

Belarus Human Rights Index

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2019

Right to work

Score: 5.2

Including scores by component:

- Freely chosen work without any kind of compulsion – 5.3
- Equal access to work for all – 5.1
- Fair and favourable conditions of work – 6.0
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The right to work is enshrined in Article 41 of the Constitution of the Republic of Belarus, which guarantees citizens "the right to work as the most worthy means of self-assertion, that is, the right to choose a profession, type of occupation and work in accordance with one's vocation, abilities, education and vocational training and with due regard for public needs, as well as the right to healthy and safe working conditions."¹ In 2019, Law No. 219-Z "On Amendments to Laws" was adopted – entering into force in early 2020 – under which more than 200 articles of the Labour Code will be amended. The most significant changes from a human rights perspective are: the inclusion of Chapter 25¹ on remote work; and amendments relating to gender and non-discrimination. Article 1 of the Labour Code is to be amended to include a detailed definition of "sole parent" in place of "sole mother".² There are plans to introduce a new Chapter 18-1 on the specific features of work for contract workers; workers will be treated equally in terms of financial liability; contract workers will not be liable for fines imposed on the organisation.³

- **Freely chosen work without any kind of compulsion**

¹ Constitution of the Republic of Belarus, Article 41

² Changes to the Labour Code for parents and guardians. Commentary by an expert, <https://1prof.by/news/obshhestvo-i-profsoyuzy/izmeneniya-v-trudovom-kodekse-dlya-roditelej-i-opekunov-kommentiruet-ekspert/>

³ For further details, see Revera, Overview of key changes to the Labour Code of the Republic of Belarus, <https://revera.by/info-centr/news-and-analytical-materials/510-obzor-klyuchevyx-izmenenij-v-trudovoj-kodeks-r epubliki-belarus/> ; <https://finance.tut.by/news670244.html>



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The right to free choice of employment is enshrined in legislation and is, in general terms, upheld in practice. At the same time, choice of profession is constrained. In the assessment of experts, people choose work where wages are higher or where it is easier to study and subsequently find employment – not the work that genuinely reflects their calling. A list of professions prohibited to women exists, which is incompatible with free choice of employment. The state operates a system of mandatory graduate placement for state-funded university graduates, with a two-year work obligation upon completion of studies. Graduates who decline to fulfil their placement obligation are required to reimburse the cost of their education to the state budget. Free higher education in the Belarusian sense is thus, in effect, a deferred loan or payment in kind. Short-term contracts are widespread.

Forced labour is formally prohibited under Article 41 of the Constitution and Article 13 of the Labour Code, yet in practice it continues to be used. At the international level, forced labour is recognised as a modern form of slavery⁴ and human trafficking; however, no such concept exists in Belarusian legislation. The Soviet-era practice of mobilising and deploying unpaid labour for the purposes of economic development remains widespread in the country. As a rule, those used in this way are persons who are in some degree of dependent position – school pupils, students at vocational colleges, university students, prisoners, military personnel, persons undergoing compulsory treatment in compulsory rehabilitation centres, and persons whose children are in state care.⁵

In the assessment of experts, the state understands labour not as a human right but as an obligation. The state views the individual as a resource from which value can be extracted.

In 2015, Presidential Decree No. 3 of 2 April 2015 ‘On the Prevention of Social Dependency⁶’ was issued, under which able-bodied citizens who had not worked for 183 working days were required to pay a levy to the state. In 2018, the decree was repealed and replaced by Decree No. 1 of 25 January 2018 ‘On Amending the Decree of the President of the Republic of Belarus’. Decree No. 1 abolished the obligation on ‘social parasites’ to pay the tax, but did not abolish payments altogether: from 1 January 2019, all able-bodied citizens not in official employment are required to pay for utilities and other public services at different rates (100%) from those applicable to persons who are working or engaged in other activities recognised by the government. Under this decree, local executive and

⁴ Report of the UN Special Rapporteur on modern forms of slavery, including its causes and consequences, 2013:

https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/_layouts/15/WopiFrame.aspx?sourcedoc=/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-43_ru.pdf&action=default&DefaultItemOpen=1

