



Governing Body

346th Session, Geneva, October–November 2022

Institutional Section

INS

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Reports of the Officers of the Governing Body

Third report: Complaint alleging non-observance by Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Employment Policy Convention, 1964 (No. 122)

1. By a letter dated 8 June 2022 addressed to the International Labour Office, Mr Mikhail Orda, as Chairperson of the Federation of Trade Unions of Belarus and delegate to the 110th Session of the International Labour Conference, presented a single complaint under article 26 of the ILO Constitution against each of the Governments of the following European Union (EU) countries: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden, alleging that these Members had violated the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Employment Policy Convention, 1964 (No. 122) (see Appendix I). The letter was signed by Mr Orda as Chairperson of the Federation of Trade Unions of Belarus. Despite the date indicated on the letter, the complaint was in fact received and date-stamped by the registry of the International Labour Office on 21 June 2022, ten days after the session of the Conference had concluded on 11 June 2022.

2. All of the 27 ILO Member States named in the complaint have ratified both Convention No. 111 and Convention No. 122, with the exception of Malta which has not ratified Convention No. 122 (see Appendix II for the dates of ratification).
3. Article 26 of the ILO Constitution provides that:
 1. Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any Convention which both have ratified in accordance with the foregoing articles.
 2. The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Inquiry, as hereinafter provided for, communicate with the government in question in the manner described in article 24.
 3. If the Governing Body does not think it necessary to communicate the complaint to the government in question, or if, when it has made such communication, no statement in reply has been received within a reasonable time which the Governing Body considers to be satisfactory, the Governing Body may appoint a Commission of Inquiry to consider the complaint and to report thereon.
 4. The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a delegate to the Conference.
 5. When any matter arising out of article 25 or 26 is being considered by the Governing Body, the government in question shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the government in question.

▶ Presentation of the complaint

4. According to article 26(4), the Governing Body may consider the implementation of the procedure “on receipt of a complaint from a delegate to the Conference”. In practice, all the complaints filed to date under article 26 by delegates to the Conference have been received by the ILO when the Conference was still in session.
5. In the present case, while the complaint was dated 8 June 2022, when Mikhail Orda, Chairperson of the Federation of Trade Unions of Belarus, was a worker delegate to the Conference, it was only received by the International Labour Office on 21 June 2022 (see date-stamped copy attached), that is ten days following the closure of the Conference session. The Office has made the necessary inquiries to confirm that the communication was indeed stamped on the date of receipt (21 June) by the responsible unit and that no other channels were used to bring the document to the Conference’s consideration prior to this date.

▶ Valid cause of action

6. Article 26(1) sets out the scope of a complaint which may be brought against any Member on the basis that the Member has not secured the effective observance of a ratified Convention. “Effective observance” has been consistently construed as referring to the domestic application of a Convention. This is further corroborated by the fact that under article 24 of the ILO Constitution, representations may be submitted alleging non-observance by a Member of a ratified Convention within its jurisdiction. There is nothing to suggest that the intention of the drafters of the Constitution was any different in the case of article 26 complaints. In the present

case, the complaint alleges that the 27 EU Member States in question applied unilateral coercive measures in the form of trade restrictions, which have had negative consequences for the economy of Belarus. The complaint does not allege that any of the 27 EU Member States has failed to secure the effective application of Conventions Nos 111 and 122 within its jurisdiction.

7. As a consequence, the complaint does not appear to fulfil the requirements set out in article 26 of the ILO Constitution for receivability. First, it was not submitted during the session of the International Labour Conference and therefore cannot be considered to have been made by a delegate to the Conference, as required by article 26(4). Second, the complaint fails to state a valid cause of action under article 26(1), as it does not allege the failure of any of the 27 EU Member States to secure the domestic application of either Convention No. 111 or Convention No. 122.

▶ Draft decision

8. **In light of the information contained in document GB.346/INS/18/3, and taking into consideration the recommendation of its Officers, the Governing Body decided that the complaint was not receivable.**

► Appendix I

The complaint

ФЕДЭРАЦЫЯ ПРАФСАЮЗАЎ
БЕЛАРУСІ



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08.06.2022 № 01-09/138



International Labour Office

COMPLAINT

of the delegate of the 110th Session (2022)
of the International Labor Conference from the workers of Belarus
Mikhail Orda

