

The Right to Strike in Post-Soviet Countries Reflections on the Impact of International Labour Law

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Abstract The article is devoted to the problems of realization of the right to strike in Belarus and Russia. The article considers the conception of strike in Russia and Belarus. The strike procedure is analyzed in detail. The authors have revealed a number of problems in the organization of the strike: in holding the strike in a structural division of the organization, in making a decision on holding the strike, in notifying the employer of the planned strike, in suspending the strike, etc.

It is rather difficult for employees to exercise the right to strike and after the collapse of the USSR, there has been no legitimate strikes in the independent Republic of Belarus. The article provides statistical data. The article analyzes the compliance of the national legislation of Belarus and Russia with international standards. The authors estimate the influence of international organizations on the change of labour legislation in Russia and Belarus. The judicial practice on cases of recognition of strikes as illegal is considered. The practice of the European Court of Human Rights is analyzed.

The authors consider if the right to strike can indeed be protected in Russia and Belarus through bringing claims to international human rights bodies and through the help of ILO.

Keywords: the strike, right to strike, strike procedure, unlawful strike, international standards.

JEL Classification: J81, J83, K32.

Certain post-soviet countries where the influence of Russia is traditionally strong and which tend to cooperate with one another building new players on the international stage such as Eurasian Economic Community have much in common in their systems of industrial relations. The purpose of this paper is to analyse the main traits of the regulation of the right to strike in Russia and Belarus, the cases on illegal strikes considered by national courts during last years, if any.

The economic and political reforms of the 90s brought a lot of challenges to the Russian and Belarusian labour law which, preserving in the beginning much legacy of

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Soviet norms, was unable to ensure the due dynamics of labour relations in the market economy. The process of excluding excessive employees' protection and promoting social dialogue started already in the 90-s and still goes on.

1. Russian provisions on the right to strike and their implementation

Article 37 of the Russian Constitution proclaims the right to strike between other basic labour rights. The norms of the Russian Labour Code provide regulation of the right to strike. The provisions have been amended a number of times, but the most important changes were made in 2006 and then in 2011, both times acting on recommendations made by the Committee on Freedom of Association of the International Labour Organization (Cases No. 2216 and 2251) and approved a number of recommendations submitted to the Russian government.¹ However it important to note at the outset that in spite of those amendments a number of particularly important ILO concerns remained unanswered.²

1.1 Definition of a strike

The Russian Labour Code defines the strike as worker's temporary and voluntary refusal of a worker to fulfill their work duties, (entirely or in part) with the intention being the settlement of a collective labour dispute (Article 398). Thus it strictly links a strike with the existence of the collective labour dispute, representing a very narrow perception of this right. According to the ILO Freedom of Association Committee such interpretation is not in line with the ILO Conventions N 87, 98.³

The notion of the collective labour disputes is provided in the same article: "Unresolved disagreements between workers (or their representatives) and employers (or their representatives) concerning the establishment and changing of working conditions (including wages), the making, changing, and fulfilment of collective negotiations agreements and other agreements, and also disagreements concerning an employer's refusal to consider the opinion of an elected workers' representative body in adopting local normative acts".

According to article 410 of Labour Code a decision on declaring a strike shall be taken by a meeting (conference) of employees of an organisation (branch, representative office or another detached structural unit) or individual entrepreneur of the proposal of the representative body of employees which has been earlier empowered by the employees to resolve a collective labour dispute. The meeting of the employees of this employer is deemed competent if attended by at least half of the total number of the

¹ Gerasimova E., The resolution of collective labour disputes and the realization of the right to strike in Russia. In: Vladimir Lebedev and Elena Radevich editors. 'Labour Law in Russia: Recent Developments and New Challenges', Issue 6. Newcastle upon Tyne: Cambridge Scholars Publishing, 2014, pp. 260-261.

² Liutov N., Russian labour legislation and international labour standards: compliance and prospects for improvement. Moscow, 2012, pp. 192-200.

³ Freedom of Association Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO. Para. 531, p. 111.

employees. The conference of the employees of this employer is deemed competent if attended by at least two thirds of conference delegates.

Thus the strike is possible only in case of passing all the stages of collective dispute resolution. According to the experts' calculations, the duration of all mandatory preliminary procedures is at least 42 days.⁴

These norms create a number of problems in practise: firstly they mean that no strike at occupational or professional level may be possible, as we can hardly imagine the organization where the half of employees represent the same profession, and the strike will be illegal if supported by the less quantity of employees. ILO Committee on Freedom of Association was concerned with the lack of possibility of collective bargaining at occupational or professional level both in law and in practice⁵ the same concern arises in respect of realization of the right to strike on these levels.