⁵ Deikalo E.A. ‘Belarus: Human Rights and Business (A Guide for Business, the State and Civil Society)’, 2019, p. 88: <http://www.biz.belhelcom.org>; Summary of submissions on Belarus by stakeholders, Report of the Office of the UN High Commissioner for Human Rights, 27 February 2020, paras. 86–87

⁶ Decree of the President of the Republic of Belarus No. 3 of 2 April 2015 “On the Promotion of Employment” (as amended by Decree of the President of the Republic of Belarus No. 1 of 25 January 2018), https://pervadmin.gov.by/docs/dekret_3/dekret_3.pdf



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administrative bodies assist citizens in finding employment, organise training, arrange temporary employment, provide advisory and legal assistance, and organise training in the legal and financial fundamentals of entrepreneurial activity. Decree No. 1 also establishes a database of all able-bodied citizens not engaged in the economy, in which the provision, collection, processing, storage and use of personal data may be carried out without their consent. The decree introduced the concept of a "citizen leading an antisocial way of life" and conferred on commissions – to be established pursuant to the decree – the power to decide on the referral of such citizens to compulsory rehabilitation centres. Work in compulsory rehabilitation centres constitutes forced labour.

The Law on the Rights of the Child of the Republic of Belarus of 1993 (Article 9) formally prohibits all forms of child exploitation. Article 10 of the International Covenant on Economic, Social and Cultural Rights and Article 32 of the Convention on the Rights of the Child impose on Belarus an obligation to take all measures to prevent the economic exploitation of children. In practice, however, school pupils are engaged – in some cases without remuneration – in agricultural work. Although this activity falls within the list of work to which children aged 14 to 16 may be assigned, instances of abuse of authority by school administrations are frequent, as are violations of labour and education legislation: such engagement takes place during the school day, is unpaid, children under 14 are in some cases involved, safety requirements are not always observed, and there is no element of voluntariness – children are directed to agricultural enterprises by their schools in a manner that is effectively compulsory while nominally voluntary. By virtue of their participation in the educational process, children are in a position of dependence on the school and its administration.

In 2019, a trend of unjustified dismissals was observed at both state and private enterprises, alongside a refusal to engage with independent trade unions. Politically motivated dismissals were also practised.

As of 2019, no legislative or other effective measures had been adopted to ensure that workers are free from physical and psychological harassment, including sexual harassment. The concepts of "workplace bullying", "sexual harassment" and "physical and psychological harassment" are absent from legislation. Employers retain complete freedom of action with respect to employees; women are particularly vulnerable to such harassment. It is effectively impossible to prove the fact of such conduct, as there is no legal norm addressing it, and victims frequently remain silent given the ineffectiveness of the human rights protection system and the courts. In the assessment of experts, state-controlled trade unions do not engage with such cases.

- **Equal access to work for all**

The labour market is not open to everyone, notwithstanding the prohibition on discrimination in employment relations (Article 14 of the Labour Code). As of 2018, 85% of Belarusians reported encountering discrimination in employment relations (89.6% of women and 80.4% of men); women more frequently face discrimination in connection with their role as wife and mother, men in



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connection with age.⁷ There is no comprehensive anti-discrimination legislation. Due to its absence, there are no effective legal remedies against discrimination. The concepts of direct and indirect discrimination and multiple discrimination are not defined in law, while in practice cases of indirect discrimination in particular are widespread.

The level of legal culture is low; social tolerance of difference is limited; people live by stereotypes, resulting in the discrimination of vulnerable groups. The state operates with a standardised understanding of vulnerable population groups; state bodies lack an understanding that such groups are numerous and shift over time as new vulnerabilities or combinations of vulnerabilities are identified.

Despite the state formally adopting and implementing national policies aimed at promoting equality of opportunity and treatment in employment and eliminating all discrimination – such as the gender action plan and legislation on persons with disabilities – discrimination in practice is pervasive.

A list of professions prohibited to women exists. A *de facto* gender pay gap persists.

