

Асацыяцыя прафсаюзаў

«Беларускі Кангрэс  
дэмакратычных прафсаюзаў»

**БКДП**



Trade Union Association

«Belarusian Congress of  
Democratic Trade Unions»

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International Labour Organization (ILO)  
International Labour Standards Department  
Committee on Freedom of Association

cc. ITUC Human and Trade Union Rights Department (turights@ituc-csi-org)

**BKDP's OWN COMMENTS TO THE COMMITTEE OF EXPERTS ON THE  
APPLICATION OF CONVENTIONS AND RECOMMENDATIONS REGARDING  
THE CONVENTION No. 87 IN BELARUS  
(August 30, 2015)**

For the period passed since the recommendations of the Commission of Inquiry have been put into force in July 2004 only two recommendations (3 and 11) have been fully implemented by the Government of Belarus and the recommendations 2 and 4 have been implemented only partially.

The continued harassment of workers on grounds of their union affiliation and forcing them to leave the democratic unions, as well as dismissals of union leaders and activists, refusal in registration and in putting on record of primary-level union organizations, ban of union meetings, picketing and rallies clearly indicate that there have been no progress achieved in implementing recommendations of the ILO Commission of Inquiry.

The BKDP repeatedly forwarded the Government the proposals concerning improvement of legal provisions of functioning of trade unions in the Republic of Belarus in line with ILO Conventions and Recommendations as well as

statements referring to cases violating trade union rights. These proposals and statements have never been considered by the government.

It should be noted that no changes have been introduced into the Belarusian legislation as far as establishment and registration of newly formed unions and their activities is concerned and as it is requested by the ILO Conventions. Presidential Decree № 2 “On some measures regulating the activities of political parties, social organizations and trade unions” and the adopted by the Justice Ministry “The Instruction № 48 identifying the procedure of state registration of trade unions and exclusion of trade unions from the state register or putting on record the trade union structures and exclusion them from the record”. These legal acts continue violating principles of freedom of association and limiting the rights of workers to organize unions without prior authorization.

The Decree № 4, signed by Belarusian President Lukashenko June 2, 2015 was assessed by Presidential press service as a document allegedly creating “more favorable conditions” for trade union activities and for better protection and implementation of social and labor rights and interests of workers. In reality, this Decree cannot be treated as a real step of the Government to implement the ILO recommendations.

This document introduces changes and addendum to the Decree №2 "On some measures for regulating the activities of political parties, trade unions, other public associations dated January 26, 1999. According to them the requirement of having not less than 10% of totally employed workers (students) in the companies, institutions or organizations needed for setting up a union and ensuring its activity has been excluded from the Decree No.2. The announced changes of the Decree No 2 in reality do not create more favorable conditions for trade union activities, particularly for independent unions. The trade union practice in Belarus does not envisage the creation of the autonomous (individual) unions in the companies. Independent trade unions, as well as sectoral unions of the FPB, have national status. Their affiliated primary organizations are established in accordance with union statutes and operate as organizational structures of national sectoral trade unions. In this regard, the introduced changes in the Decree No. 2 have a cosmetic nature and do not contribute to implementation of ILO recommendations (2) that are aimed at ensuring freedom of association in Belarus. As it was noted by the Workers’ Group during the 2015 ILC when considering the Belarus case” ... ***The government has made only symbolic steps. We have no illusions that the abolition of the 10% membership requirement will make a difference and lead to free trade unionism. This requirement was not the key obstacle***”.

The Belarusian regime by adopting Decree 4 tried to demonstrate its alleged intention to comply with international commitments and recommendations of the ILO during the annual Labor Conference in Geneva.

In fact, Decree No. 4 does not annihilate compulsory registration of trade unions and their organizational structures which does not comply with the ILO Convention 87, the requirement of legal address for the union registration as well as requirement of having at least 500 members for setting up a national sectoral union.

The Belarusian legislation contains a norm that does not go in line the ILO Conventions according to which the local and primary-level union organizations are to be registered or put on a record in the local bodies of power.

Administrative authorities have the power to unilaterally dissolve, suspend or de-register trade union organizations. Trade unions may be deleted from the register by a decision of the registrar without any court procedure.

The requirement of legal address for a union registration or putting it on record continues to be an insurmountable obstacle for functioning of trade unions in Belarus. Belarusian legislation requires legal address even for those unions which have no legal entity status.

