



ITUC REPORT

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ITUC/PERC-Regional Conference

“Building democracy and
trade union rights in the
NIS”



The International Trade Union Confederation (ITUC) represents 176 million workers, 40 percent of whom are women, in 151 countries and territories and has 301 national affiliates.

The ITUC is a confederation of national trade union centres, each of which links together the trade unions of that particular country. Membership is open to all democratic, independent and representative national trade union centres.

The ITUC's primary mission is the promotion and defence of workers' rights and interests, through international cooperation between trade unions, global campaigning and advocacy within the major global institutions. Its main areas of activity include trade union and human rights, the economy, society and the workplace, equality and non-discrimination as well as international solidarity. The ITUC adheres to the principles of trade union democracy and independence, as set out in its Constitution.

The Pan European Regional Council (PERC) is a structure of the ITUC for Europe working to promote ITUC strategies, priorities and policies in the region.

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and trade union rights
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Produced with the assistance of Elena Gerasimova, Director of
the Centre for Social and Labour Rights, Moscow

The fundamental and permanent mission of the trade union movement is the economic and social advancement of the workers.

To these ends it is essential for the trade union movement in each country to preserve its freedom and independence so as to be in a position to carry forward its economic and social mission irrespective of political changes.

Governments in seeking the co-operation of trade unions to carry out their economic and social policies should recognise that the value of this co-operation rests to a large extent on the freedom and independence of the trade union movement as an essential factor in promoting social advancement and should not attempt to transform the trade union movement into an instrument for the pursuance of political aims, nor should they attempt to interfere with the normal functions of a trade union movement...

Resolution on Independence of Labour Movement,
Adopted by the 35th Session of the International Labour Conference in 1952

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ACRONYMS

- AGROINDSIND** National Federation of Unions of Agricultural and Food
- AUCCTU** All-Union Central Committee of Trade Unions
- BCDTU** Belarusian Congress of Democratic Trade Unions
- CAS** Conference Committee on the Application of Standards (of the International Labour Organisation)
- CBA** Collective Bargaining Agreement
- CEACR** Committee of Experts on the Application of Conventions and Recommendations (of the International Labour Organisation)
- CC** Constitutional Court
- CFA** Committee on Freedom of Association of the Governing Body (of the International Labour Organisation)
- CFTUU** Confederation of Free Trade Unions of Ukraine
- CTUA** Confederation of Trade Unions of Armenia
- CSRМ** Confederation of Trade Unions of the Republic of Moldova
- EC** European Community
- ECHR** European Court of Human Rights
- EU** European Union
- ETUC** European Trade Union Confederation
- FPB** Federation of Trade Unions of Belarus
- SPB** Free Trade Union of Belarus
- FTUU** Federation of Trade Unions of Ukraine
- GSP** Generalised System of Preferences
- GTUA**
Georgian Trade Union Amalgamation (subsequently renamed Confederation)
- GTUC** Georgian Trade Union Confederation
- GUF** Global Union Federations
- ICFTU** International Confederation of Free Trade Unions
- ICJ** International Court of Justice
- ILS** International labour standards
- ILC**
International Labour Conference (of the International Labour Organisation)
- ILO** International Labour Organisation. Also: International Labour Office (**the**

Office is the secretariat of the Organisation)
ITUC International Trade Union Confederation
KTR Confederation of Labour of Russia
LC Labour Code
MPRA Interregional Automobile Industry Workers' Union
NCLSA National Council on Labour and Social Affairs
NGO Non-Governmental Organisation
NPGR
Independent Miners' Union of Russia
OAO Open Joint Stock Company
OPRTU All-Russian Commercial and Services Workers' Union
RB Republic of Belarus
REWU Radio and Electronics Workers' Union
RF Russian Federation
RPD Dockers' Union of Russia
RPSM Seafarers' Union of Russia
RTUREC Russian Trade Union of Railway Engine Crews
SINDASP Federation of Trade Unions of Public Service Employees
SSRU Soviet Socialist Republic of Ukraine
TUR Trade Union Right(s)
VKT All-Russian Confederation of Labour
WCL World Confederation of Labour
ZAO Closed Joint Stock Company

FOREWORD

Ten years ago, in May 2001, a decade after the disintegration of the Soviet Union, an International Forum on Freedom of Association was held in Moscow. The purpose of the forum was to bring together unionists to reflect upon the main problems workers and their organisations were facing in defending their basic trade union rights in the former USSR countries. Over 250 trade union representatives - leaders of confederations as well as of regional and sectoral structures, experts, local shop stewards and labour activists - from Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Ukraine and Uzbekistan attended the forum. The basis for their discussion was the definition and understanding of freedom of association and the right to organise, as defined in Conventions 87 and 98 of the International Labour Organization (ILO).

In the late 90's and the early 2000s, freedom of association and trade union pluralism became more prevalent within the new social and economic context in the region. Empowered by a "new freedom", trade unions started to exercise their legitimate rights. Incidentally, when they did not succeed in ensuring respect for these rights or where the rights were not enforced, they turned to the mechanisms for enforcement at their disposal at the national, the regional and the international level. At that time, most countries in the region had joined the ILO and ratified some of its most fundamental conventions. The Forum recognised the ILO as the only global organisation with a mandate to rule on violations of the International Core Labour Standards.

At the same time, the situation with regard to trade union rights began deteriorating in the majority of the countries in the region. The participants highlighted the introduction of labour legislation undermining trade union rights and identified the main violations they were all facing. During the forum, the case of Belarus was singled out as the most serious case of systematic violation of trade union rights in the region, mostly perpetrated by the Presidential Administration of the country. As well, the introduction of a new Labour Code in the Russian Federation that would impair workers and trade unions rights was denounced.

In order to promote fundamental trade union rights and ensure the setting up of an environment conducive to their free exercise in the region, the participants in the Moscow Forum put forward concrete proposals, They:

- appealed for awareness raising and capacity building programmes at the enterprise level in order to develop the skills necessary for effective union representation and collective bargaining
- pledged to launch a regional campaign on core labour standards in cooperation with the international trade union movement.