I, Mikhail Orda, delegate of the 110th Session (2022) of the International Labour Conference from the workers of Belarus, am filing a complaint in compliance with the Article 26 of the International Labour Organization Constitution against the Member States of the International Labour Organization (hereinafter – ILO Members) : the Republic of Austria, the Grand Duchy of Luxembourg, Hungary, the Greek Republic, Ireland, the Italian Republic, the Kingdom of Belgium, the Kingdom of Denmark, the Kingdom of Spain, the Kingdom of the Netherlands, the Kingdom of Sweden, the Republic of Latvia, the Republic of Lithuania, the Republic of Portugal, the Republic of Malta, the Republic of Croatia, the Republic of Bulgaria, the Republic of Cyprus, the Republic of Poland, the Republic of Slovenia, Romania, the Slovak Republic, the Federal Republic of Germany, the Republic of Finland, the French Republic, the Czech Republic, the Republic of Estonia that have not effectively enforced the ratified Employment Policy Convention (Convention № 122) and ratified Discrimination (Employment and Occupation) Convention (Convention № 111) (with the exception of the Republic of Malta).

The Republic of Belarus ratified Convention No. 122 and Convention № 111 on 26.02.1968 and 04.08.1961 respectively.

Violation of Convention № 122 and Convention № 111 resulted in the application by the ILO Members of unilateral coercive measures against the Republic of Belarus.

Unilateral coercive measures have various negative consequences for the economy of the affected state. In particular, they artificially narrow

available markets, disrupt value chains, block financial flows and discourage investment.

These adverse effects have additional consequences for enterprises and businesses in the affected state and for their labour. Enterprises are unable to purchase certain materials and/or technologies, attract credit or other funds and, ultimately, sell their products. All abovementioned disrupts the work cycle of enterprises, which often causes dismissals.

In this regard, unilateral coercive measures applied to individual states directly worsen the employment situation in these states, thereby worsening the employment opportunities of their citizens. This practice is discriminatory in that it arbitrarily affects a certain group of people on the basis of their nationality.

Discriminatory policies are prohibited by international law, namely by the Conventions of the International Labour Organization.

1. The Article 1 of Convention No. 122 determines that in order to stimulate economic growth and development, raise living standards, meet labor needs and eliminate unemployment and underemployment, each Member of the Organization must proclaim and implement as a main goal an active policy aimed at promoting full, productive and freely chosen employment.

The policy is to be aimed at:

- a) opportunity to get jobs for all who are ready to start working and looking for jobs;
- b) their work to be as productive as possible;
- c) providing freedom of choice of employment and the widest possible opportunity for every labourer to be trained and to use their skills and abilities for the job they are competent in, regardless of race, colour, sex, religion, political opinion, foreign origin or social origin.

The use of unilateral coercive measures is a part of the national policy of the ILO Members. Such a policy is contrary to the goal of promoting full, productive and freely chosen employment, since in practice unilateral coercive measures leads to an increase in unemployment in the affected states.

In accordance with paragraphs 30-32 of the 1964 Employment Policy Recommendation, ILO Members should endeavor in their domestic economic policies to avoid measures that would adversely affect the employment situation and general economic stability in other countries, including developing countries.

ILO Members shall promote all efforts to expand international trade as a means of promoting economic growth and employment opportunities. In particular, they should take all possible measures to reduce the impact on employment of adverse fluctuations in the ratio of export and import prices, as well as balance of payments and liquidity reserve problems.

Industrialized countries, in their economic policies, including those on cooperation and expansion of demand, should take into account the need to increase employment in other countries, in particular in the developing countries.

They should, as urgently as local conditions permit, adopt measures aimed at increasing the consumption of imported goods, both manufactured, processed and semi-processed, as well as raw materials, which can be produced in developing countries on an economically viable basis, thereby facilitating mutual trade and employment in the manufacture of products for export.

The employment policy pursued by the ILO Members did not meet the requirements of Convention No. 122, since full employment is impossible in the conditions of the closure of markets for finished products, which leads to the curtailment and closure of manufactures, which is confirmed by the following decisions of the Council of the European Union - 02.03.2022 The Council of the European Union adopted Council Regulation (EU) No 2022/355 amending Regulation (EC) No 765/2006 on restrictive measures, taking into account the situation in the Republic of Belarus and EU Council Decision (CFSP) No 2022/356 amending in Decision 2012/642/CFSP on restrictive measures, taking into account the situation in the Republic of Belarus.

As an example of a violation of the requirements of Convention № 122, consider a foreign limited liability company "VMG Industry" (hereinafter – IOOO "VMG Industry").

In accordance with the norms of Council Regulation (EU) No. 2022/355, business entities of the European Union are prohibited from directly or indirectly importing from Belarus timber products of the 44 commodity group of the CN FEA EAEU (wood, articles of wood, wood charcoal).