The top company managers are normally the members of the official trade unions affiliating to the FPB.

Those who want to be employed at a state-owned company are urged first to write a petition for affiliation to the company official union and only after this they are given jobs. If a person does not want to be affiliated to the official union he can hardly get a job. Actually the citizens are deprived of the right to choose freely a union for affiliation.

The Government failed to fulfill its duty of disseminating its directive instructions on impropriety of company managers to interfere in the internal affairs of trade unions. The cases of managers' interference in the trade union activities are noted in almost all state companies.

The right of trade unions for collective bargaining is being violated across the country.

The short-term contract system in force in accordance with the ***Presidential Decree No. 29 "On additional measures for improving labor relations and strengthening labor discipline"*** is used by the company managers to force workers out of independent unions and to dissuade workers from joining them. Members of democratic unions are forced to leave independent unions

under the threats of terminating their contracts or not extending them. For the period the short-term contract system is in force a lot of activists and rank-&-file members of independent unions have been dismissed or lost their jobs. The claims of workers or their unions for reinstatement through the courts are usually denied by the courts under various pretexts.

The government has no intentions to revise and change the existing system of labor relations in the country which gives the employers the possibility with the help of short contracts to keep workers in the dependent position and to oppose the development of independent and democratic trade unions.

Till now the Government failed to implement recommendation No.10 of the ILO Commission of Inquiry urging to amend the **Law of the Republic of Belarus № 114-3 dated 30.12.1997 "On mass actions in the Republic of Belarus"** so as to bring it in line with the ILO Convention 87. This Law still envisages the possibility of dissolving a union for its participation in mass actions not authorized by the local authorities.

Moreover, the National Assembly of the Republic of Belarus on 8 May, 2014 has adopted the **Law "On introducing changes to some laws of the Republic of Belarus related to regulation of labor and interlinking relations"**. It has approved some amendments and addendum into the Labor Code of the Republic of Belarus and it has seriously limited social and labor rights of workers and has worsened their position on labor market.

In particular, the law has excluded mentioning of ILO Conventions from the Article 3 "Scope of applying Labor Code" and Article 8 "Correlation between labor legislation and norms of international law" which in the earlier version were considered as inseparable parts of the national labor legislation. Now the new Law version in its new **Article 8 has only references to international agreements of the Republic of Belarus but not ILO Conventions which are not international agreements but have special status of international standards.**

The exclusion of references to ILO Conventions from the Labor Code at the background of continued violations of rights of members of independent unions and neglecting the ILO recommendations for decay looks like a deliberate, illegally ignorant, antidemocratic and breaching workers' rights action.

The article 17 of the Labor Code has been modified and now it reads that by a mutual agreement of the parties the employment contract can be concluded with persons who are hired by the owners of micro companies (small businesses) and that the contract concluded on terms and procedures in line with labor legislation is considered as a kind of a short-term contract. The mentioned novelties not only don't exclude the collision of the norms mentioned in the Labor Code and in the Decree No.29 of the President but

expand the sphere of applying short-term contracts and make short-term contracts legal. Belarus is the only state in Europe where the short-term contracts are so widely spread (they cover 80-90% of total workforce). This new rule is aimed not at diversity of labor regulation in the sphere of small businesses but rather at discriminating it.

Discrimination of citizens in the sphere of labor relations is aggravated by Decrees adopted by the President and which have normally more legal force than laws or code of laws.

On December 15, 2014 the President has issued the **Decree No. 5 “On increasing powers and responsibilities of top executives and employees in companies, institutions and organizations”** and on January 1, 2015 it came into force.

The Decree envisages granting additional rights in the sphere of labor relations to top executives of the companies and organizations.

In particular, the **top managers of the companies and organizations in line with paragraph 3.2. of the Decree No. 5 get the right to change essentially the working conditions of the workers if it is required by technological, organizational or economic reasons.** A worker in such cases will be notified 7 days prior to this change (earlier the period was one month). This norm is an additional way to impose pressure on workers and justify reprisals against members of independent unions who may be dismissed within one week.

**According to paragraph 3.3. the employer can deprive the workers who broke discipline at workplace,** technical discipline or workers morale either fully or partially of their additional incentive payments (bonuses) within the period up to 12 months.

