

Committee on the Application of Standards

Date: 16 May 2022

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 16 May 2022.

▶ 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.

The Government of Belarus has considered the report of the Committee of Experts of 2022 and has to state again with great regret that, as before, the arguments of the Belarusian side regarding compliance with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), implementation of the recommendations of the Commission of Inquiry and the situation after the presidential elections in 2020 are not taken into account.

The position on the Belarusian case is formed solely on the basis of complaints from the Belarusian Congress of Democratic Trade Unions (BCDTU), the International Trade Union Confederation (ITUC), IndustriALL Global Union and other structures. Their assessments and allegations are often conditioned by political motives, and their leaders' views regarding the path of development and the geopolitical choice of Belarus are biased, incorrect and should not be used as a guideline for the formation of objective perception of the situation in the country.

Today, it is obvious that the sharp negative shift in the assessments of the ILO supervisory bodies in relation to Belarus is associated exclusively with the political events that took place in the country.

The Government insists that such an approach is unfair, counterproductive, absolutely unacceptable and can become a serious obstacle to the further development of constructive interaction on the implementation of recommendations both within the country and with representatives of the ILO.

Events of a purely political nature, not related to the processes of social dialogue in the field of labour, should not be the basis for assessing the situation with respect to Convention No. 87.

At the same time, complaints received by the ILO testify to the desire of their authors to deliberately and unreasonably draw political issues into the sphere of competence of the ILO in order to ensure pressure on the country through this authoritative international organization.

Taking into account the above information, as well as the recommendations of the Committee of Experts, the Government considers it necessary to submit the following comments.

Implementation of the recommendations of the Commission of Inquiry

The Government notes with deep regret the negative assessments of its ongoing efforts to build constructive interaction with the social partners and the ILO in order to implement the recommendations addressed to the Belarusian side.

The Government pays due attention to the comments and recommendations of the ILO supervisory bodies. At the same time, the ILO bodies should take a more critical approach to the content of incoming complaints and should not build their position on the basis of unconfirmed data. Complaints of trade unions are not always caused by an objective situation and do not always reflect the real state of affairs.

We believe that the open position and readiness of the Government for a constructive dialogue with the social partners and the ILO are a good basis for continuing interaction on the implementation of the recommendations of the Commission of Inquiry, the essence of which involves the long-term and systematic work of all those concerned to improve social dialogue with the obligatory consideration of realities and national interests of Belarus.

The Government has already taken a number of specific targeted steps, as a result of which some of the recommendations have been fully implemented, and significant progress has been achieved in the implementation of the rest.

Thus, the recommendations of the Commission of Inquiry have been brought to the attention of the general public. Systematic steps have been taken to inform representatives of the judiciary and prosecution authorities about the need to carefully consider complaints of anti-trade union discrimination. An additional mechanism for the protection of trade union rights has been introduced – the Council for the Improvement of Legislation in the Social and Labour Sphere has been entrusted with the function of a tripartite independent body that enjoys the confidence of all interested parties. Measures have been taken to liberalize the process of registration of trade unions – the Republican Registration Commission has been abolished, and the requirement for at least 10 per cent of the total number of employees to form a trade union has been cancelled. The Government constantly monitors the issues of interaction between the administrations of enterprises and trade unions, clearly delineating its position on the inadmissibility of interference of enterprise managers in the activities of trade union organizations.

It must be emphasized that all this time the Government has clearly followed the agreements reached and the plans developed jointly with the ILO to implement the recommendations.

As a result of work of the direct contacts mission in the country in 2014, with the support of the ILO, a number of international technical cooperation activities were carried out aimed at implementing specific recommendations of the Commission of Inquiry.

Despite the fact that at the moment the proposals of the direct contacts mission have been successfully implemented, the Government is interested in continuing interaction with the ILO, both on the implementation of the recommendations, and on a wider range of issues that meet the goals and objectives of the Organization.