As a result of the decisions taken by the Council of the European Union, employees of the IOOO "VMG Industry", members of the Belarusian Trade Union of Forestry and Environment Management Workers, suffered.

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The main activity of the IOOO "VMG Industry" is the "manufacturing of other furniture", the IOOO "VMG Industry" is an export-oriented enterprise. The share of exports for 2021 amounted to 95% of the total revenue.

The main buyer IKEA, due to the temporary suspension of activities in the Russian Federation and the Republic of Belarus, canceled orders for ready-made products of furniture and the bent glued parts. The manufacturing was completely focused on this buyer. As a result, the company was forced to stop the furniture production manufacture (from 05.03.2022 to 31.05.2022) and to stop the manufacture of bent glued parts (from 24.04.2022 to 11.05.2022). Downtime for the manufacture of chipboards has been announced (from 29.04.2022 to 24.05.2022). Downtime in manufacture is carried out with remuneration of labour in the amount of 2/3 of the established tariff rate (salary).

Thus, forced downtime from March to April 2022 amounted to 20,750 people/days.

Due to production downtime, there was a decrease in:

- release of production. The volume of output in April against January of this year has been decreased by 62%;
- average monthly salary. Average monthly salary in April against January of this year decreased by almost 500 rubles, which is equivalent to 150 euros (or 31% of wages).

From June 4, 2022, a ban comes into force in accordance with the norms of Council Regulation (EU) No. 2022/355 on the export to the EU countries of products with a certain CN FEA code, which includes products manufactured with chipboard.

Taking into account the ban on imports from the Republic of Belarus to the countries of the European Union of products of the IOOO "VMG Industry", the employees of the enterprise are subject to dismissal.

2. The Article 2 of Convention No. 111 states that each ILO Member for which this Convention is in force undertakes to define and implement national policies aimed at promoting, in ways consistent with national conditions and practices, equality of opportunity and treatment in respect of labour and occupations with a view to eradicating any discrimination against them. Since national policy is both domestic and external, any State Member of the Organization that has ratified this convention undertakes to define and implement both domestic and external national policies aimed at encouraging, in ways consistent with national conditions and practice, equality of opportunity and treatment in relation to labour

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and occupations with a an aim to eradicate all discrimination in relation to them.

The scope of the obligations is not limited to persons residing in the State or the territory of the State, but is universal.

Within the framework of the article, the application of unilateral coercive measures clearly violates the principle of equality of opportunity and treatment in respect of labour and occupation for everybody. By such measures, discrimination is created, not eliminated.

Since in trade with the Republic of Belarus, which is also a member of the ILO, in accordance with the norms of Council Regulation (EU) No. 2022/355, business entities of the European Union are prohibited from importing from the Republic of Belarus timber products of the 44 commodity group CN FEA EAEU (wood, articles of wood, wood charcoal), which leads to a deterioration in labour conditions and employment of the IOOO "VMG Industry" employees, then such actions of the ILO Member States are discriminatory against the IOOO "VMG Industry" employees who have fallen under the restrictive measures of the ILO Members, and therefore the Article 2 of Convention No. 111 is violated.

Thus, it can be stated that the unilateral introduction of coercive measures by the ILO Members is a violation of ILO Conventions No. 111 and No. 122.

Chairman
Federation of Trade Unions of Belarus



Mikhail Orda

▶ **Appendix II****List of ratifications**

EU Member States	Dates of ratification	
	Convention No. 111	Convention No. 122
Austria	January 1973	July 1972
Belgium	March 1977	July 1969
Bulgaria	July 1960	June 2008
Croatia	October 1991	October 1991
Cyprus	February 1968	July 1966
Czechia	January 1993	January 1993
Denmark	June 1960	June 1970
Estonia	August 2005	March 2003
Finland	April 1970	September 1968
France	May 1981	August 1971
Germany	June 1961	June 1971
Greece	May 1984	May 1984
Hungary	June 1961	June 1969
Ireland	April 1999	June 1967
Italy	August 1963	May 1971
Latvia	January 1992	January 1992
Lithuania	September 1994	March 2004
Luxembourg	March 2001	March 2021
Malta	July 1968	not ratified
Netherlands	March 1973	January 1967
Poland	May 1961	November 1966
Portugal	November 1959	January 1981
Romania	June 1973	June 1973
Slovakia	January 1993	January 1993
Slovenia	May 1992	May 1992
Spain	November 1967	December 1970
Sweden	January 1962	June 1965