The employer got the right to terminate the contract with a worker who broke technical discipline or discipline on workplace that have resulted in causing damage to the company (organization) in amount exceeding three monthly wages of workers. **The employer notifies the union about dismissal of the worker on the dismissal day.** The trade union when notified about it on the day of the worker’s dismissal will not be able to evaluate the validity of dismissal and a worker loses the right to address his union for protection of his interests.

**In addition, paragraph 11 of the Decree authorizes the employer to ask the applicant upon entry into employment to submit the employer’s reference from previous work** that undoubtedly will be an obstacle for members of independent unions to get a job. Paragraph 6 contains a list of 24 situations under which the labor contracts may be terminated by the employer before the expiry date of the contract.

The Decree No. 5 like the Decree No. 29 ***“On additional measures to improve labor relations, strengthen discipline at workplace and workers morale”*** is of a repressive and discriminatory nature.

The Decree No. 5 in addition to contract labor system in force lays down series of unprecedented peculiarities of applying short-term contracts as well as other labor agreements. The Decree No. 5 does not comply with the international standards, Constitution, Labor Code and other legislative acts of the Republic of Belarus. It violates human rights, reduces the level of labor and social guarantees, seriously limits trade union rights and establishes discrimination in the sphere of labor relations.

Taking into account that the Presidential Decree No. 5 affecting the rights and interests of entire Belarusian working people has not initially considered and discussed by the tripartite National Council on Labor and Social Issues (NCLSI) the President of the Belarusian Congress of Democratic Trade Unions (BKDP) Aliaksandr Yarashuk in accordance with the decision of the BKDP Council dated 23.01.2015 proposed to put on the agenda of the (NCLSI) the issue of suspending the Decree No. 5. But the members of the NCLSI refused to support the proposal of BKDP union

**On April 2, 2015 President Lukashenko issued the *Decree No. 3 “On prevention of social “dependency burden” and parasitic lifestyle”*.**

According to its preamble the Decree was adopted to encourage the working-age population to employment, ensure the fulfillment by the citizens of the Constitutional obligation to participate in financing public expenditures by paying taxes, custom duties and other payments as well as preventing parasitic lifestyle. The authorities intend to achieve all these high goals by one way – establishing a special fee, which in mass media, among population and experts is called “a tax on parasitic lifestyle”. The Decree envisages the obligation of annual payment of a fee to cover state expenditures for the citizens who in a current year either failed to participate in financing state expenditures or participated in financing less than for 183 days a year. The amount of the fee is 20 basic units (based on the size of the base rate set as per January 1, of the consequent tax period). Today this amount is equal to 250 USD. This system covers those citizens of Belarus who is able to work, persons without Belarusian citizenship and foreign citizens permanently living on Belarus territory and who are not involved in any legal labor activities. Persons who came to Belarus for permanent residence after March 31 or those who left Belarus for other permanent residence as well as citizens of Belarus actually living outside Belarus for more than 183 days. The state clerks justify the necessity of **introducing the tax on citizens who do not work by social benefits these citizens are making use of: medical care, allowances and others.** The Decree No. 5 covers thousands of the citizens who have no

income resources and do not live an asocial way of life but are not able to find decent work by profession. The exception was made for disabled citizens, invalids, those who under age and men and women reaching the retirement age. Thus, the fee is to be paid by householders or housewives, non-employed citizens (usually women) having 1 or 2 children. Default in payment or partial default is punished by fine amounting from 2 to 4 basic units (360000 – 720000 rubles) or by an administrative detention up to 15 days. When in detention the citizens are obliged to execute public works. For those who refuse to fulfill public works the additional measures of enforcement are to be applied to them. Today the Code of Execution Procedure of Belarus envisages the following forms of disciplinary penalties for refusal when in detention to fulfill the set up obligations: reprimand, unscheduled cleaning works, accommodation in a cell or in a solitary confinement cell. The Decree envisages that a citizen, who served an administrative penalty in the form of administrative arrest (detention), is deemed to fulfill his obligation to pay the fee. The tax authorities in relation to the fee payers are entitled to carry out controls in declaring income and control over matching expenses against revenues.

The adoption of this decree in the time of economic crisis is completely contrary to the principles of socially oriented economic policy. In fact, during the growth of structural unemployment the adopted a document introducing a tax on the most vulnerable group: those who have lost their jobs and are at an age when it is difficult to get retraining and possibilities to find job dramatically are limited.

A state which has failed to provide opportunities for the involvement of these people into economic activity and to ensure full employment not only refuses to provide support to them, but also imposes additional tax on them. We have to emphasize that unemployed people are not taxed in any country of the world.