The Forum welcomed the fact that respect for core labour standards was a

condition for the granting of the European GSP Special Incentive Arrangements sought by a number of countries in the region. The participants also stressed the necessity of free, strong, autonomous, representative and united trade unions to ensure regional and international solidarity. International cooperation in establishing trade union rights networks as well as international cooperation in capacity building, technical assistance programmes, and campaigning was stressed with a view to reinforcing solidarity at both national and regional levels.

Nearly ten years after the Forum was held, this report aims to give an overview of the evolution of enforcement of fundamental trade union rights in the region during the last decade. It highlights common hurdles faced by trade union organisations as well as concrete actions taken to redress violations of trade union rights and highlights the experience gained by trade unions in defending those rights.

After giving an overview of the political, social and economic environment in the aftermath of the disintegration of the USSR, the report focuses on the adoption and the enforcement of labour laws protecting, or in some cases undermining, fundamental trade union rights, as well as the most common infringements of those rights. It shows how the countries evolved from a single trade union system to trade union pluralism in a context where the pressure put on trade unions and their rights grew steadily.

The report also details some strategies used by trade unions to defend their rights at the national, regional and international levels. Finally, a special emphasis is put on three countries: the Federation of Russia, Belarus and Georgia.

The report serves as an important background document for the Regional Conference "Building democracy and trade union rights in the Newly Independent States" in Moscow on 3-4 December, 2010. The ITUC, through this report and the Regional Conference, not only aims to expose the systematic infringements perpetrated by States or by private and public employers in the region, but also to map the concrete situations faced by trade union organisations in their daily work to defend workers' rights.

The aim of the conference is to facilitate and strengthen the work in the field of trade union rights in the region as well as to outline priorities and perspectives for future work. The ITUC seeks to strengthen and further develop concrete political strategies and action programmes in the region related to the above.

In so doing, it addresses the resolutions adopted during the ITUC Vancouver Congress in June 2010. After affirming that "workers' rights are human rights and that promoting and defending fundamental workers rights is and must remain a priority for the ITUC", the Congress stated that "the rights to form and join a trade union, to bargain, and to free and independent trade union action, are essential for all working people to defend and promote their interests." The Congress also stressed that "international labour standards are a fundamental pillar of the decent work agenda and an essential guarantor of workers' rights

and interests”, and called upon “governments and employers to promote and respect freedom of association and the right to collective bargaining in order for social dialogue to be effective.” Finally, the Congress committed the ITUC to building the “capacity of affiliates to combat fundamental workers rights violations, including through education programmes, the building of regional and global networks and publication of annual national reports on trade union rights”.

Ten years after the first Conference in the Region, the ITUC commits to taking the required concrete steps to strengthen the capacity of our affiliates to defend the rights of working women and men.

Sharan Burrow
ITUC General Secretary

SECTION I. INTRODUCTION

1.2. Context and Rationale

The role, place and legal situation of trade unions in the Newly Independent State (NIS) Region¹ today are largely determined by a prolonged shared past. The uniform social system, legislation, law enforcement practices, problems and ways of resolving them in the majority of public life areas influenced the development of labour and trade union relations for a long time following the disintegration of the Soviet Union (USSR) and throughout the 1990s and 2000s.

The USSR had a single association of trade unions, the All-Union Central Committee of Trade Unions (AUCCTU) that was closely controlled by the State and the ruling Communist Party, with the unions' mandates and functions strictly aligned with the objectives determined for them by the State and the Party. Union membership was compulsory for workers, students, and pensioners; and massive. However, it was not possible to create a union organisation outside of this system.

The role of trade unions as “the school of communism”, “accessory drive belts” of the Party was determined, accepted and never challenged by the parties to labour and social relations. It was asserted that workers were employed in state-owned enterprises where production was subordinated to the interests of workers themselves. Trade unions were free to partake in activities aimed at the increased wellbeing of the people and the working population, and they functioned with a freedom that was quite complete, being organisations of workers in whose hands the power was concentrated in its entirety.

In reality, trade unions acted like a buffer, a conduit for the management policies, functioning as workers' educators and the enterprise's department of social activities. Trade unions were equally responsible for carrying out production plans, upholding labour discipline, improving productivity. They were charged with managing state social security funds, monitoring compliance with the labour legislation, ensuring occupational health and safety. Trade unions were the largest nominal owner of social facilities, independently developing and maintaining a huge network of sanatoria, recreational and health improvement facilities, etc. All issues of production capacity development, wages, working and living conditions, cultural, recreational, and health improvement activities etc were tackled with their obligatory involvement.

The State, being the sole employer and, at the same time, the regulator of labour relations, was a party to labour relations. It was the State that determined the working conditions at the enterprise level and the wages and collective bargaining had no bearing on the resolution of all major issues.

Formally, trade unions represented workers, yet in case of conflicts and disagreements they directed their efforts at allaying the contradictions rather than defending workers' interests. Conflicts or disagreements between employers – concrete organisations where people worked – and workers

¹ The report covers countries of the region where the ITUC has affiliated and associated organisations

never became public. Furthermore, there were no procedures regulating the resolution of collective labour disputes, conflicts, strikes.

The unions did have the right to collective bargaining with the employer, they agreed a large number of local statutes and regulations, their consent was required for dismissals of workers, etc. Employers were responsible for providing union organisations with office space, means of communication, transport, office equipment etc. The creation and functioning of trade unions, their structures were considered internal matters and were regulated by trade unions themselves rather than through legislation. However, outside of certain (although quite significant, if looked upon in terms of international standards) restrictions, workers' rights were protected by the labour legislation and implemented. In addition, the law and the social system did provide jobs, their security and a level of income allowing a certain level of wellbeing for a worker and his/her family.

