

# The Realization of the Right to Work in the Republic of Belarus In the Context of International Labour Standards: Issues and Prospects

**Kirill Tomashevski\***

**Abstract** The report will consider the historical aspects of securing the right to work in the Soviet labour law, fixation and interpretation of this principle and freedom of work in the modern constitutions of Belarus, Russia and other EAEU member – states. There will be discussions among scientists on the correlation between the right to work, freedom of labour and the abolition of forced labour. The author will draw attention to a number of problematic issues in the current labour legislation of Belarus, in particular, some norms which non-compliance with international labour standards on the abolition of forced or compulsory labour. Specific proposals will be made to improve this legislation and further implement the provisions of the ILO conventions and recommendations to the legal order of the Republic of Belarus to ensure decent work for employees.

**Keywords:** right to work, abolition of forced labour, fixed-term employment contract

**JEL Classification:** K3

## Introduction

The year 2019 marks 100<sup>th</sup> anniversary of the International Labour Organization (ILO) – one of the world’s oldest and most respectful international organizations. Belarus has participated in the ILO activities for 65 years (Byelorussian Soviet Socialist Republic joined the Organization in 1954). On March 15, 2019 there has been 25 years since adoption of the Constitution of the Republic of Belarus<sup>1</sup>. The Document has created fundamental legal principals, which become the basis for all norms and labour law institutions. The above mentioned anniversaries provide good opportunity to look back and see what the Republic of Belarus has done to secure its citizens’ right to work, to implement the UN and ILO International Labour Standards

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<sup>1</sup> The Constitution of the Republic of Belarus 1994: as amended at the Republican Referendums on 24th of November, 1996 and on 17th of October, 2004.- 10th addition.- National Center of Legal Information of the Republic of Belarus, 2014.

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Kirill Tomashevski\*(✉)

\* Professor of Department of Labour and Economic Law, «International University «MITSO» , Belarus  
e-mail: k\_tomashevski@tut.by

in the framework of the Belarusian National Labour Law. It is also a good opportunity to contemplate on the future, to discuss what actions the Parliament and the Belarusian Government together with social partners should do so as to enhance employees' labour conditions, to provide these conditions on a decent level and what is the most important here – is to insure legal guarantees for the right to work.

### **1. The right to work: constitutional, doctrinal, historic and legal aspects.**

The Republic of Belarus in contrast to many of the former Soviet countries has preserved the right to work in its Constitution. We want to remind that according to part 1 article 41 of the Belarusian Constitution citizens are guaranteed the right to work as the most decent way to a human's self-affirmation. The right includes the choice of profession and type of work as well as the ability to work according to one's vocation, capabilities, education, professional training and public demand. Part 4 of the same article has enshrined the principle of forced labour elimination, which we are going to discuss below.

Contrary to article 37 of the Constitution of the Russian Federation which ensures the freedom of labour, neither the Constitution of Belarus nor its Labour Code enshrines this freedom, which is considered to be a defect in the Belarusian Legislation. We consider the freedom of labour to be the major moral and legal idea that eliminates the possibility of forced labour and gives an individual the right to decide whether to work or not to work and, if yes, which type of work it should be<sup>2</sup>.

With this regard the constitutional principal of the right to work is the most important social and economic right, tightly connected with the principal of the freedom of labour though not equal to it.

### **2. Public principle of abolition of forced labour and the deviation from this principal in the Belarusian Legislation.**

The right to work and the freedom of work mentioned above are closely connected with the principle of abolition of forced labour. Part 4 article 41 of the Constitution states this principle in the following manner: "Forced labour is prohibited with the exemption of labour or service imposed by a court's verdict or in compliance with the law on the state of military emergency."

The International Labour Standards, formulated by the UN and the ILO and directed to deal with the issue of the elimination of slavery, forced or compulsory labour. These Standards are also enshrined in the Belarusian National Legislation. For the clarification of the principle of forced labour abolition it's vital to refer to article 13 of the Labour Code of the Republic of Belarus. This article apart from the actual elimination also contains (part 1) the information on which type of labour is viewed upon as forced labour: labour that an employee is forced to do under the threat of abusive pressure, including such cases when the pressure is used as: 1) the means of political influence or part of upbringing or as a punishment for the express of political views and ideological beliefs, that are differ

<sup>2</sup> See detailed: Tomashevski K.L. Labour Law Essays (History, philosophy, problems of system and sources) / scientific proofreading by O. Kuryleva. Minsk : Publishing house BSU, 2009. p. 89-90.

from the established political, social or economic system; 2) the means to mobilize and use work force for the sake of economic development; 3) the means to maintain work discipline; 4) the means to punish for participation in labour strikes (part 2).