The use of compulsory community and public works as an administrative penalty is contrary to international instruments such as Convention 29 of the International Labor Organization "Regarding forced or compulsory labor." According to the Convention № 29, "***Forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.***"

Part 3, article 101 of the Constitution referred to in the preamble to the Decree as a basis for its adoption states: "As the special occasion (need) requires the President on his own initiative or on the proposition of the Government may issue temporary decrees having the force of law."

The name of the document and the purpose of his decision do not explain the "special occasion (need)". Obviously, its main purpose is to find an additional

source of budget replenishment and use of free forced labor in cases of failure to pay the fees by the citizens. The provisions of the Decree № 3 "On prevention of social dependency and parasitic lifestyle" violate the ILO Convention 105 and 29 prohibiting forced labor, the Constitution of Belarus, human rights and aggravate the problem of gender inequality, create a new legal precedent for the introduction of forced labor in the country as a punishment for non-payment of socially unjust fees.

Against the background of the deteriorating economy and violations of human rights in the country the discrimination of independent unions and the harassment of their members, as in previous years, keep on growing and, as a result, the situation with trade union rights in the country has worsened dramatically. Examples:

The BNP independent union at RUUP "Granit" Company in Mikashevichi established at the end of 2012 was denied legal address. The members of this union were imposed to continuous and unprecedented pressure in order to make the workers leave the independent union. By now all 200 members were forced to leave the independent union and re-affiliate to the official FPB union. The organization was dissolved and does not longer exist. All union leaders were subjected to harassment. The chairperson of the independent union at RUUP "Granit" Company Oleg Stakhaevich and his deputy Nikolai Karyshev were unlawfully dismissed. In April-May 2013 the rest of the members of the union's executive bureau have lost their jobs. They were Anatoli Litvinko and Leonid Dubonosov and several others (all 8 members of union executive bureau).

For a long period the employers of RUP "Bobruisk Tractor Parts and Units" Company kept on discriminating workers on grounds of affiliation to Belarusian Free Trade Union (SPB). The employer has illegally deprived the primary-level SPB union of its office room. Till today the leader of the union organization Mikhail Kovalkov is not allowed to enter the enterprise despite the decision of Bobruisk district and town courts which obliged the employer to unblock his permanent pass to the enterprise territory. The SPB rank-&-file members are imposed to permanent pressure forcing them to leave the independent union under the threat of terminating their contracts. . Nearly 200 members have already forced to leave the union. The employer, demanding from the union to present confirmation of its representativeness, has practically excluded the SPB company union from the process of collective bargaining and signing the collective agreement for 2013-2016. The concluded collective agreement without participation of SPB union envisages social packages and guaranties only to members of the official union and discriminates SPB members and other non-unionized workers. The Bobruisk municipality fails to take its



decision to reregister the primary SPB union on the ground that the legal address of the union was not available.

On 30 September 2014 the management of the Bobruisk tractor parts and components company has dismissed the most professional assembly workers Alexander Varankin and Alexander Gromyko-members of independent union. Alexander Varankin several months earlier went on hunger strike protesting against trade union discrimination by the company director and attended the meeting with the General Secretary of the ITUC Sharan Barrow who visited Belarus in the middle of September 2014 to monitor the situation in Belarus and was shocked by the permanent and numerous violations of trade union rights in Belarus.

Nikolai Zhibul having served nearly 30 years at the company was dismissed two years before his official retirement while Oleg Shevchenko was fired after 16 years of work at the company.

On 5 November 2014 the dismissed SPB members Nikolai Zhibul, Oleg Shevchenko, Alexander Varankin and Alexander Gromyko went on hunger strike demanding end of discrimination on the ground of union affiliation, resuming collective bargaining with the SPB union at the company and cover the agreement on all workers of the company, ensure free access to the company to Mikhail Kovalkov –SPB union of the company, provide the premise to the independent union on the company territory and ensure equal conditions for work to independent union.

Since hunger strike is classified as picketing that needs special authorization four members going on hunger strike were taken to the police where they have received administrative punishment.

On 30 June 2015 the management of Bobruisk tractor plant and Components Company has dismissed a young professional instrument worker Segei Pichugov. He was notified that his contract is not longer extended one day before dismissal but not before one month as it is envisaged by the legislation. In March 2014 he was one of the SPB members who went on hunger strike and did it on his workplace. His family now was practically left without means for living as his wife is on a maternity leave and in August 2015 one more child was borne to them.