The second problem that arises from this formulation of the quorum requirements is the lack of definition of what is deemed under "another structural unit" where the strike may be declared as well.

The legislation does not define this notion and thus leaves much ambiguity in realization of the right to strike on this level. It was up to the courts to establish the criteria for the determination of structural units judging cases where the employer claimed that the strike was illegal as it was declared not in a structural unit of the company but in another kind of a unit.

The research of relevant case law is disappointing. The Supreme Court stated that the structural division should obtain such "a degree of autonomy that ensures that its activity is autonomous from the main organization and which, in the event of a strike by the employees of such a division, would ensure the continuation of the activity of the entire organization".⁶ This approach of the Supreme Court demonstrates that the narrow interpretation of the "structural division" serves the aim of restricting strikes for the majority of workers. The case law of lower courts have caught the message of the Supreme court in a very particular manner, requiring almost impossible level of autonomy from the unit in order to establish that it is a structural unit to permit the declaration of strike on a meeting of its workers. Thus the strike organized in the unit producing the spare parts for production held in one private limited liability company was found illegal by court as this unit was not really detached from the main production facility, was located on the territory of the company location, along with other divisions and services it was included in the general production activity.⁷ The orchestra of the theatre was also considered as a non-structural unit: the workers referred to the workers referred to the autonomy of its work, the existence of an independent regime and work schedule, the special nature of remuneration, the possibility of the theatre to perform

⁴ Kozina I., The labour movement in Russia: the anatomy of strikes. In *Journal of Social Policy Studies*, 2009, 7/4.

⁵ 332nd Report of the Committee on Freedom of Association, 288th Session Governing Body Geneva, November 2003. Available at: www.ilo.org/public/english/standards/realm/gb/docs/gb288/pdf/gb-7.pdf

⁶ Ruling of the Supreme Court of the Russian Federation, 18 July 2008 No. 45-Г08-12.

⁷ Case number 3-140 / 2015 decision of the Perm Regional Court August 26, 2015

without the participation of the orchestra using phonograms. The Court found that the orchestra cannot be recognized as a separate structural division of the opera and ballet theatre, since it is an integral organic part of its overall activities.⁸

These cases demonstrate that the notion of structural unit in spite of some criteria established by the Supreme Court in several cases still remains to be vague. Russian scholars note that it does not help groups of employees to fully understand whether or not they can legitimately start a collective labour dispute.⁹

I think that the lack of clarity in this case might amount to the unjustifiable interference with the freedom of association (article 11 of the European Convention on Human Rights) if as a result of interpretation the strike organized in a unit was declared illegal. According to a well-elaborated case law of the European Court of Human Rights (ECtHR) the consideration of such claims consists of several steps: the ECtHR considered whether there have been an interference, then analyses if it was in accordance with law, pursued legitimate aims, was necessary in the democratic society and proportionate to the pursued goals.¹⁰ The ECtHR general quality requirement to the law permitting interference with human rights, they are: precision, certainty, and foreseeability.¹¹ In my opinion the provisions of Russian law considered above do not correspond to all these criteria.

Once the decision on strike is adopted according to the norms of Labour Code the workers have to notify the employer of a forthcoming strike in writing at least ten calendar days in advance. The following shall be available in a decision on declaration of a strike: a list of disagreements of the parties to the collective labour dispute that are deemed grounds for the declaration and conduct of the strike; the date and time of beginning of the strike, would-be number of participants (notably, the strike shall not be started after the expiry of two months after the decision on declaration of the strike); the name of the body that leads the strike, the composition of the representatives of employees who are empowered to take part in conciliatory proceedings; proposals for the minimum necessary works (services) to be performed during the period of the strike by employees of the organisation (branch, representative office or other detached structural unit) or the individual entrepreneur.

All these points are very important as the violation of one of them would lead to the finding of illegality of such a strike. According to the article 413 of the Labour Code the strike shall be unlawful if it was declared in disregard of the time limits, procedures, and requirements stipulated in the Code. A workers' representative body that announced the strike and failed to halt it after it has been declared unlawful should compensate the employer for losses caused by the unlawful strike.

⁸ Decision of the Chamber of Civil Cases of the Supreme Court of the Russian Federation of 01.12.2006 in case No. 48-G06-20

⁹ Gerasimova E., The resolution of collective labour disputes and the realization of the right to strike in Russia. In: Lebedev V., Radevich E. (ed). 'Labour Law in Russia: Recent Developments and New Challenges', Issue 6. Newcastle upon Tyne: Cambridge Scholars Publishing, 2014, p. 269.

¹⁰ For example: ECtHR, National Union Of Rail, Maritime And Transport Workers v. The United Kingdom (31045/10) 08/04/2014

¹¹ ECtHR, Malone v. The United Kingdom (8691/79) 02/08/1984.