Still, there was no real freedom of association in the USSR as there was no freedom per se to create or not a union, join or stay out of it; as unions did not produce their own action programmes, their own statutes; as there were no free and independent elections or any possibilities to independently determine and carry out actions to protect workers' and trade unions' rights, etc.

The policy with regard to the role of trade unions was a subject of criticisms by the international community. In 1954, the International Confederation of Free Trade Unions (ICFTU) filed a complaint with the International Labour Organisation (ILO) Committee on Freedom of Association (CFA), questioning the compliance of the Soviet trade unions' situation with the international freedom of association standards.

In the '90s, a number of countries amended their labour legislation, adopted laws on trade unions, collective bargaining, collective labour dispute resolution and industrial action but in general the labour legislation was using much of the Soviet time provisions. Regulations during that period were adopted on the wave of democratic change and, although they were not perfect from a legal standpoint, they largely provided progressive standards allowing the transfer to trade union pluralism. Unions enjoyed sufficiently broad rights, including the right to strike and the right for different unions to bargain collectively on different levels.

That period, despite significant practical difficulties, could be seen as the period of romantic boom for the trade union movement, when many countries saw the creation of a large number of new trade union organisations workers were becoming aware of the functions of trade unions and tried to implement them.

That was also a period of protest activity that had to do not only with the general democratisation and people's changing mentality, but also with the unfavourable economic situation, numerous plant closures, and prolonged wage arrears. The '90s, especially the second half, is a period of the most active attempts to realise in practice the rights that were embodied in law. However, the unions

that tried to protect the rights of workers and their own rights came up against real opposition and harsh pressure from the employers and faced difficulties in resolving collective labour disputes and strike actions.

At that time, the State maintained the position of an unbiased arbiter, and appeals to its law enforcement bodies – the courts, the prosecutor's office, the labour inspectorate – could sometimes help trade unions restore justice, protect rights as well as get the upper hand in their conflicts with employers. Overall, the State refrained from interference in union-employer relations, at least, visibly.

At the same time, trade unions, as successors to the Soviet trade unions, faced numerous challenges including the loss of their former authority and power, and dwindling membership figures. New economic relations, emergence of private employers, development of legal nihilism, the loss of their former state-determined role in society put some hard questions before the unions about their *raison d'être* and conditions of survival.

Finally, at the end of the '90s, trade union leaders and activists began realising that trade union rights in Russia were no longer something isolated. Information regarding the ILO standards and mechanisms started spreading and the first attempts were made to make use of the international mechanisms of rights protection in the area of freedom of association.

1.2. International labour obligations

The main source of international labour law is the ILO. Freedom of association is recognised in the ILO Constitution, the Philadelphia Declaration and the Declaration on Fundamental Principles and Rights at Work of 1998.²

The content of the right to freedom of association is exposed in two core ILO Conventions – On Freedom of Association and Protection of the Right to Organise of 1948 (No. 87) and On the Right to Organise and Collective Bargaining of 1949 (No. 98). The ILO Declaration on Fundamental Principles and Rights at Work recognises freedom of association as one of the four core rights to be observed by the Member States regardless of whether they have ratified the relevant Conventions, just by virtue of the ILO membership itself.

The ILO has adopted another series of conventions in the area of freedom of association that do not belong to the “core” standards and are therefore only binding in the countries that have ratified them. These are Conventions No. 11 on the Right of Association (Agriculture) of 1921, No. 84 on the Right of Association (Non-Metropolitan Territories) of 1947, No. 135 on Workers' Representatives of 1971, No. 141 on Rural Workers' Organisations of 1975, No. 151 on Labour Relations (Public Service) of 1978, No. 154 on Collective Bargaining of 1981.

Another source of law for freedom of association is the interpretations given by the ILO CFA when examining complaints of employee or employer

² These documents can be found online at <http://www.ilo.org/ilolex/english/constq.htm>, http://www.ilo.org/projects/cariblex/conventions_23.shtml, and <http://www.ilo.org/declaration/thedeclaration/twodeclaration/lang-en/index.htm>, respectively

associations concerning violations of freedom of association, as well as interpretations of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) given when reviewing reports on the implementation of Conventions by Member States.

The USSR became a member of the ILO in 1934, suspended its ILO membership in 1940 to renew it in 1954. At that time, Ukraine and Byelorussia also became Member States of the ILO. The USSR ratified a significant number of ILO Conventions, including the core ones. The freedom of association Conventions Nos. 87 and 98 were ratified on August 10, 1956. The legal successor of the USSR in terms of its international relations was the Russian Federation (RF) which continued as an ILO Member State, just as Ukraine and Belarus did. Other nations in the Region joined the ILO after becoming independent states.³

SECTION II. OVERVIEW OF THE SITUATION IN THE REGION FOR THE PAST 10 YEARS

In general, the countries of the Region approached the beginning of the 21st century having largely preserved the Soviet labour legislation or the spirit and content of its provisions.

2.1. - Evolution of the situation in the region in the 90's

2.1.1. – Adoption of new legal frameworks in the '90s

On January 12, 1996, the Russia Federation adopted the RF Law “On Trade Unions, Their Rights and Guarantees of Their Operation”, based on the principles of trade union pluralism. The Law laid down the legal foundation for trade union building, providing a rather long list of rights and guarantees for their operation, although it was not at all specific on a multitude of aspects related to the exercising of those rights. Three persons were enough to set up a union organisation, unions had the right to operate without being registered as a legal entity, the registration of trade unions had a notifying nature, and it was against the law to deny a union registration. The Law guaranteed the equality of all trade unions regardless of their membership figures, their right to bargain collectively and conclude agreements in the interests of their members, their right to participate in the resolution of collective labour disputes, including their right to strike action. The current RF Labour Code preserved the bulk of trade union rights and guarantees related to trade union activities. The years 1992 and 1995 saw the adoption of the RF Law “On Collective Bargaining Agreements” and the RF Federal Law “On Procedure for Resolution of Collective Labour Disputes”.