On 21 August 2015 the Bobruisk Tractor Parts and Components Company director has dismissed deputy chairperson of SPB company union Oksana Kernozhitskaya despite the promises of local authorities and members of Parliament to persuade the company management not to do it. The employer even has neglected to explain to Oksana Kernozhitskaya the reasons for dismissal. But for all the workers of the company it was clear that she was

fired because of her affiliation to independent union and for her active position in advocating rights and interests of workers of the company.

Continuous pressure has been imposed on SPB members by the management of OAO "Polotsk-Steklovolokno (Fiber Glass)" Company forcing them to leave the independent union. The primary-level SPB union has been practically excluded from the process of collective bargaining for signing the collective agreement. Unlawfully dismissed in March 2013 the chairperson of SPB primary organization at the company Viktor Stukov was not allowed to enter the company territory for nearly 8 months. Now he can come to the company only being accompanied by the gatekeeper. His case on reinstatement at his former workplace now is in the process of supervisory appeal in the Supreme Court.

The SPB primary-level union at OAO "Polotsk Steklovolokno" Company which earlier was a party of collective agreement now is deprived of the right to represent the interests of its members in collective bargaining. On January 14, 2014 the employer tried to exclude Viktor Stukov from collective agreement commission. The employer called the police so that to hold Viktor Stukov administratively liable. SPB members were forced by the employer to sign surety letters that their interests will be represented by company official union otherwise they will not be covered by the terms of the collective agreement. The new collective agreement for 2014-2016 was concluded without participation of the SPB free trade union.

The primary-level union organization of Belarusian Independent Union (BNP) at OAO "Naftan" Oil Refinery acting earlier as a party in the company collective bargaining commission was not included into collective bargaining commission for developing collective agreement for 2014-2017. It happened so as the official company union FPB Belkhimprofsoyuz despite the contest of the employer has refused to accept that the trade union side will be represented by two unions.

The pressure on members of BNP union at OAO "Mozyr Oil Refinery" also kept on growing in the year of 201 - 2015. In the period of 6 recent years nearly 700 members had to leave independent company union. Only in December 2013-January 2014 50 members left the union. The workers were fired for their affiliation to independent union. In October 2013 at one time 5 members of independent union were dismissed from the planning and design office: they were a married couple Gennady and Tatiana Bobrovniks as well as workers of the production shop №2 Vladimir Kliuchnikov, Alexei Ermak and Ivan Shaban. Numerous penalties based on fabricated accusations were imposed on these workers which later have turned into reasons for not extending short-term contracts with them. The Chairperson of BNP primary-level union organization Yury Shvets in protest went on hunger strike starting

from 14 October 2013 which, nevertheless, has produced no effect on the employer and local authorities.

The municipalities of Minsk, Polotsk, Mogilev, and other towns in Belarus have denied the BKDP and its affiliated organizations SPB and SPM to organize a protest action day on 21 February. On this day the BKDP has decided to organize picketing across the country protesting against the Presidential Decree No 5 ***“On strengthening the authorities and responsibilities of top executives and employees in the companies, institutions and organizations”***. This notorious Decree was signed by President Lukashenko on 15 February 2014 and came into force on January 1, 2015. The provisions of the Decree contradict the labor legislation and worsen dramatically the working terms and conditions of the workers.

Minsk Municipality has denied the BKDP and its affiliates across the country the permission of organizing May Solidarity Day activities on 1 May, 2015.

Minsk Municipality has denied the BKDP and its affiliates across the country the permission of holding meetings dedicated to World Day for Decent Work on October 7, 2015.

It should be noted that for the last 10 years the BKDP and its affiliates failed to get permissions for organizing meetings, rallies, picketing and other mass actions. The authorities deny the permissions on arbitrary reasons making references to the Law on Mass actions.

During the period of 2013-2015 the Belarusian Radio-and- Electronics Industry Workers’ Union (REP) was five times denied registration of its union structure – Bobruisk regional primary REP union organization (Mogilev region).

The Council for Improvement of Labor and Social Legislation which has been established in January 2009 as an instrument for realizing the Government’s obligations on implementing ILO CI recommendations and eliminating violations of trade union rights as well as improving social and labor legislation does not fulfill its functions.

Aliaksandr Yarashuk  
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30, August, 2015, Minsk