The review of the relevant case law revealed the following reasons for finding the strike illegal:

- The decision on strike was adopted on the last day of the period when the employer had to answer workers' claims;¹²
- The workers missed the stage of consideration of their collective labour dispute by labour arbitration;¹³
- The document adopted on the meeting where the strike was declared did not contain the date of the conference, the signature of the responsible person who compiled and filled this list;¹⁴
- The reason for strike was not linked with the collective labour dispute: in one case workers went on strike to oppose the appointment of a specific person as the director¹⁵, in another – to make the employer pay the salary arrears.¹⁶

This overview illustrates a very important finding: Russian courts do not assess the seriousness of procedural violations, perceiving even minor ones as in the case of making a decision on strike one day before the permitted time was about to start. This approach of the court is comprehensible as the norms of Labour Code stipulate that strike organized with violations should be declared illegal and it reflects the dominant attitude of authorities on this point.

Another problem arising in the realization of the right to strike is the dominance of traditional trade-unions which take roots in the soviet era which are now united under the Federation of Independent Trade Unions (FNPR). This Federation supported the draft of the Labour Code passed in 2001, which largely deprived the alternative trade unions of legal protection, bargaining rights and the right to strike.¹⁷ The trade-unions of this Federation are traditionally supported by the employers and the authorities, their loyalty also expresses, as a rule, in non-resorting to strike actions. This concept of somehow “cut” legal capacity of traditional unions contributed, as some scholars note, to their transformation into a resource of the administration, which uses it for effective personnel management.¹⁸

Western researchers point that the dominance of such trade unions (they unite about 23 mln workers¹⁹) is due to the soviet legacy which determine the degree of unevenness in the playing field and the size of the gap that competing unions must close in order to overtake legacy unions.²⁰ It should be also noted that the dominant position might be

¹² Decision of Novosibirsk Regional Court, October 5, 2015. Case No. 3-139/ 2015.

¹³ Decision of Khabarovsk Regional Court, May 24, 2012 in case No. 3-75 / 2012

¹⁴ Decision of Irkutsk Regional Court, 15 November 2011

¹⁵ Decision of Perm Regional Court, October 19, 2011, case №3-178-2011.

¹⁶ Decision of Krasnoyarsk Regional Court, May 4, 2011.

¹⁷ Clarke S., Pringle T. *Labour activism and the reform of trade unions in Russia, China and Vietnam*. In *NGPA Labour Workshop*. Vol. 10. 2007.

¹⁸ Kozina I. The labour movement in Russia: the anatomy of strikes. In *Journal of Social Policy Studies*, 2009, 7/4.

¹⁹ Resolution of the Executive Committee of the FNPR of 05.04.2011, № 2-11, <http://www.fnpr.ru/n/2/15/187/6378.html> (accessed 20.04.2018)

²⁰ Caraway TL., *Pathways Of Dominance And Displacement: The Varying Fates of Legacy Unions*

also explained by the fact that numerous institutions, which belonged to trade unions in the Soviet era were transmitted to them. This property included not only offices but also print houses, banks, cultural institutions, resorts, and hotels, with an estimated value of \$6 billion and annual income of \$300 million a year²¹. The FNPR's comparatively favorable political alliances contributed to its ability to retain many of its assets²².

1.2 Reflections on the statistics of strikes and relevant case law

In the following table I've gathered information on the quantity of official strikes provided by the Rosstat, the information of the stop-actions organized by workers gathered by the NGO "Centre for social and labour rights" and the judicial statistics of applications for the declaration of strike as illegal brought by employers in Russian courts in the recent years.

Year	Official statistics on strikes ¹	Non-official data of stop-actions ²	Applications for the declaration of strike as illegal brought before the courts. ³ Number of dismissed applications/ number of satisfied
2005	2575	-	-
2010	-----	88	10/24
2012	6	95	8/19
2014	2	97	0/10
2015	5	168	-
2016	3	158	-

¹ Russia in Numbers. 2017: Rosstat. Moscow, 2017, P76.

² Bizyukov P., Analytical report on the results of monitoring of labour protests of the Center for social and labour rights. <http://trudprava.ru/expert/analytics/protestanalyt/2015> (accessed 20.04.2019).

³ Cited from Gerasimova E. Collective labour disputes, strikes and protests in Russia: the impact of legislation and law enforcement practice on their prevalence and application. In *Journal of Russian Law*, 2016, 9, p. 237.

These data demonstrates the reference to the strike as an almost "mission impossible" for the trade union was not an exaggeration. It also illustrates great tension between the labour and the capital which takes illegal form of protests as the legal way remains closed for a number of reasons discussed above.

