Social Issues, in the working group for preparation of the draft general agreement.

However, it should be emphasized that the possibilities of cooperation with the BCDTU are limited due to their extremely destructive position. Acting as an open opponent of the state authorities, the BCDTU representatives build their position on rejection and criticism of any measures of the Government in all areas of social and economic policy, regardless of their intended effect. In such a situation, the development of joint mutually acceptable decisions within the Council is an extremely difficult process.

Nevertheless, even in such difficult conditions, the Council plays a significant role in promoting social dialogue and implementing the recommendations of the Commission of Inquiry. So, for example, it was the Council who developed proposals to abolish the legislative requirement for 10 percent of employees to create a trade union, together with the ILO experts developed and implemented proposals of the ILO direct contacts mission, as well as additional measures of technical cooperation with the ILO based on the results of the implementation of the mission's proposals.

The steps taken by the Government to implement the ILO standards were positively assessed by the Committee of Experts. Thus, in the Committee's 2020 and 2021 reports, Belarus is noted among the countries in which there are cases of progress. In particular, the measures taken by the Government to implement ILO Conventions Nos. 98, 144 and 149 were noted with interest by the Committee of Experts.

The Government would be grateful to the ILO supervisory bodies for their impartial attitude to the situation in the country and the absence of hasty critical assessments of the actions of the Belarusian authorities aimed at restoring law and order.

The Government appreciates the experience and expertise of the ILO and expects to continue an open and constructive dialogue on the implementation of the obligations stipulated by the ratified conventions, as well as on a wider range of issues in the social and labour sphere in order to improve the level and quality of life of Belarusian citizens.

## Article 2 of the Convention. The right to establish workers' organizations

As practice shows, today the legal address requirement is not an obstacle to the registration of trade unions. The proof is the data on the number of registered organizations: during the last five years (2016 – 2020) 6,027 new organizational structures of trade unions and 3 new trade unions were registered in the country. As of January 1, 2021, there are a total of 25 trade unions (20 republican, 1 territorial, 4 trade unions in organizations), 4 trade union associations and 26,522 organizational structures of trade unions operating in Belarus.

The cases of refusal to register the organizational structures of trade unions are rare and have objective reasons, in most cases not related to the legal address requirement. The main reasons for refusal are non-compliance with the legislation regarding the procedure for creating trade unions and the submission of an incomplete package of documents for registration.

## Articles 3, 5 and 6 of the Convention. The right of workers' organizations, including federations and confederations, to organize their activities

### The procedure for organizing and holding mass events

The procedure for organizing and holding mass events established in Belarus does not conflict with the principles of freedom of association and assembly and is fully consistent with the provisions of the International Covenant on Civil and Political Rights. The exercise of the right of peaceful assembly is not subject to any restrictions, except those that are imposed in conformity with the law and are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, the protection of the rights and freedoms of others.

The norms of legislation stipulating punishment for violation of the procedure for organizing and holding a mass event, which entailed serious negative consequences, are aimed at preventing socially dangerous unlawful acts that pose a real threat to the life and health of citizens. Here we are talking about the unconditional need to maintain a balance of interests and rights of individual groups of citizens and society as a whole. Maintaining and keeping this balance is the direct task of the State.

The fundamental point is that the decision to terminate the activities of the trade union for violation of the legislation on mass events, which caused serious damage, significant harm to the rights and interests of citizens, organizations, society and the State, can only be taken in court.

No decisions were made to liquidate trade unions for violating the procedure for organizing and holding mass events in Belarus.

### The procedure for obtaining and using foreign gratuitous aid

The legislation does not prohibit the receipt of foreign gratuitous aid by trade unions, including from international trade union organizations and associations. At the same time, the law clearly defines the purposes of using such aid and the procedure for its registration, which is applied to all legal entities.

It should be noted that there have been no refusals to trade unions to receive foreign gratuitous aid, as well as no cases of liquidation of trade unions for violation of the procedure for its use.

The established procedure for obtaining funding from abroad is unreasonably linked to Articles 5 and 6 of Convention No. 87. The prohibition on the use of foreign aid for carrying out political and mass propaganda work is due to the interests of national security, the need to exclude the destructive influence of external forces on the situation in the country.

### Development of the situation in the case of Gennady Fedynich and Igor Komlik

The Government once again draws the attention of the ILO supervisory bodies to the fact that the prosecution of the REP Trade Union officials, Mr. Fedynich and Mr. Komlik, took place solely due to their violation of the procedure for carrying out economic activities (tax evasion). The guilty verdict is based on evidence that has passed an objective check during the trial. This case is in no way connected with the activities of the REP Trade Union and should not be considered as a persecution of trade union activists for the exercise of civil or trade union rights.