Persons with disabilities face barriers to access to training and, consequently, to entry into particular professions, depending on their disability classification. The state incentivises enterprises that specifically employ persons with disabilities. Formally, the state declares that it promotes the employment of persons with disabilities and takes various measures to this end; in practice, however, it is the employer – not the state – who decides whether to hire a person with a disability. In 2019, a draft Law "On the Rights of Persons with Disabilities and their Social Integration" was submitted to Parliament⁸. Despite the formally large number of positive support measures in the employment sphere for such persons, no more than a third of able-bodied individuals with a "mild" degree of disability are in employment. The measures taken are primarily group-based and institutional in character rather than personalised or inclusive.⁹ Persons with disabilities face discrimination and restrictions when seeking permanent employment¹⁰. The state fails to implement effectively measures ensuring physical accessibility and alternative and flexible working conditions for employed persons with disabilities. An accessible, barrier-free environment is almost entirely absent in the capital and regional centres; in the regions, the situation is, by all accounts, considerably worse.

⁷ On the situation regarding gender discrimination in the labour market and in recruitment in 2018, gender perspectives, <https://www.genderperspectives.by/novosti/527-rezultaty-sotsiologicheskogo-issledovaniya-situatsii-v-sfere-gendernoj-diskriminatsii>

⁸ <https://pravo.by/document/?guid=3941&p0=2019087021>

⁹ Alternative report by the National Human Rights Coalition on the implementation by the Republic of Belarus of the 1966 International Covenant on Civil and Political Rights (submitted to the 124th session of the UN Human Rights Committee, May 2018), paras. 25–31: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BLR/INT_CCPR_CSS_BLR_31288_R.pdf

¹⁰ <https://imenamag.by/posts/rabota-v-krizis>



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Persons of pre-retirement age, older persons and young specialists are subject to age-based discrimination in employment. Employers tend to favour younger specialists over older ones; conversely, younger specialists find it more difficult to secure employment owing to a lack of experience. The 2016 pension reform and its consequences for the population continue to affect access to labour pensions, pension payments and related benefits – and their absence – with the result that many are left awaiting a social pension¹¹.

- **Fair and favourable conditions of work**

Belarusian legislation establishes fairly stringent requirements and standards relating to occupational safety; in practice, however, workplace safety is a problematic area in which employees' rights to safe working conditions and access to effective legal remedies are not observed. An occupational safety system exists, and employers are required to brief employees on safety upon hiring. The system is, however, largely formal: what matters to the state and to employers is that "everything looks right on paper" rather than workers' genuine command of occupational safety skills. In April 2019, a session of the Presidium of the Council of Ministers was held on the state of workplace accidents with serious consequences and on ensuring fire and industrial safety in organisations. The Ministry of Labour prepared additional measures to ensure safe working conditions.¹²

A significant problem is the near-total dysfunction of the mechanism for access to effective legal remedies for the families of workers killed in workplace accidents. In the assessment of experts, enterprises seek to avoid the payments required by law. It is common practice for employers, when a worker sustains a minor injury, to pressure that worker into describing it as a domestic accident, or to deprive them of their bonus for non-compliance with occupational safety requirements. Even where a court judgment has been obtained, recovering the sums due from enterprises proves extremely difficult. As a result, the relatives of those killed either receive payments substantially below the statutory amount, receive nothing at all, or are offered payment in negligible installments over an extended period.¹³ In 2018, compared to 2017, the number of workers who died in workplace accidents rose by 19. In 2019, the number of fatalities remained unchanged from 2018 – 95 deaths over the course of the year.¹⁴

¹¹ For further details, see the BHC study, 'Who risks losing their pension by falling into the insurance record trap?', <https://www.pensii.belhelcom.org/#spisok>

¹² Council of Ministers of the Republic of Belarus: <http://www.government.by/ru/content/8759>

¹³ Deikalo E.A. 'Belarus: Human Rights and Business (A Guide for Business, the State and Civil Society)', 2019, p. 82: <https://biz.belhelcom.org/>

¹⁴ Statistics on workplace injuries, Belstat, https://www.belstat.gov.by/upload-belstat/upload-belstat-excel/Oficial_statistika/Godovwe/travma_na_proizvod-2020.xlsx

Concerns remain regarding the provision of a safe and healthy working environment – in particular, access to safe drinking water, adequate sanitation that takes into account the specific hygiene needs of women, and materials and information conducive to proper hygiene standards.