Another and perhaps the most important conclusion is the negative attitude of the authorities to the realization of the right to strike. Russian scholars are used to cite in this context the words of Vladimir Putin once said: "Those who will sit on rails will sit"²³. In Russian the verb "sit" is also used to describe imprisonment.

in New Democracies. In World Politics, 2012, Vol. 64, No. 2, pp. 278-305.

²¹ Ibid, 282

²² Ibid, 299t

²³ Kosina I., Workers protest. <https://iq.hse.ru/news/177676301.html>. Accessed 20 April 2019.

The words “In the Urals, there were police training to suppress the strike of workers who according to legend were not paid salaries for several months” were heard in the live broadcast news. In my opinion these news report is a sign of a new era in the state’s hostility to strikes. A number of other facts may be referred to support this argument: The recent dissolution of the Interregional Trade Union Workers’ Association (ITUWA) for their alleged involvement in political activities and international work.²⁴ The point was that the trade union were considered by the prosecutor to be a “foreign agent” as it received some financial support from abroad and lead political activities. It should be noted that it is one of the most potent “alternatives” unions in Russia organized by the famous for its strikes trade union of the Ford Motor Company in Vsevolozhsk.

The Court in Saint Petersburg satisfied the application of the prosecutor and considered as political activities the following:

- the publications posted on the website of the MPRA and in the social network Vkontakte in support of protests of truck drivers
- materials published in support of the campaign to amend the provisions of Russian Labour Code regulating indexation of wages
- critical publications about the public policy on import substitution, launched as a response to the sanctions.²⁵

Even though the Russian Supreme Court overruled this decision and considered that the dissolution was a disproportionate sanction for the revealed violations²⁶ this case is very alarming. Other examples of the same kind include the criminal persecution of trade union leaders, the declaration as extremist materials and the prohibition of the use of trade unions’ leaflets with the slogans “Against precarious employment”, “Let those who created the crisis pay for it”, and the address” Comrades workers!”²⁷

Considering these provisions and the relevant case law four main problems can be summed up:

1. The strike is possible only in case of passing all the stages of collective dispute resolution. According to the experts’ calculations, the duration of all mandatory preliminary procedures is at least 42 days.²⁸
2. The vague formulation of the quorum requirements
3. Any procedural violation leads to the finding of illegality of such a strike.
4. Legal strike is an almost “mission impossible” for the trade union.
5. Negative attitude of the authorities to the realization of the right to strike.

²⁴ See, for example, <http://www.industrial-union.org/international-and-russian-trade-union-movement-opposes-the-dissolution-of-ituwa>. Accessed 20 April 2019.

²⁵ Liquidation of the trade union MPRA - legal conclusion of the Centre for social and labour rights. <http://trudprava.ru/expert/analytics/unionanalyt/1986>. Accessed 20 April 2019.

²⁶ Decision of the Supreme Court of the Russian Federation of May 22, 2018, case No. 78-APG18-8.

²⁷ Lyutov N., The effectiveness of international labour law. Monograph. Prospect, Moscow, 2013, pp. 199-200.

²⁸ Kozina I., The labour movement in Russia: the anatomy of strikes. *Journal of Social Policy Studies*, 2009, 7/4.

2. Belarusian provisions on the right to strike and their implementation

In Belarus, the right to strike is enshrined in the Constitution and the Labour Code. Article 41 of the Constitution of the Republic of Belarus sets out the right to protect one's economic and social interests, to join trade unions, including the rights to conclude collective agreements and go on strike. However, it is rather difficult for employees to exercise the right to strike and after the collapse of the USSR, there has been no legitimate strikes in the independent Republic of Belarus.

The largest trade union organization is the Federation of Trade Unions of Belarus, which unites 96.5% of the economically active population of the country (more than 4 million people), in the current period does not actually use strikes to resolve disputes. Also in Belarus there are trade unions that are not part of the Federation of Trade Unions of Belarus. They are called independent trade unions. The Association of Trade Unions "Belarusian Congress of Democratic Trade Unions" operates in Belarus, and unites four independent trade unions.

Up until today, only independent trade unions have attempted to strike. There is no systematic information about the number of strikes and their results in the publicly available media.

2.1. The definition and the procedure for calling a strike

The legislation of Belarus establishes a strict procedure for organization and conduction of a strike. As in Russia, the strike is recognized as a means to resolve collective labour disputes. This arises from the definition of a strike, enshrined in Art. 388 of the Labour Code of Belarus. Accordingly, the launching of strikes for public purposes (strikes of solidarity, strikes for the recognition of professional unions, etc.) is prohibited. In Russia, workers may resort to a preventive strike. But in Belarus, such a strike is not possible. The law may impose restrictions on the enjoyment of the right to strike to an extent necessary for maintenance national security, public order, public health, the rights and freedoms of others. For example, the prohibition to participate in a strike is set for civil servants; civil aviation personnel providing air traffic and flight control; employees working in the sphere of public transportation and performing passengers transfer on regular basis; military personnel; workers who serve in the bodies and units for emergency situations.