³ Armenia joined the ILO on the 26 November 1992, Azerbaijan on 19 May 1992, Georgia on 22 June 1993, and Moldova on 8 June 1992.

During the same period, other countries in the Region were adopting their own national legislation regulating trade union rights (TUR), collective bargaining at all levels, and resolution of collective labour disputes. It was largely based on the concepts and standards contained in the Russian legislation; and in the majority of cases - but not all - similar to it.

2.1.2. Implementation of trade union rights

During the second half of the '90s, those laws started to be enforced. Attempts to exercise the right to strike under the new legislation were under way. The new or, as they were habitually called, "free" trade unions tried to initiate collective bargaining, exercise their legal rights. However, as the law implementation practice grew, it was becoming clear that what looked quite well on paper was often a far cry from what it looked like in practice.

A fundamentally new relationship between employers who, by that time, had largely become private and independent of the State and the unions started gradually taking form. While in the Soviet times, trade unions were perceived by employers as "their own", a mentality that still lingered during the first years following the disintegration of the Soviet Union, in the mid-90s the parties began to realise that the vectors of their interests, goals and objectives were no longer unidirectional. Many trade union leaders suddenly faced a situation where nobody from "above" was giving the unions aims to achieve and tasks to perform. They found themselves in a sort of vacuum with only vague ideas about their future goals and areas of work. Furthermore, in many countries of the Region the unions lost their traditional and important function of managing social security, which undermined their authority, made their place in the system unclear in the eyes of workers and had a negative impact on their financial situation.

Some unions embarked on building a model of conflict-less co-existence with their employers, preserving the status quo, keeping their assets and their members, and ensuring a relatively stable existence. Good relations made sure that the employer did not interfere in the union's operation and did not put pressure on the members. On the other hand, a number of unions using the law to defend workers' interests gained the greatest understanding of how realistic it was to actually exercise the legally declared rights guarantees, how effective the legal protection of worker and union rights was and how effective the guarantees against discrimination and interference in trade union affairs really were.

However, when trade unions would defend a position different from the employer's, they often faced heavy pressure and harsh opposition, refusals to recognise trade union rights, discrimination, and diverse union-busting practices. It is true, however, that that period was marked by a relatively low level of state interference in trade union affairs. The only exceptions, probably, were collective labour disputes and strikes. In Russia, for instance, from the very beginning the courts took a position aimed at the elimination of strike actions, declaring strikes illegal. Yet other methods – pressure outside of the court-rooms – were used against striking workers in extremely rare cases.

2.1.3. Understanding trade union rights

The demand for a deeper understanding of relevant international standards and their application also began forming in the late 1990s. It was among the unions who strongly opposed employers that the demand for a deeper understanding and interpretation of the content of TURs emerged. National legislation, as mentioned earlier, was largely declarative and laconic and in any case not properly enforced by judicial instances. Neither the legislation, nor the law enforcement experience of the past could give answers to the complex questions that emerged from the exercise of TUR. The courts had no experience and no skills of profound interpretation of the legal norms, and, more importantly, no reference points or guidelines they could use when attempting such interpretations. As a result, for a long time court decisions were primitive and superficial, never reflecting the complexity of the actual situations.

In the early 2000s, trade unions already had, firstly, their own experience in the area of freedom of association violations and, secondly, a demand for new, other than those existing in their countries, mechanisms for protection of these rights.

The first attempt to systematise available information on TUR violations took place at the International Forum on Freedom of Association held in May 2001. The information showed that the violations were of quite a systemic nature.

2.1.4. – Overview of the systematic violations of trade union rights in the '90s

From late the '90s and the early 2000s, the situation with regard to TURs began deteriorating in the majority of the NIS countries. Several major trends were noticeable in the area of freedom of association.

States' interference: State authorities began or stepped up their attempts to interfere in trade union affairs and to use trade unions in their own interests. For instance, in Belarus the state authorities embarked on restoration of the Soviet-style relationship between the State and the unions. During the trade unions' election campaign in 2000 and early 2001, state authorities began actively interfering in the election process. The Head of Presidential Administration issued an order to the ministries to assume control over elections in corresponding industrial unions and to ensure the election of "constructive forces". In the course of the elections pressure was brought to bear on the delegates. Immediately before the elections, during the Congress of the Federation of Trade Unions of Belarus (FPB), the Federation's bank accounts were frozen. In Georgia, the Government expropriated trade union property and then put pressure on trade unions in the public sector, trying to force them to leave the Georgian Trade Union Amalgamation⁴ and enter the state-controlled unions. In Moldova, the state authorities exerted pressure on union members, forcing them to change their union affiliation.

⁴ Subsequently renamed Confederation – GTUC

Adoption of complicated registration procedure: In the majority of the countries in the Region, trade unions faced increased State interference in the process of creating and registering trade union organisations, or saw the registration procedure grow increasingly complicated and impossible to follow. In a number of countries the State attempted or is still attempting to impose excessive membership requirements for recognising trade unions as representative, regulate their organisational structures through national legislation, etc.

In Russia, despite the provision of Art.8 of the Federal Law “On Trade Unions, Their Rights and Guarantees of Operation” that prohibits the authorities from denying unions their state (notifying) registration, such denials did take place and the registration documents were returned to the applicant unions 2-3 times and sometimes more. The courts universally would not recognise such denials of registration as illegal.

In Belarus, the President issued Decree No. 2 “On Certain Measures to Promote the Orderly Functioning of Political Parties, Trade Unions and Other Public Associations” dated January 26, 1999, significantly limiting workers’ ability to create and register trade unions. In accordance with the provisions of the Decree, any organisation that is not properly registered or whose registration is not renewed, cannot operate in the territory of Belarus and must be dissolved. Excessive requirements in terms of membership figures necessary to set up trade unions on various levels were enacted.