The rules of article 13 of the Belarusian Labour Code are largely formulated under the influence of the ILO International Labour Standard.

In the present Legislation of the Republic of Belarus there are still some deviations from the principle of forced labour abolition and from the constitutional provision about right to work, in particular:

- unreasonably wide use of fixed-term contracts, that prevent employees to resign (contractual employees are not subject to article 40 of the Labour Code, and in order to resign on employee's demand as stipulated in article 41 of the Labour Code it is necessary to have good excuse or to show that the employer has breached the Labour Legislation or the employment contract's conditions.)
- paid public works for the unemployed, introduced firstly by the Decree № 7 of the President of the Republic of Belarus dated 17.03.1997 "On additional measures to promote employment", article 19 and by the Act of the Republic of Belarus № 125-3 dated 15.06.2006 "About employment of population of the Republic of Belarus"<sup>3</sup> part 2, article 25. In reality, the unemployed are forced to do paid public works under the threat to suspend unemployment benefit for 3 months if they fail to fulfill their month's norm of the stated public works;
- compulsory labour of state university graduates who receive their education for free and therefore subject to distribution (article 83 of the Code of the Republic of Belarus on Education; the Decree of the Council of Ministers of the Republic of Belarus № 821 dated 22.06.2011 (amended 12.07.2018) "On some issues of distribution, redistribution, deployment or further deployment of graduates, coverage of states' expanses on their education and targeted preparation of specialists, employees and personnel");
- compulsory labour (including obligatory transfers) of individuals, who are covering state's expanses on child support (the so-called persons under obligation) and therefore directed to employers under a court's verdict or decision taken by labour, employment and social security agencies (part 1 article 16, part 3 article 30 of the Labour Code, the Decree of the President of the Republic of Belarus № 18 dated 24.11.2006 (amended 23.02.2012) "On additional measures to protect children from vulnerable families"<sup>4</sup>);
- obligation of citizens in compulsory rehabilitation centers (with regard to their age, ability to work, health condition, degree and qualification) to work in these centers or other organizations in the vicinity of the rehabilitation center (article 18 of the Law of the Republic of Belarus № 104-3 dated 04.01.2010 (amended 09.01.2017) "On the procedure of sending citizens to rehabilitation centers and on the conditions of their treatment"<sup>5</sup>).

<sup>3</sup> National register of legal acts of the Republic of Belarus. 22.06.2006. № 94. 2/1222.

<sup>4</sup> National register of legal acts of the Republic of Belarus. 01.12.2006. № 198. 1/8110.

<sup>5</sup> National register of legal acts of the Republic of Belarus. 20.01.2010. № 15. 2/1656.

### 3. Fixed-term labour contracts: Belarus's negative experience and the ways to overcome it.

We want to remind that according to article 17, chapters 23 and 24 of the Labour Code of Belarus there are 5 types of fixed-term contracts: employment contract with fixed term of no more than 5 years; employment contract for the term of realization of a specific piece of work, employment contract with a temporary period to cover the absence of the employee, whose job position remains open, seasonal employment contract, employment contract with a temporary employee (up to two months according to the common procedure).

The Decree of the President of the Republic of Belarus № 29 dated 26.07.1999 "On additional measures to improve employment relations, sustain work and executive discipline"<sup>6</sup> (hereinafter referred to as the Decree № 29) has become a significant momentum for the unrestricted use of employment contracts and enabled employers to sign fixed-term contracts with any employees. The procedure of transference from employment contracts with indefinite duration to the contractual system of fixed-term employment was subject only to a formal notice of employees in a month, at the end of which an employee can either sign a contract (usually for minimum term of one year) or an employer can terminate labour relations due to employee's refusal to work under the significantly changed working conditions.