In Belarus, unlike Russia, strike must be held no later than within three months after failure to settle collective labour dispute in the conciliation commission, with the participation of a intermediary or in labour arbitration. A strike can be held only after all conciliation procedures to resolve a collective labour dispute has been exerted.

First of all, if disagreements arise between the parties to collective labour relations, then the requirements of the employer are stated at a meeting or a conference of employees. These requirements are sent in writing to the employer. The employer must consider the demands of the workers and, no later than within ten days upon receiving, notify in writing the representative body of the employees about the decision.

If the employer refuses to satisfy all or part of the workers' demands or fails to notify

about his decision, a conciliation commission is formed. Appeal to the conciliation commission is a mandatory stage of consideration of a collective labour dispute. Further, the parties have the right to resolve a collective labour dispute with the participation of an intermediary or in arbitration, but these stages is not mandatory.

Accordingly, a strike can be held only after the failure to reach agreement between the parties to a collective labour dispute in the conciliation commission, as well as the failure to reach an agreement with the participation of a mediator or in labour arbitration, in case the parties agreed to resort to the last two methods.

To declare the strike the trade union has to come through the following procedure.

A. The decision making

The decision to hold a strike can be taken at a meeting or conference of workers. If in Russia the decision to gather a strike can be made by a meeting of employees of a separate structural unit, in Belarus the decision is made only by employees of the entire organization. In the Labour Code of Belarus it is established that the meeting is considered valid if more than half of the employees are present. The conference is considered valid if at least two thirds of the delegates are present.

Belarus has the highest decision-making threshold among the member states of The Eurasian Economic Union. The decision is considered adopted if at least two thirds of the present employees (conference delegates) voted for it.

B. Notice to the employer

The representative body of workers is obliged to notify the employer in writing about the decision to go on strike. It should be noted that the trade union is the only representative body of workers in Belarus. Notification must be made no later than two weeks before the strike. Belarus has a longer notification period for the start of a strike; in Russia and Kazakhstan, this period is 5 working days. For a strike declared by a trade union or trade union association, Russian legislation has a notification period of 7 working days. The content of the strike notice in Belarus is the same as in Russia. The difference is that the strike notice must specify the duration of the strike.

C. Determining the minimum required work

The Labour Code of Belarus establishes that the minimum required work is determined in a collective agreement. However, most collective agreements do not contain these norms. Therefore, the minimum required work is determined by agreement of the parties to a collective labour dispute within five days from the date of the decision to hold a strike. If the parties are unable to reach an agreement, then the local executive and administrative body establishes the minimum required work before the strike.

D. Striking

Parties to a collective labour dispute are required to take the necessary measures to ensure the rule of law in the organization during the strike, the preservation of state and private property, public order, and the fulfillment of the minimum required work.

During the strike, the parties are obliged to continue resolving the collective labour dispute through negotiation.

E. Recognition of the strike as illegal

A strike or a decision to hold it can be declared illegal by a decision of the regional (Minsk City) court, if the strike is carried out or the decision to hold it was made in violation of the requirements of the Labour Code of Belarus and other laws. Belarus has set deadlines for the submission by the employer of an application to declare strikes or decisions to hold it illegal.

A court decision recognizing a strike as illegal, which has entered into legal force, is subject to immediate implementation. Employees must stop the strike and start to work. In 2017, employees of one of the industrial enterprises attempted to hold a strike.²⁹ An independent trade union, acting in this organization on equal rights as the official trade union, tried to strike. The union put forward the requirement to establish a decent wage, and equally applies to workers, regardless of whether they are in a free trade union or not. The strike was supposed to last from November 1 to December 31. The company's executives appealed to the regional court, which declared the strike illegal. The court came up with a number of reasons for declaring the strike illegal:

- the lack of documents on the holding of a conference of workers at which the decision about the strike was made and the absence of a list of members of the independent trade union. The workers' representatives explained that workers who are members of an independent trade union do not disclose their membership because they are afraid to be dismissed;
- the notice of the strike does not contain the information about the estimated number of workers who will take part in the strikes; the minimum required work is not defined.³⁰

Postponement and suspension of a strike

A strike that has not been started may be postponed, and a strike that has been launched may be suspended. In Russia, the court is entitled to postpone or suspend a strike, in exceptional cases such a decision can be made by the Government, but only until the matter is resolved by the relevant court, in Kazakhstan for instance such a right is given to the court or the prosecutor. In Belarus, only the President of the Republic of Belarus has this right.