On September 15 1999, Ukraine adopted the Law “On Trade Unions, Their Rights and Guarantees of Operation” obliging all unions to undergo re-registration within a 6-month period or otherwise face disbanding. The law prescribed what exactly trade union organisations of different levels should look like.

Anti-union tactics: As unions were becoming more active and forceful, they faced the ever growing pressure of the employers’ response: repressions, intimidation, and discrimination. Attempts to use national legal protection mechanisms showed the latter’s low effectiveness and inability to provide real protection against discrimination based on union membership and activity. As of today, the task of setting up such effective mechanisms remains unresolved in the majority of countries, and the lack of such legal instruments constitutes one of the more serious threats to the labour movement’s development. In Russia, workers-members of trade union organisations of the Commercial Sea Port of Kaliningrad, the municipal enterprise “MedAutoTrans” (Nizhny Tagil), the workplace union organisation of the Ocyabrskaya Railway Carrier affiliated to the Russian Trade Union of Railway Engine Crews (Saint-Petersburg), the free trade union “Metallurg” of the JSC “Severstal” (Cherepovets) faced extreme pressure and blatant discrimination in connection with union membership or organisation of strikes or other collective actions to defend their rights.

In Russia and Kazakhstan, employers began using the tactic of creating “yellow” unions. Furthermore, there are numerous examples of putting

pressure on trade union members and their families, including employees of state-owned companies.

Limitation of the right to strike and difficulties to exercise it: All countries in the Region embarked on the regulation of collective labour disputes resolution and industrial actions in a relatively democratic manner. However, in several countries, the right to strike remained severely limited in law and in practice. In Russia, the RF Federal Law “On the Procedure for Resolution of Collective Labour Disputes” introduced a number of standards that made exercising the right to strike almost impossible. The law enforcement practice chose the path of declaring strikes illegal or suspending them even before they began. The right to strike action turned into a hollow declaration with practically no chance of putting it into practice. In Kazakhstan, the 2000 Law “On Labour” included all enterprises with continuous production process into the list of workplaces where strikes were prohibited.

In addition, as trade unions attempted to use strike action to defend their rights, the relevant legislation or law enforcement practices (or, sometimes, both of them) were becoming stricter and more prohibitory. Currently, there are almost no strikes in the Region, or, like in Russia, they are organised outside of the existing legal procedures, since the latter are virtually impossible to observe in real life. It was only after repeated appeals to the law enforcement agencies and hearings in the Labour Conflict Resolution Commission of the State Duma that the union organisation of Moscow-McDonald’s was able to sit at the bargaining table. This problem was faced by hundreds (or thousands) of other union organisations in Russia.

Use of short term individual contracts: In several countries, the use of short-term individual contracts started to be heavily used as a tactic to limit trade union development. This has been, and often still is, the case in Belarus⁵ and Georgia⁶. The Law “On Labour” in Kazakhstan gave employers the right to sign short-term individual employment contracts even for jobs that were permanent by nature. This provision was widely used where unions were active.

Lack of effectiveness of collective bargaining process: The collective bargaining process became more complex and less effective, with the number of negotiations carried out and collective bargaining agreements (CBA) signed going down. There are many reasons behind this development, including the withdrawal of the State from regulating collective bargaining procedures, the limited number of levels and subjects of collective bargaining, the lack of employer associations as bargaining counterparts for industry-based unions. In a significant number of cases, the CBAs are declarative or nominal and not observed by employers.

Employers’ reluctance to recognise trade unions: New trade union organisations faced problems gaining recognition from the employer. In general, the concept of social partnership was taken quite formally or ignored

⁵ See hereafter 2.2. for more details

⁶ See hereafter 2.2. for more details

by employers. Trade unions came to realize that neither they, nor state authorities had any mechanisms that would induce employers to bargain with the unions. Furthermore, many employers failed to transfer union subscriptions from members' wages to trade unions' bank accounts in Azerbaijan as well as other countries.

Deficiencies of the judiciary and administrative system and lack of law enforcement: Almost all countries lacked legal provisions for administrative or criminal responsibility for the violations of TURs, or enforcement of such provisions. Equally, there were no mechanisms in the area of civil judicature that would ensure economic consequences for employers violating the freedom of association principles (fines, significant moral damage compensations, etc.). There were no specialised state agencies to examine cases of rights violations in the area of freedom of association. Such complaints were referred to bodies of general jurisdiction (courts, labour inspectorates, public prosecution bodies). Their examination of complaints lacked depth and were of a purely formal and fruitless nature.

In some countries, the situation developed along the lines of dramatic deterioration of the situation of workers and the role and rights of their trade unions.

2.2. – Development in the 2000's

In Russia, after many years of debates, the draft Labour Code (LC) introduced by the Government was adopted in 2002. At first glance, it appears to have preserved the majority of the Soviet legislation norms, yet closer scrutiny and implementation experience revealed that it significantly undermined the situation of workers and, even more so, of their unions.⁷

Gone from the law is the requirement for the unions' consent to their members' dismissals on a number of grounds, the ability to agree a significant number of local statutes. All these were supplanted with a phrase "in consultation with trade unions" which, in practical terms, only requires observing a formal procedure of exchanging documents.

Substantial changes for the worse took place in the area of freedom of association. The new LC's provisions deprive trade unions organising less than half of the workforce of the right to bargain for a separate collective agreement, narrow down opportunities for collective bargaining on different levels as well as further entangle the procedure for putting forward workers' demands during collective labour disputes and resolving them and for announcing and carrying out industrial actions. Finally, they impose upon the unions a structure determined by the RF Labour Code. Furthermore, neither the RF LC, nor any other statute or regulation contains provisions protecting against anti-union discrimination or ensuring responsibility for violation of trade union rights.