The Government reaffirms its commitment to fundamental principles and rights at work and expresses its readiness to continue constructive engagement with the social partners and the International Labour Office on issues of concern, as well as on a wider range of social and labour issues, subject to the obligatory condition of taking into account the realities and sovereign interests of the Republic of Belarus.

Commission of Inquiry's recommendation No. 8

Bringing to justice those who break the law

The ILO supervisory bodies refer in their recommendations to the Commission of Inquiry's **R**ecommendation No. 8, according to which 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.

It should be noted that this recommendation in no way refers to the release of trade union workers from liability in case they commit unlawful acts. Moreover, the need to respect the rule of law in the exercise of the rights recognized by Convention No. 87 is enshrined in paragraph 1 of Article 8 of the said ILO Convention.

In this regard, we consider it necessary to emphasize that any allegations that trade union activists were held accountable solely for participating in peaceful protests and legal strikes are untrue and completely unfounded. There were serious legal grounds for bringing to justice citizens whose actions were unlawful.

Accordingly, any calls to release and drop all charges against trade union activists, who, it must be emphasized, were held accountable for specific acts of violation of the law, seem to be absolutely unfounded.

Impartial and independent judiciary, fair trial

The principle of the rule of law is respected in Belarus. The State guarantees the rights and freedoms of citizens, enshrined in the Constitution, laws and stipulated by international obligations.

By virtue of the provisions of article 60 of the Constitution, everyone is guaranteed the protection of his/her rights and freedoms by a competent, independent and impartial court.

Judges in the administration of justice are independent and subject only to the law. Interference in the activities of judges is unacceptable and entails liability under the law.

The trial of cases in all courts is open. Hearing of cases in a closed court session is allowed in cases specified by law, in compliance with all rules of legal proceedings.

Justice is carried out on the basis of competitiveness and equality of the parties in the process.

Judicial decisions are binding on all citizens and officials.

The parties and persons participating in the process have the right to appeal against decisions, sentences and other judicial decisions.

There are no obstacles for citizens to apply to the court.

Registration of trade unions

Consideration of registration issues within the framework of the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere

In Belarus, at the level of legislation, everything necessary has been done to ensure that trade unions and their organizational structures successfully pass the procedure of state registration.

Decisions affecting the right of citizens to join trade unions are taken in strict accordance with the current legislation, based on the principle of maximum consideration of the interests and rights of citizens and trade unions.

In order to expand the possibilities of trade unions in terms of obtaining a legal address, they are given the opportunity to be located not only at the address of the employer, but also in any other place.

As practice shows, today the need to confirm the presence of a legal address is not an obstacle to the registration of trade unions.

Denials of registration are rare and have objective reasons, in the vast majority of cases not related to the lack of confirmation of a legal address. The main reasons for denials are non-compliance by trade unions with the provisions of the law regarding the procedure for creating trade union organizations and submitting all necessary information and documents to the registration authorities.

Since, if the procedure for creating a trade union is followed, documents for registration after the elimination of identified shortcomings can be submitted to the registration authorities again, the refusal to register a trade union is not equivalent to a ban on the creation of a trade union (its organizational structure) and is not an insurmountable obstacle to registration.

Issues of registration of trade unions can be considered within the tripartite Council when this body resumes its work (after the improvement of the epidemiological situation).

At the same time, consideration of any issue within the framework of the Council is expedient only if materials submitted by the parties to the Council really confirm the existence of a problematic issue. Otherwise, the members of the Council will have no reason to consider and discuss the relevant agenda item.

Organization and holding of public mass events

Receiving and using foreign gratuitous aid

The Government notes with regret that its arguments regarding the possible destructive consequences of the implementation of recommendations aimed at weakening state control over funds entering the country from abroad and removing responsibility from trade union structures for violating the law during mass events are not taken into account.

The procedure established in the country for receiving foreign gratuitous aid is unreasonably linked to Articles 5 and 6 of Convention No. 87. These Articles do not contain provisions on the right of trade unions to freely receive financial or other assistance for political and agitation work among the population.