There are various grounds to postpone or suspend a strike. In Belarus, they include: the creation of a real threat to national security, public order, public health, the rights and freedoms of others, as well as other cases stipulated in the law. Such cases are enshrined in detail in the Law of the Republic of Belarus of January 13, 2003 "On Martial Law" and in the Law of the Republic of Belarus of June 24, 2002 "On State of Emergency". The threat to national security, public order, public health, the rights and freedoms of others should be real, and some lawyers point out that the threat does not necessarily

²⁹ Strikes on the "Polotsk-Fiberglass" will not: the court has prohibited it. <https://finance.tut.by/news567058.html>. Accessed 9 Febr. 2019.

³⁰ Strike Notice. Available at <http://spbpolack.ru/archives/7359>. Accessed 9 Febr. 2019.

have to be caused by the strike itself. It may be caused by some other circumstances.³¹ In Russia, the basis for the postponement and suspension of a strike is the cause of an immediate threat to the life and health of people.

There are certain uncertainties around the issue of a threat to public order. In general terms, public order is understood as a certain pattern of relations among people, their behavior in society, actions, way of behavior in public places, and are characterized by the observance of public morality.³² The threat to public order, the rights and freedoms of others may be interpreted very broadly. Also in Belarus, the periods of postponement and suspension of strikes are long. In Belarus - 3 months, in Russia - 15 days, in Kazakhstan - until the court decides on the case of declares a strike illegal.

2.2 Spontaneous workers protest

Sometimes in Belarusian organizations spontaneous strikes happen- when people massively refuse to start to work. Protest actions are mainly connected with non-payment of wages or with its extremely small amount.³³ As a rule, such situations are resolved quickly through negotiations.³⁴ From a legal point of view, such protests are not considered as strikes, because they do not meet all the requirements stipulated by the law. Due to the lack of publicly available information about such protests, it is extremely difficult to estimate the real number of them.

Summing up the provisions on the right to strike in Belarus the following main problems are revealed:

1) Tough strike-launching procedure.

– a strike can be held no later than within three months after the failure of the parties to reach an agreement to a collective labour dispute in the conciliation commission, with the participation of a mediator or in labour arbitration.

The Labour Code of Belarus has set deadlines for carrying out the necessary actions before the strike (setting up a conciliation commission, making a decision by the conciliation commission, notification of a strike, etc.). Based on this, a strike can be started no earlier than 4-5 weeks from the day the collective labour dispute arose.

– The decision to go on strike can be made at a meeting or conference of the employees of the organization.

– The trade union is obliged to notify the employer in writing of the decision to hold

³¹ Comment to the Labour Code of the Republic of Belarus In 2 volumes. Volume 2. A.V. Baranashnik, E.A. Volk. L.I. Lipen and others; the general ed. L.I. Lipen. Minsk: Amalfea, 2014, pp. 698–699.

³² Kramnik A.N. Disorderly conduct as an administrative offense // Justice of Belarus. 2006. № 10, P. 39–43.

³³ In Belarus, workers began a strike because of a salary of \$ 35 per month. https://udf.by/news/main_news/178597-v-belarusi-rabochie-nachali-zabastovku-iz-za-zarplaty-35-za-mesyac.html. Accessed 9 Febr. 2019.

³⁴ Tractor drivers staged a strike in Slonim district. <http://belsat.eu/ru/in-focus/v-slonimskom-rajone-traktoristy-ustroili-zabastovku/>. Accessed 9 Febr. 2019.

a strike at least two weeks before its start. This notification, in contrast with the ILO requirements should contain the duration and the estimated number of participants.

2) The official trade unions are unwilling to resort to strikes.

This is due to several reasons:

– Official trade unions closely cooperate with the government (for example, the Chairman of the Federation of Trade Unions of Belarus was a member of the upper chamber of the Parliament of the Republic of Belarus). The government has a negative attitude to strikes.

– Often the leaders of trade union are at the same time employees of the organization and can easily lose their main job if the employer is dissatisfied with their actions.

3) There is an unfairly wide range of opportunities to restrict the right to strike. Restrictions on the right to strike can be made not only by the Labour Code of the Republic of Belarus, but also by other laws.

4) Any formal violations of the lawful requirements to hold a strike result in the declaration of its illegality.

3. Any light in the end of tunnel?

The right to strike is a human right, guaranteed in a number of international instruments. We will consider if this right can indeed be protected in Russia and Belarus through bringing claims to international human rights bodies and through the help of ILO.