It is necessary to notice that since January 1, 2015 Belarusian employers has received formal grounds to give notice to the employees about the significant changes of working conditions in 7 days, not in a month, which was stipulated in sub-item 3.2 of item 3 of the Decree of the President of the Republic of Belarus № 5 dated 15.12.2014 "On enhancement of demands to managers and employees of organizations" (hereinafter referred to as the Decree № 5). Meanwhile, the term of given notice on the changed working conditions (the contract's conditions as agreed upon by the Parties) is supposed to be the shortest among all the EurAsian Economic Union (EAEU) member-states (in the majority of cases the legislation sets a term in one or two months for such a notice). In 2018 Belarusian trade unions began to worry about the results of a massive monitoring: "experts studied about 1.6 million contracts and found out that more than 30% of these contracts were signed for the term of 1 year"<sup>7</sup>.

As we've already mentioned, "(the study of the application of fixed-term contracts after the Decree №29 has showed that a lots of enterprises are beginning to introduce fixed-term employment contracts, which in return negatively impacts the employment stability and leads to increase of the unemployment level. Often contracts are made to practically harass dissatisfied employees or to get rid of these employees without perfectly grounded industrial, organizational or economic reasons)"<sup>8</sup>.

Thus situation with widely used fixed-term contracts in Belarus is a really strong way

<sup>6</sup> National register of legal acts of the Republic of Belarus. 06.08.1999. N 58. 1/512.

<sup>7</sup> The Government was criticized for 260 thousand of the unemployed and absence of amends to the Labour Code // URL: <https://finance.tut.by/news599666.html?crnd=59881> (date of access: 26.05.2019).

<sup>8</sup> Tomashevski K.L., Voitik A.A. Contractual form of employment // Industrial and trade law. 2001. №4. p.31.

to precarization of labour market of our state. Meanwhile the Republic of Belarus has not yet ratified the ILO Convention №158 “On the Termination of Employment at the Initiative of the Employer” (1982) and formally this Convention has no legal authority in our country. Along with that the Belarusian Parliament and the Government have to take into account the Acts of the ‘soft law’, particularly the ILO Recommendation № 166 “On the Termination of Employment at the Initiative of the Employer” (1982). Item 3 of the article 1 of this Recommendation has stipulated, for example, the measures in order to protect employees from the use of fixed-term employment contracts:

- a. to restrict the use of fixed-term employment contracts in the cases when due to the type of work or the working conditions or employee’s interests, the contract can not be signed with indefinite duration.
- b. consider all fixed-term contracts to be contracts with indefinite duration (apart from cases stipulated in sub-item 2)a of the present item)
- c. consider employment contracts signed with fixed duration and already extended once or twice to be contracts with indefinite duration (apart from cases stipulated in sub-item 2 of the present item).

The EAEU member-states’ legislations have all the measures proposed by the ILO and represented in this or that combination. For example, sub-item 3 of item 3 article 1 of the Recommendation are active used in 4 from 5 EAEU member-states (article 95 of the Labour Code of Armenia, part 2 of article 17 of the Labour Code of Belarus, article 55 of Kyrgyzstan and article 58 of Russia).

## **Conclusion**

In conclusion we shall say that this paper is aimed at conducting a comparative and legal analysis of the legislations of Belarus and a number of the EAEU member-states. It is worth mentioning that despite the constitutional right to work and the principle of forced labour elimination, the Belarusian legislation has some deviations from these fundamental legal notions.

Correspondingly, even though Belarus has ratified all eight ILO fundamental Conventions (including Conventions № 29 and 105) , there are still some practical deviations from the principle of abolition of forced and compulsory labour, that are mainly the results of unreasonably wide use of fixed-term employment contracts, disciplinary transfers of persons under obligation covering state’s expenses for child support and drives of certain types of transport vehicles.

The above-mentioned problem parts of the Belarusian Legislation require, as we see it, special attention from the Constitutional Court of the Republic of Belarus, which can check whether these parts are in line with the Constitution and the ILO Conventions №29 and №105.

Nowadays the Parliament of the Republic of Belarus is considering and preparing to adopt a bill at its second reading. The bill will amend the majority of provisions of Labour Code of Belarus. We hope that some of the problems expressed in this paper will be solved during this or further legislation reforms.

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