During the 2000s, several legal norms that provided guarantees to elected union officers requiring the union's consent to the dismissal of union activists

⁷ See hereafter 4.1. for more details

were found to contravene the RF Constitution by the RF Constitutional Court (CC). The original text of Article 374 of the RF LC, stipulating guarantees for members of elected trade union bodies, provided for their dismissal on three grounds (redundancy, inaptitude, and repeated dereliction of duty) was only permitted with the advance consent of the corresponding higher elected union body. Yet a number of rulings of the RF CC (of January 24, 2002, December 04, 2003, and November 03, 2009) resulted in a situation where guarantees protecting leaders of elected union bodies from dismissals have virtually no effect in practice.⁸ Finally, on December 2008, the RF Constitutional Court found that the provision in the Federal Law “On Trade Unions, Their Rights and Guarantees of Operation” requiring trade unions’ consent for imposing disciplinary measures on members of elected trade union bodies was non-effective and non-applicable as it contravened the Labour Code of the Russian Federation.

As a result, the level of legal protection of trade union leaders and activists dropped so low as to be virtually on a par with that of all other employees.

The 2006 Labour Code of **Georgia** superseded all other laws in the sphere of labour relations. The LC significantly undermined the situation of workers and their unions though not referring to trade unions at all. With only 55 articles, its provisions are extremely laconic and clearly inadequate for regulating labour relations as well as the role and situation of trade unions. The more substantial deficiencies of the Georgian LC are that it allowed the signing of fixed-term contracts without any justification and made it possible to arbitrarily dismiss employees without any grounds and without any prior notice of impending dismissal.⁹ The procedure for collective bargaining is described so briefly and inadequately that their conclusion was impossible in practice. Finally, the LC leaves practically no room for strikes.

As a consequence, creating new trade unions and carrying out trade union activities has become impossible. The unchecked ability to terminate employment contracts made the struggle of employers against trade unions very simple- The Georgian Law on Trade Unions, though not formally abrogated, is not applied in practice as it is contravening the Georgian LC. Furthermore, there are no legal norms covering trade union leaders and members to provide them with additional guarantees against dismissals. As the new Labour Code superseded the law governing the activity of state labour inspectorates, the public monitoring of labour legislation observance ceased.

In the **Republic of Belarus (RB)**, labour relations are governed by the Labour Code adopted on July 26, 1999. The LC of Belarus provides for the conclusion of employment contracts with indefinite term as well as fixed-term contracts for

⁸ For instance, refusal of a superior elected union body to give consent to a dismissal under Cl.2 Art.81 of the RF Labour Code (redundancy) can be appealed in court by the employer. The provision requiring the employer to seek the consent of a superior elected union body to a dismissal under Cl.5 Art.81 of the RF Labour Code (repeated unmitigated dereliction of duty) was found to be unconstitutional. Refusal to give consent to a dismissal under Cl.3 Art.81 of the Labour Code (inaptitude confirmed by attestation), although it was never the subject of a separate adjudication, is often appealed in court with reference, claiming analogy, to the ruling of the RF Constitutional Court on Cl. 2 Art.81 of the Code. Here, judicial practice does not favour trade unions: unions seldom manage to prove that the real cause for dismissals is involvement in trade union activity.

⁹ See hereafter 4.2. for more details

up to 5 years. Yet, in accordance with the Belarusian Constitution, a Presidential Decree supersedes any law or code. On July 26, 1999, the Presidential Decree No. 29 “On Additional Measures to Improve Labour Relations. Strengthen Labour Discipline and Implementation Standards” was adopted whose provisions contravene the RB LC. Later on, the President of Belarus enacted a number of other documents related to this issue¹⁰. Employers were given the right to sign fixed-term contracts with all employee categories, including those working under indefinite term employment contract (cl.1 of the Decree).¹¹

Since 2004, all ministries, agencies, employers, following instructions of the Presidential Administration, forced workers, under threat of dismissal, to accept a fixed-contract form of employment.

Introduction of these measures resulted in a situation where, during the period of 2004-2005, the majority of Belarusian workers were gradually transferred to fixed-term employment contracts, of minimum duration in most cases. As a result, nearly 90% of all employees in Belarus work under short-term employment contracts today. The law allows for the transfer of an employee who has been working for a long time under an indefinite employment contract to a one-year fixed-term contract, and for the dismissal of the employee, if he/she refuses to sign such a contract. In case such a contract is signed, the employer has no obligations to the employee to renew it, even if the position and the work are still there.

Employees found themselves extremely vulnerable and dependent on the good will of the employer: if there was the slightest dissatisfaction with an employee, his or her employment contract simply was not renewed. This became a simple and effective method of fighting the creation of trade unions: union activists and members of undesirable union organisations found themselves behind the factory gates as soon as their contract expired. The complaint filed by Belarusian trade unions with the ILO CFA mentioned below, has been repeatedly supplemented with new examples of such dismissals.

In 2000, **Moldova** adopted the Law “On Trade Unions” which proclaimed equal rights and independence of trade unions and banned discrimination based on union affiliation. The law guaranteed main TURs, like the freedom of association¹² (registration of trade unions was obligatory, yet the law contained no exhaustive list of grounds for a refusal), the right to represent rights and legal interests of union members, to bargain collectively, to monitor compliance with the labour legislation and to participate in the resolution of individual and collective labour disputes. The law also confirms the right to mass actions

10 For instance, the Decree No. 164 of March 31, 2010, “On Amending and Supplementing the Presidential Decree No. 180 of April 12, 2000”.

11 The minimum term for employment contract – one year – is determined in Clause 1 of the Decree. Within the range of one to five years, the employer determines any specific term of a labour contract, at the moment of both its conclusion and its renewal. As a rule, the contract is signed for one year with subsequent renewal or non-renewal. The decree No. 164 gave the employer the right to sign an indefinite employment contract with an employee who has worked for at least five years for the employer without breaching labour discipline and implementation standards, i.e. once a 5-year contract expires, there are no provisions for a transfer by default to an indefinite employment contract.