3.1. International law and Russian labour law

Russia as a member of UNO, ILO and the Council of Europe has ratified the main international instruments protecting the right to strike: International Covenant on Economic, Social and Cultural Rights (ICESCR), ILO Conventions No 87 and 98, European Convention on Human Rights and finally European Social Charter, which, in contrast with the latter three conventions directly fixes the right to strike.

The main points of international bodies' concern have been already referred to in this paper. The complexity of procedure for strike was the object of criticism and the amendments to the Labour Code in 2006 and 2011 were partly in line with the conclusions of the Committee on Freedom of Association of the International Labour Organization (Cases No. 2216 and 2251).³⁵ Russian legislation prohibiting a strike for a very broad list of professions and occupations was summarily criticized by a number of international bodies because of the need to protect the public interest.³⁶ However up

³⁵ Gerasimova E., The resolution of collective labour disputes and the realization of the right to strike in Russia. In *Labour Law in Russia: Recent Developments and New Challenges*, Radevich E., Lebedev V. (ed). Cambridge Scholars publishing, 2014, pp. 260-261.

³⁶ European Court of Human Rights, Ognevenko v. Russia (44873/09) 20.11.2018; Observation (CEACR) - adopted 2016, published 106th ILC session (2017) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - Russian Federation (Ratification: 1956), Concluding observations of the Committee on Economic, Social and Cultural Rights on the sixth periodic report of the Russian Federation E/C.12/RUS/CO/6, 16.10.2017; Concluding

until now nothing has changed. We suppose that the efficiency of international impact depends among other things also on the level of publicity granted to a particular case. Even though the States are encouraged to promote the provisions of the ICESCR and publish the concluding observations delivered by the relevant Committee³⁷, it is almost impossible to find in Russian media any information about the results of the report's consideration. The situation is different with individual cases by the ECtHR which attain immediately the broad public interest both in Russia and abroad. This publicity might be very helpful at least for the individual's rights protection.³⁸ In this context the recent ECtHR's case *Ognevenko v. Russia* is of much interest. Mr Ognevenko was a train driver for Russian Railways. In April 2008 the union to which he belonged decided to call a strike after the failure of wage and bonus negotiations and Mr Ognevenko took part in it. He refused to take up his duties on the day of the strike and was dismissed for the second breach of disciplinary rules (the first one was committed in 2007) as the strike for railway staff was prohibited by the Federal Law of 10 January 2003 no. 17-FZ "On Railway Transport in Russia". The ECtHR has considered the provisions of Russian law, relevant international law, and the jurisprudence of human rights bodies and found out that the Russian norms in question do not correspond to international standards. The Court was reluctant to find that railway is an essential service and referred to ILO and ECSR's conclusions in this respect. The Court pointed out that the Government had not substantiated its argument that the action had caused damage. The Russian authorities, in the view of the Court, did not provide information on the reasons for this prohibition of strikes, on the possible alternatives to a strike for these workers, or any safeguards. The applicant's dismissal had a "chilling effect" on trade union members taking part in industrial actions. These findings led the ECtHR to the conclusion that the dismissal constituted a disproportionate restriction of the applicant's right to freedom of association and violated Article 11 of the European Convention of Human Rights.

Thus the ECtHR did not conclude directly that the ban on strike for railway staff was disproportionate but has provided a number of solid arguments for such a conclusion. Hopefully, this judgment will make the Government at least (and at last) adopt the list of professions of the railway staff to whom the prohibition of a strike will be addressed. We can hardly expect that the ban will be repealed. It is not surprising that the ECtHR did not require legislative changes as a general measure. According to the new norms of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation"

observations of the Committee on Economic, Social and Cultural Rights Russian Federation E/C.12/RUS/CO/5 1 June 2011.

³⁷ See, for example, Concluding observations of the Committee on Economic, Social and Cultural Rights on the sixth periodic report of the Russian Federation E/C.12/RUS/CO/6, 16.10.2017.

³⁸ As an example we can refer to the case of Svetlana Medvedeva, who was denied employment because the job she applied for was in the list of occupations prohibited for women. These provisions were criticized by International bodies (see CESCR, Concluding observations E/C.12/RUS/CO/5, 01 June 2011), but were not repealed. After the consideration of the individual case by the UN Committee on the Elimination of All Forms of Discrimination against Women (Opinion of the UN CEDW № 60/2013, 21 March 2016) the Government has at least expressed its readiness to review the norms in question, though nothing has been done yet.

adopted in 2015, this court has now jurisdiction to decide if it is possible to execute a judgment of ECtHR in light of the provisions of the Russian Constitution. In 2007 the Russian Constitutional Court considered the constitutionality of the provisions banning the right to strike for railway staff and it did not find any contradiction, as the ban was found to be justified by the need to protect the rights of others.³⁹ Therefore there might be a risk that the ECtHR's judgment in *Ognevenko* would be found not in line with the Constitution and not executed in Russia.