In the assessment of experts, discrimination exists between women and men in terms of opportunities for career advancement. A gender pay gap persists across all sectors of the economy. The gap between men's and women's wages narrowed from 33% in 2015 to 24% in 2019, but continues to represent a significant social divide and an obstacle to women's access to equal pay for equal work.¹⁵

The following are regulated by law and applied without impediment: paid leave, sick leave, limits on the length of the working day and working week, and daily and weekly rest periods.

No measures have been developed to support the reconciliation of work and family responsibilities, including affordable daytime care services for children and dependent adults.

- **Fair remuneration**

Judging by poverty levels in Belarus, poverty is associated with unemployment and large family size rather than with inadequate wages. In the assessment of experts, Belarus is characterised by an imbalance between the time a person devotes to work and the time a person ought to have for themselves. State economic policy contributes to a situation in which the average worker is compelled to work considerably harder in order to secure a decent standard of living.

A statutory minimum wage is established by the state; employers may not pay below this legislatively fixed sum. It is reviewed regularly. At the same time, the minimum wage does not apply to civil contracts, which in some cases in practice substitute for employment contracts. A legislative act regulating the minimum wage has been adopted – the Law "On the Establishment and Procedure for Increasing the Minimum Wage". The minimum wage in 2019 was 330 roubles. In 2019, the increase amounted to 8.1%¹⁶ compared to 2018. According to experts, the minimum wage does not always provide a decent standard of living.

Despite wage scales being identical for men and women, women earn less in practice, as men are assigned greater volumes of work and accordingly receive higher supplementary payments. Women *de facto* have fewer opportunities for career advancement. Wages are differentiated according to length of service, classification and grade. Inequality in pay for the same work exists between the private and public sectors – for example, in the remuneration of nursery and school teachers. There is no genuinely transparent competition among employers for workers, nor are there effective trade unions at the local level.

¹⁵ Summary of information on Belarus submitted by stakeholders, Report of the Office of the UN High Commissioner for Human Rights, 27 February 2020, para. 94

¹⁶ <https://myfin.by/wiki/term/minimalnaya-zarabotnaya-plata>

- Employment promotion and protection against unemployment

Measures aimed at achieving full employment are being taken but are ineffective. There is no systemic labour market planning; for those wishing to retrain in a different profession, no meaningful choice of retraining options exists. Only one in six unemployed persons is registered with the employment services¹⁷.

National policy aimed at eliminating unemployment and underemployment and meeting labour force needs is developed by state bodies without the participation of interested groups; inclusiveness in this process is absent.

A compensation mechanism in cases of job loss has been developed and is applied with reasonable effectiveness, operating more effectively in the civil service. Retraining opportunities exist. In the event of job loss, three months' average earnings are paid. However, where job loss results from the expiry of a contract, such compensation is not paid; the same applies in cases of termination by mutual agreement.

Unemployment benefit formally exists, but is minimal – set at 2 base units. It is not linked to prior income and does not cover the minimum subsistence level; it is impossible to live on. Accessing it requires navigating numerous procedures. In the assessment of experts, only 0.5% of the able-bodied population are registered as unemployed within the system. In 2019, the state began discussion and initiated a programme under which employers would be required to make contributions of 1% of the wage bill to create a fund for subsequent redundancy payments. Employers are opposed to the introduction of this mechanism, taking the view that Belgosstrakh is in a position – given its resources from compulsory accident insurance – to redirect those resources towards combating unemployment and supporting those who have lost their jobs.

Employment assistance and support services exist and are operational. A labour exchange and job fairs are available. These are used, though the list of vacancies on offer is limited.

A sufficient number of functioning vocational and technical education institutions exists, though enrolment falls short of available places. Infrastructure for quality vocational and technical education is inadequate. Vocational and technical education is generally accessible; however, statistics show that pupils entering such institutions tend to have lower academic scores and are predominantly male. In effect, vocational and technical education is concentrated among particular social groups. Few graduates go on to pursue higher education. Vocational and technical education offers opportunities to acquire knowledge and skills that promote personal development, independence and employability – in some respects more effectively than higher education. Vocational and technical education does not, however, provide retraining for adults whose knowledge and skills have become obsolete as a result of changes in technology, the economy, employment or social relations.