The legislation of the country does not prohibit the receipt of foreign gratuitous aid by trade unions. At the same time, the legislation defines the conditions (purposes) for the use of foreign gratuitous aid, and also provides that such aid must be registered in the prescribed manner. The registration procedure is simple and can be carried out in a short time.

There are no facts of refusals to trade unions to receive foreign gratuitous aid. There were no cases of liquidation of trade unions for violating the procedure for its use.

At the same time, providing external forces with the opportunity to sponsor mass events in the country can be used to destabilize the socio-political and socio-economic situation, which, in turn, will have an extremely negative impact on the life of society and the well-being of citizens.

The ban on receiving and using foreign gratuitous aid for purposes involving political and agitation work is due to the interests of national security, and the need to exclude opportunities for destructive influence from external forces in order to destabilize the socio-political and socio-economic situation.

The current procedure for organizing and holding mass events in the country does not conflict with the principles of freedom of association and is fully consistent with the provisions of the International Covenant on Civil and Political Rights.

The norms of the legislation providing for punishment for violating the procedure for organizing and holding a mass event, which entailed serious negative consequences, are aimed at preventing socially dangerous illegal acts that pose a real threat to the life and health of citizens.

When holding mass events, trade unions are obliged to observe public order and, a priori, should not allow actions as a result of which the event may lose its peaceful character and cause serious harm to citizens, society and the State.

The punishment provided by law for organizers of mass events for causing significant damage, harm to the rights and interests of citizens and organizations, as well as to the State or public interests is not and objectively should not be interpreted as a deterrent for citizens and trade unions to exercise their right to freedom of peaceful assembly.

The decision to terminate the activities of a trade union for violating the law 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.

The amendments made to the Law "On Mass Events" do not contain provisions prohibiting citizens from exercising their right to peaceful assembly in order to protect their rights and legitimate interests. The amendment of the Law is directed against organization, preparation and commission of actions encroaching on the independence, territorial integrity, sovereignty of the State, foundations of the constitutional order and public security through the organization of mass riots, the implementation of acts of vandalism associated with damage or destruction of property, the seizure of buildings and structures, as well as other actions grossly violating public order, or active participation in them.

Taking into account the unprecedented political and economic pressure on Belarus aimed at undermining its economic potential, slowing down development and lowering the living

standards of citizens, we believe that the easing of responsibility for violating the procedure for holding mass events and removing restrictions on the use of foreign financial assistance for political and agitation work will help create conditions for strengthening external destructive influence on the situation in the country, which does not meet the national interests of Belarus.

Right to strike

The current procedure for organizing and conducting strikes in Belarus does not contradict international labour standards and allows citizens to fully exercise their right to hold a legal strike in order to resolve a collective labour dispute that has arisen.

According to Article 8 of the International Covenant on Economic, Social and Cultural Rights, States are obliged to ensure the right to strike, provided that it is exercised in accordance with the laws of each country.

In Belarus, a strike is a temporary voluntary refusal of employees to perform work duties (in whole or in part) in order to resolve a collective labour dispute (Article 388 of the Labour Code).

According to article 22 of the Law on Trade Unions, trade unions have the right to organize and conduct strikes in accordance with the law, while political demands are prohibited during strikes initiated by trade unions.

The ban on putting forward political demands during a strike is also enshrined in the third part of article 388 of the Labour Code of the Republic of Belarus.

The unauthorized protest actions that took place in the republic and the attempts to organize a strike movement at enterprises without taking into account the requirements of the law have nothing to do with the implementation of trade union rights and freedoms to protect the labour, social and economic interests of citizens and do not at all correlate with the tasks that trade unions are called upon to solve.

The organizers of illegal protest actions at enterprises, pursuing purely political goals far from realizing the rights and freedoms of workers, deliberately misled workers about the legality of such actions, replacing such legal concepts as a strike and a mass event.

