

Belarusian Labour Law - Stuck in Transition

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The Belarus system of labour law and industrial relations has been developing as a distinct legal system after Belarus was proclaimed an independent state in 1991. There were two phases of development. During the first one from the early 1990s to approximately 1996, Belarus was not an exception compared to its European neighbours; the country tried to observe all international conventions and was hoping to join the European Union. However, after the presidential elections in 1994, the political climate started to change and the country began to transit from a relatively democratic state to authoritarian rule. The political leadership of the country no longer declared the goal of joining the European Union, but to the contrary, it proclaimed that one cannot apply European rules to the situation in Belarus because of particularities of its development and close ties with Russia. This has affected almost all fields of law, including labour law. The three problems, which are of particular concern from the point of view of international and European labour law in Belarus are discussed below.

Belarusian legislation on short-term contracts, discrimination, and compulsory labour

The Labour Code provides that individual labour contracts should be concluded for an indefinite period of time, unless there are certain conditions which allow to conclude a fixed-term contract when the character of work to be performed cannot be established for an indefinite period of time.¹ However, the Presidential Decree nr. 29² entitled all employers to conclude fixed-term contracts with all categories of workers for a period from one year

to five years and to transfer those working on open-ended contracts to fixed-term contracts.

Article 14 of the Labour Code prohibits discrimination in the field of labour relations and defines discrimination as constraint in labour rights or receiving any advantages depending upon a number of grounds, including religious or political convictions, participation or nonparticipation in trade unions or other voluntary organizations. Other legal enactments are generally in line with these provisions of the Labour Code.

Both the Constitution and the Labour Code declare that forced labour is prohibited in Belarus. Article 41 of the Constitution stipulates that forced labour shall be prohibited, other than work or service specified in the verdict of a court of law or in accordance with the law on the state of emergency or martial law. Article 13 of the Labour Code defines forced labour as the labour exacted from the employee under the menace of violence.

As will be shown in the next sections, the practice of labour relations in Belarus differs from what is prescribed by the legislation.

Short-term contracts

The system of transfer of workers from open-ended labour contracts to fixed-term contracts usually concluded for one year has become known in Belarus as “contractualisation” (Krivoy and Pastukhov 1999). In 2004 there was a clear goal set by the government that all employees working at state enterprises should be transferred from open-ended labour contracts to fixed-term contracts. There is no reliable statistics available regarding the percentage of employees working on the basis of fixed-term contracts in 2005, as the Ministry of Labour does not disclose this information. According to some estimates, as of June 2004 around 70% of all workers in Belarus concluded fixed-term contracts with their employers (Naviny.by 2004).

The effect of the total transfer of workers to fixed-term contracts in Belarus is that employees are deprived of the most important legal guarantees relating to the termination of labour relationship. Another consequence of total introduction of fixed-term contracts is that workers do not see the benefits of union representation in an environment of short-term employment. Strikes have become extinct not only because of severe legislative restrictions (Kryvoi 2003) but also because the would-be strikers realize that if they go on strike, their contracts will not be renewed the following year. The government officials are well aware that short-term contracts and unions do not typically go hand in hand, and fixed-term contracts are used as an affirmative tool to avoid independent unions.

Discrimination on the basis of political opinion and union membership

Another area of concern is discrimination on the basis of political opinion and trade union membership. This discrimination may result in unfair dismissals on the basis of political activities and antiunion activities. These two grounds are often classified as discrimination based on ideological freedoms and beliefs.

Employers in Belarus tend not to admit publicly that they dismiss employees for the reason of trade union activities or engaging in opposition activities. Typically the legal grounds for dismissal are violation of labour discipline, nonfulfilment of work duties, or failure to pass an examination. However, the real causes for dismissal are often different from the formal ones. It is important to mention that most of the corporations in Belarus are state-owned and managers can easily lose their positions if there is suspicion that they are not loyal enough to the political regime. Getting rid of independent trade union leaders and opposition activists is one of the ways to prove political loyalty.

In practice an employer's administration informally demands that either the employee stops any political or union activities, or he or she will eventually be fired despite the laws and their work performance. Enterprise managers were openly telling trade unionists that a pretext to fire them could always be found (ILO 2004). The ILO Commission of Inquiry was provided with evidence of the dismissal of the most active members of independent trade unions, arrests, and detention for their activities and even physical abuse of trade union activists (ILO 2004).

If workers go to the courts in an attempt to defend their lawful rights, including constitutional rights, the courts tend to turn a blind eye to violations of labour rights as soon as there was a certain "political" context in which these violations occurred. Judges, not unlike state enterprise managers, can also lose their job if they do not obey the unwritten rules of the game and informal "telephone law".

Compulsory labour

At the time of the late Soviet era, unpaid voluntary labour on weekends was more commonly referred to as *subbotniks* (from Russian "subbota", Saturday). There is no definition of *subbotnik* in Belarusian legislation. The work carried out during *subbotniks* is supposed to be of voluntary nature and should not be paid. However, in today's Belarus these characteristics are not always in place. According to account sheets, the work is paid, but the money is transferred to the regional executive authorities, rather than to employees, without explicit consent of the latter.

In practice, citizens who have a day off on Saturday are assigned to perform their normal work or social work, for example, cleaning the sites or painting

of monuments. The salary for that day is not paid to them but transferred by the employer to special accounts of regional executive committees. However, not only employees are subject to compulsory labour during *subbotniks*. Regional universities often order students to clean sites near the universities, otherwise they are threatened with losing their place in the dormitory or with problems during the examination session (Association of Belarusian Students 2003). Unpaid labour is also used in agriculture. Use of unpaid labour at the time of gathering harvest in autumn is a common practice, which also exists from the Soviet era. The most common way is to engage students in agricultural work. Not only students of colleges and universities but also senior school students are used to collect harvest for periods of about two weeks.

Conclusion

As has been indicated above, the transition from the centrally planned Soviet economy to a more market-oriented model has taken a particular form in Belarus, mostly due to certain historical and political reasons. While Belarusian legislative enactments concerning equal treatment and compulsory labour in general look consistent with international obligations, undertaken by Belarus under ILO conventions, in practice the situation is different. The main problem is law enforcement coupled with a lack of independence of the judiciary and more generally the absence of respect to the rule of law in post-Soviet Belarus.

Notes

1 Article 17 of the Labour Code of Belarus.

2 Presidential Decree nr. 29, "On additional measures on improving labour relations, strengthening labour and executive discipline", dated 26 July 1999.

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