3.2. International law and Belarusian labour law

The Committee of Experts on the Application of Convention and Recommendations of the ILO had repeatedly requested the Government of the Republic of Belarus to take measures to amend some sections of the Labour Code of Belarus which regard to the exercise of the right to strike⁴⁰.

1. It is necessary to amend the Part 3, Article 388 (about restrictions on the exercise of the right to strike) and Article 393 of the Labour Code of Belarus (about reasons for postponing and suspending a strike), so as no legislative limitations can be imposed on the peaceful exercise of the right to strike observing the rights and freedoms of other persons (except for cases of deep national crisis, or for public servants exercising authority in the name of the state, or in case of putting a threat to the provision of essential services in the strict sense of the term, i.e. only those, the interruption of which, would put the life of people in danger, or threaten personal safety and health of the whole or part of the nation).

2. It is necessary to repeal the requirement of the notification of strike duration (Article 390 of the Labour Code of Belarus).

3. It is necessary to ensure that the final determination concerning the minimum amount of work to be done in the event of disputes between the parties is made by an independent body and to further ensure that minimum work is not required to be done by all departments of the organization but only by those whose work is viewed upon as essential services, or public services of fundamental importance (special attention should be attached to situations in which strikes of a certain magnitude and duration could cause an acute crisis threatening the normal conditions of existence of the people, or when a strike can cause damage to safe operation of necessary facilities (Article 392 of the Labour Code of Belarus)).

³⁹ Ruling of the Constitutional Court of the Russian Federation dated February 8, 2007 No 275-OO.

⁴⁰ Report of the Committee of Experts on the Application of Conventions and Recommendations. Report III (Part 1A) / International Labour Conference, 102nd Session, 2013. https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_205472.pdf. Accessed 9 Febr. 2019; Report of the Committee of Experts on the Application of Conventions and Recommendations. Report III (Part 1A) / International Labour Conference, 106th Session, 2017. [https://www.ilo.org/public/libdoc/ilo/P/09661/09661\(2017-106-1A\).pdf](https://www.ilo.org/public/libdoc/ilo/P/09661/09661(2017-106-1A).pdf). Accessed 9 Febr. 2019.

However, the indicated norms were not changed. It should be noted that sometimes the government of Belarus listens to the opinion of international organizations. For example, in 2015, the rules for creating trade unions were simplified just before the 104th Session of the International Labour Conference.

According to the opinion of UN Human Rights Committee, Belarus should revise relevant laws, regulations and practices so as to repeal the undue limitations on the right to strike⁴¹.

International organizations can influence the state to enforce international standards. One of such methods of influence is the easing or lifting of economic and political sanctions imposed on a certain state.

In December 2006 the EU warned that it would have to rule out Belarus' trade preferences under the EU's Generalised System of Preferences (GSP) if Belarus did not comply with its ILO obligations relating to freedom of employees' associations. On 15 June 2007, the ILO made its assessment and stated that Belarus had not undertaken any actions to ensure the protection of certain key labour rights related to freedom of associations in Belarus. Belarus' GSP trade preferences have been therefore ruled out from 21 June 2007.⁴²

Earlier, the EU refused to back Belarus' candidacy for membership to the Council of Europe and until today, Belarus has not yet been accepted as a full member.

Certainly, sanctions against Belarus have a negative impact on the national economy. However, the Republic of Belarus is not always very actively responding to such measures, since it enjoys the support of a strong union state – Russian Federation.

4. Conclusions

The persistence of practices restricting the right to strike cannot be challenged only and mostly by the measures taken by the international bodies or international society. The Belarusian experience demonstrated that even economic sanctions cannot be considered as an appropriate tool for such challenges.

There is a lot in common between Russia and Belarus: the lack of the spirit of solidarity among workers, the unwillingness of the state to narrow the borders of its interest and leave more space for the protection of the collective rights of workers and the general perception of these factors as normal by the society in general.

The right to strike may be fully realized in case, if the society will realize the importance of collective rights.

⁴¹ Concluding observations on the fifth periodic report of Belarus. CCPR/C/BLR/CO/5. Adopted by the Committee at its 124th session (8 October–2 November 2018). P. 12. <https://undocs.org/CCPR/C/BLR/CO/5>. Accessed 9 Febr. 2019.

⁴² EU will withdraw GSP trade preferences from Belarus over workers' rights violations / European Commission. http://europa.eu/rapid/press-release_IP-07-844_en.htm. Accessed 9 Febr. 2019.

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