¹⁷ Compilation of information on Belarus, Report of the Office of the UN High Commissioner for Human Rights, 27 February 2020, para. 73



The state does not take effective measures for labour market planning and forecasting. A human rights-based approach to labour market planning and forecasting is absent.

Formal mechanisms for state support for job creation have been developed, though in practice they are not always effective. In 2019, the state encouraged various hackathons and venture projects. An entrepreneurship support fund exists, where individuals may submit a business plan.

- **Protection mechanisms**

Administrative procedures and other mechanisms exist for addressing violations of the right to work – including unjustified dismissals – but are, in the assessment of experts, ineffective. People are unaware of these procedures and of their availability. A system of state labour inspectorates has been established; however, in the view of experts, these are more inclined to identify violations at privately owned enterprises than at state ones. The state sides with foreign investors and companies; courts rule in favour of foreign companies, permitting them to operate outside the law – for example, a foreign employer may disregard the results of employee performance assessments. Owing to the weakness of trade unions at enterprise level, internal protection mechanisms within enterprises are likewise ineffective. Only where strong trade unions are present – frequently independent trade unions – are workers in a position to make effective use of mechanisms for addressing violations of the right to work.

According to the 2018 Gender Perspectives study, "the willingness to assert one's rights in the event of a violation is not high: at the point of hiring, only 12.7% take any action (while 40.1% wish to but do not); in workplace situations, 22.7% do so (while 40.5% wish to but do not). The low level of readiness to assert rights in cases of discrimination during hiring may be linked to the fact that job applicants have considerably less leverage over a potential employer in the absence of a formalised relationship between the parties. Moreover, in cases of workplace discrimination, 35.9% fear a deterioration in relations with their manager, and 23.3% wish to keep their job at any cost – both of which may be considered significant barriers to combating discrimination. No patterns have been identified – by age, education, sector or gender – in relation to readiness to resist discrimination; work to increase willingness to assert one's rights therefore needs to be directed at the broad population. A further significant problem is that one of the principal responses to the infringement of rights is resignation: approximately 30% of those who respond to rights violations do so in this way. This indicates either that constructive mechanisms for resolving the problem do not exist, or that workers do not consider or are not aware of other options. Workers thus move from a situation of rights violation into an even more vulnerable situation by losing their jobs. Women, moreover, are more frequently compelled to resort to resignation as a means of resolving the problem."¹⁸

¹⁸ On the situation regarding gender discrimination in the labour market and in recruitment in 2018, gender perspectives, <https://www.genderperspectives.by/novosti/527-rezultaty-sotsiologicheskogo-issledovaniya-situatsii-v-sfere-gendernoj-diskriminatsii>



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The right to form trade unions is enshrined in legislation and available in practice. At the same time, Belarus is the only country in the post-Soviet space to operate a permission-based system of trade union registration rather than a notification-based one¹⁹. Workers may freely join trade unions; however, leaving a state trade union is difficult – workers are retained through intimidation with the threat of dismissal and the loss of benefits provided under a given collective agreement. Workers may freely participate in trade union activities.

The right to strike is enshrined in legislation; however, the state's understanding of the right to strike is considerably narrower than the international standard. The procedures required to exercise the right to strike lawfully are so extensive and so difficult to satisfy that it is in practice extremely difficult for workers to take lawful strike action.

Access to courts for the resolution of labour disputes exists; however, in the assessment of experts, effectiveness in the handling of such disputes – particularly where the employer is a state organisation – is "seriously in question" in many cases. Labour disputes have carried a political dimension for the past decade, making it considerably more difficult for former employees to prevail in court and have their rights restored.

In the sphere of occupational safety, the right to adequate remedies – including in the form of restitution, compensation, satisfaction or guarantees of non-repetition – is enshrined in legislation and available in principle. Compensation for work performed beyond statutory norms is provided for in law and accessible in practice; compensation for other violations by employers, however, is neither enshrined in legislation nor available to workers. Methodologies for calculating restitution and compensation are not established in law; the amount of any award is determined by a court on a case-by-case basis. As regards guarantees of non-repetition, a fine for employer violations is provided for in law, but no provision is made for an increased fine in the event of repetition.

¹⁹ ILO, Recommendation 2014



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