For their part, the authorities have repeatedly appealed to citizens with a request to respond in a balanced and prudent manner to incoming calls for participation in mass events called a strike movement, not to succumb to provocations that push to cause economic damage to enterprises and the State, violation of the rights and interests of other citizens.

The implementation of proposals to legalize political strikes will not so much contribute to the exercise of the right of trade unions to complete freedom of their activities, as will create additional opportunities for abuse by various destructive structures and will be used to undermine the economic potential of the republic, which does not meet the interests of any of the parties to the social dialogue.

The information presented in the trade union complaints about citizens allegedly suffering from discrimination, pressure and repression just for exercising their right to participate in a peaceful strike does not correspond to reality.

There were no legal strikes at the enterprises of the republic.

The citizens, represented in the complaints as workers who suffered from repressive actions on the part of employers and the State, are justifiably brought to disciplinary and (or)

administrative liability for specific violations of labour discipline and other provisions of the law.

In this regard, it seems illogical, incorrect and completely unfounded to talk about the fact that those workers were subjected to repressive measures for the mere fact of participating in allegedly peaceful and legal strikes and, accordingly, must be released, reinstated at work (etc.) with the provision of compensatory payments.

Consultations with workers' and employers' organizations

In the Republic of Belarus, a system of social partnership has been created and is successfully functioning, within the framework of which government bodies, associations of employers and trade unions interact in the development and implementation of the socio-economic policy of the State.

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

With regard to the proposals to amend the Regulations of the Council of Ministers of the Republic of Belarus (approved by Ordinance No. 193 dated February 14, 2009), we consider it necessary to reiterate that draft resolutions of the Government on issues affecting the labour and socio-economic rights and interests of citizens, in accordance with the above Regulations, are sent for possible comments and (or) proposals to the Federation of Trade Unions of Belarus as a national trade union centre – the largest republican voluntary independent association of trade unions, representing the interests of more than 4 million people, that is, as the most representative organization of workers.

This approach does not contradict any principles or norms and allows taking into account the interests of the workers' side to the maximum extent during consultations and during the development of legislative acts.

Labour disputes settlement

The Government once again confirms its interest in continuing joint work with the social partners and the ILO to improve the system for resolving labour disputes.

The Government highly appreciates the assistance of the International Labour Office in terms of improving the work of the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere, which was created with the advisory support of the ILO as a body that enjoys the confidence of all parties, to consider the implementation of the recommendations of the Commission of Inquiry and resolve other issues of interaction with social partners, including consideration of incoming complaints.

Thus, at this stage, it is the tripartite Council that is the body (outside of the judicial procedure) to consider the issues raised by trade unions. At the same time, the Government is ready to move forward along the path of further improvement of this function of the Council or through the creation of another structure.

The Government looks forward to continuing an open and constructive dialogue with the ILO in order to ensure the further progressive and harmonious development of the Republic of Belarus, and the well-being and prosperity of its citizens.

At the same time, the Government is extremely concerned about the fact that today a number of countries, foreign structures and organizations, instead of developing mutually beneficial cooperation, strengthening global solidarity and coherence of policies in the

economic, social and other spheres, are actively contributing to the destabilization of the situation in the Republic of Belarus.

An aggressive and large-scale information attack has been launched against our country, and steps are being taken to form an extremely negative image of the State in the international arena. The purpose of all these actions is to justify the unprecedented and unreasonable sanctions against Belarusian enterprises, organizations and officials.

Much to the regret of the Government, unfriendly countries and various structures are actively using the platform of the ILO to put forward unfounded accusations against the Republic of Belarus that have nothing to do with the real situation.

Taking into account the current situation, the Government will be grateful to the ILO bodies for an unbiased attitude towards the processes taking place in the country and for refusing hasty critical assessments of the actions of national authorities aimed at restoring law and order in the country.

The Government calls for an objective and comprehensive consideration of the so-called "Belarusian case", taking into account all the arguments, comments and information presented by the Government.