12 The Law stated that the basis for trade unions was formed by grass-roots organisations usually established at enterprise level by a collective decision of at least three workers. At the same time, it was determined that a trade union also, as a rule, operated within a single enterprise or organisation and could join territorial, sector or cross-sector trade union associations. Registration of trade unions was obligatory, yet the law contained no exhaustive list of grounds for a refusal.

and a broad right to industrial action: with the aim of “defending the rights of union members, protecting them from an employer’s abuse of power, exerting influence on state authorities [...]”. The Law “On Trade Unions” also provides broad guarantees of trade union activities: unsalaried trade union officials cannot be subjected to disciplinary measures, transferred or dismissed without the union’s consent. The law made the employer responsible for providing a union with office space, equipment and transport.

The 2003 Labour Code establishes that trade union members’ dismissals on five grounds (redundancy, inaptitude because of health and insufficient qualifications, repeated dereliction of duty during one year, absence from work for over four hours running in one working day) are only allowed with the advance written consent of the trade union body (shop steward) at the enterprise. In all other cases dismissals are only permissible after preliminary consultations with the enterprise’s union body (shop steward).

The LC does not make the right of trade unions to represent workers’ interests at enterprise level dependent on the size of their membership. Another kind of representative can only be elected by workers in the absence of a trade union. The procedures for collective labour disputes are also much milder than Russia. The LC prohibits going on strike for political motives and beyond the enterprise level. A decision to go on strike is taken by worker representatives and the employer is to be notified at least 48 hours before the strike. However, there is a very broad list of employees who are forbidden to go on strike, including workers of enterprises with continuous production.

In 2003, criminal liability for violation of TURs was rescinded. The Moldovan Code of Administrative Offences does provide punishment for violations of the LC provisions, yet making practical use of it to protect trade union rights is impossible.

In the **Republic of Armenia (RA)**, the Law “On Trade Unions” adopted on December 5, 2000, is largely similar to the Russian one. The main TURs are guaranteed: the right to collective bargaining and conclusion of CBAs, the right to strike action, the right of access to members’ workplaces and the right to information. The state duty for the registration of a newly formed trade union organisation is 10’000 Drams (USD 27.5) which can be an obstacle for small trade unions. The unions have the right to public monitoring of labour legislation observance, but in practical terms, it means the right to “study” the situation and produce informational briefs without being able to actually do something about the infringements they have uncovered.

The RA Labour Code adopted on November 09, 2004 confirmed the principle of trade union representation of workers interests, provided the unions are representative, i.e. organise more than a half of the workforce in a specific workplace. It also guarantees the right to strike action as a refusal to work when collective bargaining does not take place. The right to call a strike belongs to a union, yet the decision to go on strike must be supported by at least 2/3 of the workforce affected. Strikes are forbidden in public utilities (power, heat, gas),

the ambulance service, as well as the police, the armed forces, other services having the same status, security services. There is a provision making trade unions liable for damages caused by an illegal strike. In practice, strikes are extremely rare.

Dismissals of elected trade union officials require advance consent of a state labour inspector. The inspector's refusal to give consent can be appealed in court. However, if a state labour inspector fails to respond to an employer's request within 14 days, the latter has the right to terminate the employee's labour contract (Art.119 of the Armenian LC).

On June 24, 2010, the RA LC was substantially amended, which led to the deterioration of the workers' situation. The new amendments expanded opportunities for creating other bodies of worker representatives. The new LC states that if a workplace has no union or the existing trade union organises less than half of the workers, a general meeting of the workers can elect a different representative (body). The other representative entity has the same rights as a trade union: to have its own Rules, to bargain collectively with the employer and conclude CBAs, to exercise non-governmental monitoring of compliance with labour legislation, etc., except for the right to strike action, to bargain collectively on other levels of social partnership and to introduce proposals for consideration by state bodies and local authorities. Furthermore, with the new LC, employers gained the right to unilaterally change essential provisions of a CBA – the working hours, the wages.

Furthermore, the law "On Trade Unions" was substantially amended in 2006. The gist of those amendments was that the scope of trade unions activities and representation was strictly limited to labour relations. For instance, only workers with effective employment contracts can become members of a trade union, which denies trade union affiliation to those workers who have no formal employment relations. Another significant change was the linking of a trade union's right to represent the interests of workers to its representativeness. According to the amendments introduced, territorial, sector or nation-wide associations of trade unions can only be created, if they unite more than half of all trade unions active in a given territory or sector. Collective bargaining on behalf of all employees in a workplace can only be done by a trade union organising more than half of the workers. A union organising less than half of all workers in a workplace can only represent the interests of its members (Art.16 of the law "On Trade Unions").

Azerbaijan, unlike most other countries in the Region, is probably the only country today where trade unions show satisfaction with the state of affairs both in the sphere of legislation and its application practices. Azerbaijan so far manages to maintain a balance of interests of workers and their unions on one side, and businesses on the other. Thus, the year 2009, saw the adoption of a law providing for administrative responsibility for wage arrears and untimely transfer of trade union membership subscriptions; the fine imposed on employer is equivalent to USD 2'000. In October 2008, the 1999 Labour Code of Azerbaijan supplemented this with provisions stating that employer-

initiated dismissals of trade union members (except for redundancy and wilful dereliction of duties stipulated in the labour contract) can only be done with the consent of the relevant trade union body. Currently, trade unions are involved in agreeing all decisions on social and labour issues on all levels, including the adoption of social and labour laws and regulations.

Article 25 of the LC states that a non-union representative for collective bargaining purposes can only be elected in a workplace where there is no trade union.

The LC recognises a strike as a voluntary refusal to work with the view of resolving a collective labour dispute. There is a direct ban on politically motivated strikes, except for when strikes relate to the social and economic policy of the State. Workers' demands to the employer in a collective labour dispute can be put forward at a worker or a trade union conference. Employees have the right to strike action from the beginning of a collective labour dispute, if the employer evades the reconciliation procedure agreed by the parties or if the reconciliatory measures proved fruitless. Strikes are prohibited to employees of legislative bodies, governmental, judicial and law enforcement bodies, hospitals, public utilities, air carriers, and fire brigades. The decision to strike can be taken by both the workers and the union.