The Government has previously submitted detailed information on this issue to both the Committee of Experts and the Committee on Freedom of Association. The comments of the Government, among other things, contained information about the position of the BCDTU Chairman, Mr. Yaroshuk, who publicly admitted the unlawfulness of the actions of Mr. Fedynich and Mr. Komlik. In particular, in his interview under the heading "The REP Trade Union Leadership Seriously Set Themselves Up", posted on the Internet on the day of the arrest of Mr. Fedynich and Mr. Komlik on August 2, 2017, commenting on the arrest of his colleagues, Mr. Yaroshuk, among other things, noted the following:

*"To put it bluntly, all the correspondence that was conducted with the Danish trade union 3F and the Danish Ministry of Foreign Affairs is in their hands [the investigators of the Financial Investigation Department]. It was a pretty high-profile story that went far beyond the trade union movement."*

*"[The project] works for separatism and splits in the independent trade union movement in Belarus."*

*"I wrote to the investigators that I do not know anything about how the financing was carried out, or about who exactly was bringing or was not bringing the money. I believe that at one time I made a worthy decision not to get into this mud. After all, I will not achieve anything, except that I will create an appropriate reputation for myself. But what I and we all were afraid of – this abscess has burst, to our deep regret. Today the situation seems to dictate to me to say that the "bloody regime" bore down on my people, my organization, but I have to be objective. Today I cannot speak about the "bloody regime" and my "white and fluffy" colleagues. They messed things up."*

Currently, in view of the application of amnesty legislation to the convicts, the main punishment in the form of restriction of freedom has been served by Mr. Fedynich and Mr. Komlik in full.

The further fate of the information storage devices seized during the investigation of the criminal case will be decided after the completion of the check on the fact of committing other crimes of a similar nature by the indicated persons.

### The right to strike

In the Republic of Belarus, the right of citizens to strike is enshrined in article 41 of the Constitution. Thus, citizens have the right to protect their economic and social interests, including the right to establish trade unions, conclude collective contracts (agreements) and the right to strike.

The right of trade unions to declare strikes is enshrined in Article 22 of the Law of the Republic of Belarus "On Trade Unions".

The procedure for organizing and conducting strikes is regulated in Chapter 36 of the Labour Code of the Republic of Belarus.

The legislative provisions that regulate the procedure for organizing and conducting strikes are aimed at creating conditions for resolving a dispute that has arisen through consultations and negotiations within the framework of conciliation procedures. A strike is an extreme way to resolve a dispute if the parties fail to reach an agreement.

In accordance with Article 393 of the Labour Code, in the case of a real threat to national security, public order, public health, the rights and freedoms of others, as well as in other cases provided for by law, the President of the Republic of Belarus has the right to postpone the strike or suspend it, but for no more than three months.

The Government considers that the current procedure for organizing and conducting strikes in the Republic of Belarus does not contradict international labor standards.

### Consultations with employers' and workers' organizations

There is a system of social partnership in the Republic of Belarus, and within the framework of this system government bodies, associations of employers and trade unions interact in the process of development and implementation of the socio-economic policy of the State.

The development of draft legal acts regulating issues of the social and labour sphere is carried out with the direct participation of social partners.

The provisions providing for the participation of social partners in the development of draft legal acts are reflected in the General Agreement between the Government of the Republic of Belarus, republican-level associations of employers and trade unions for 2019 – 2021.

So, according to clause 50 of the General Agreement, the Government of the Republic of Belarus:

- submits for preliminary discussion in the National Council for Labour and Social Issues draft legal acts that fall within the competence of this Council;
- when preparing legal acts affecting the labour and socio-economic rights and interests of citizens and the related economic interests of employers, sends to the side of trade unions and the side of employers represented by the co-chairs of the National Council for Labour and Social Issues the relevant draft legal acts for consideration and introduction of comments and proposals, and considers their positions before making a decision.

Despite the fact that the number of workers who are members of trade unions affiliated to the BCDTU and the FTUB is incomparable (the FTUB trade unions represent the interests of 4 million workers), the BCDTU, along with the FTUB, is represented in the main tripartite body of the country – the National Council for Labour and Social Issues, as well as in the tripartite Council for the Improvement of Legislation in the Social and Labor Sphere.