A lock-out is permitted, if workers demands objectively cannot be met by the employer, if the strike is conducted with legal infractions, if there is irrefutable evidence that the strike is instigated by the competition. Strikers are liable for damages, if they continue a strike that has been found illegal.

The Law "On Trade Unions" adopted on February 24, 1994, states that trade unions can be formed by collective decision of at least seven persons; to acquire the rights of a legal entity a trade union must register with State authorities. The Law guarantees the right to collective bargaining (there are no legal requirements for the representativeness of the union), the right to information, the right to monitor compliance with the labour legislation, the right to participate in law-making activities, the right to organise and conduct mass actions, the right to unrestricted access to members' workplaces, etc. Elected salaried union officers, after their term in office expires, should be offered the job they had before the election; unsalaried officers of workplace union organisations should be relieved from work to carry out their trade union duties in accordance with a procedure stipulated in the collective agreement. Trade unions should be provided with office space and equipment, yet the specifics are negotiable and finalised in the collective agreement.

In terms of protection against discrimination, there is a provision prohibiting refusals to hire and dismissals based on union membership.

Ukraine still has the Labour Code of the Soviet Socialist Republic of Ukraine (SSRU) adopted in 1971 in effect, with over 1000 amendments introduced. The situation of trade unions is regulated by the Law "On Trade Unions, Their Rights and Guarantees of Operation" and the relevant articles of the SSRU

Labour Code. The main TURs are recognised; a trade union can be created by the decision of three founding members representing a working collective; state registration is not obligatory and is a notifying procedure; guarantees of enhanced protection for leaders and members of elected union bodies are in place (trade union's consent is required for dismissing or taking administrative measures against the leader of a trade union body). Trade unions have the same guarantees to operate as they had in Soviet times. In case of a workplace organised by several trade unions, each of them has the right to bargain for a collective agreement.

Currently, a draft LC has been introduced into the Rada, the Ukraine's Parliament and adopted at the first reading. This voluminous bill has six tomes and is largely based on the concept of the actual Russian LC, yet more detailed. The draft includes norms on the status of trade unions which elicited negative evaluations from some trade unions and ITUC experts in the area of freedom of association, as they "prescribe" a certain structure and certain minimum membership requirements in order for trade unions to be recognised as representative and eligible for collective bargaining. This situation is reminiscent of the events that took place more than ten years ago, when similar representativeness criteria were introduced into the Law of Ukraine "On Trade Unions, Their Rights and Guarantees of Operation" which was being adopted at the time. It took complaints to the ILO CFA and the Constitutional Court of Ukraine to ensure abrogation of those norms. A number of other provisions in the draft LC evoke a similarly negative reaction from trade unions.

However, for the past two years, the Federation of Trade Unions of Ukraine (FTUU) and its affiliates find themselves targets in a campaign of interference in their internal statutory activities through "raider attacks". In November 2008, practically all regions (oblasts) in Ukraine witnessed attempts of occupation, through use of force, of the offices of regional trade union organisations, seizure of their seals and statutory documents, which later transformed into numerous court cases. From July 2008 to date, the FTUU has been involved in 114 litigations initiated by citizens against the FTUU and its affiliates, seeking annulment of trade union conferences' decisions and leadership election results in the FTUU and its affiliates, which resulted in injunctions against performing certain actions, demands of property and seals, etc. Ultimately, in 105 cases the courts found in favour of the trade unions, 9 cases are still pending.

Overall, over the last 10 years, trade unions in the region have faced a number of challenges and violations of their TURs; some of which are shared by all countries in the Region, while others are confined to a small circle of countries or to individual nations. A number of countries (except Georgia and Belarus) still have relatively good legislation on paper. The problem, however, lies in that it is not applied and enforced as the law prescribes. Problems facing trade unions have to do with the State either interfering in the creation and functioning of trade unions or avoiding its role in ensuring effective exercise of the freedom of association principles, establishing a state system to protect the right to association. Besides, the majority of trade unions in the Region face dismissals

of union members, leaders, and activists; harassment and intimidation of union members and activists; employers' refusals to transfer union subscriptions and funds for mass cultural activities; creation of "yellow" unions.

Below is a list of these problems specifying in which countries of the Region they are relevant and significant¹³.

	The essence of a freedom of association problem	Countries where the problem is relevant	Countries where the problem is less relevant
1.	Interference of state authorities in trade union affairs	Armenia, Belarus, Georgia, Moldova, Russia, Ukraine	
2.	Lack of responsibility for violation of rights in the area of freedom of association		
	<ul style="list-style-type: none"> No sanctions provided specifically for violation of freedom of association 	Armenia, Georgia, Russia	Ukraine
	<ul style="list-style-type: none"> Procedure for bringing perpetrators to book on broader grounds is ineffective 	Georgia, Belarus, Russia, Moldova	Ukraine
	<ul style="list-style-type: none"> No mechanism to enforce responsibility for violations of freedom of association 	Armenia, Azerbaijan, Belarus, Georgia, Moldova, Russia, Ukraine	
3.	Lack of (specialised) state authority monitoring compliance with freedom of association rights	Georgia, Ukraine	Russia
4.	A licensing or complex system for creation and registration of trade unions; denials of registration in practice	Russia, Moldova, Ukraine	

¹³ Assessment of the problems' relevance is based on opinions of lawyers-members of the ITUC PERC HTUR network who attended the sub-regional meeting of the network in Chişinău, Moldova, on July 8-9, 2010. This means that the assessment is subjective. Besides, absence of indication that a problem is relevant in this or that country may mean not only that there are no violations of the right in question but also that trade unions do not make use of this right and, therefore, face no violations of it (this concerns, for instance, the right to strike). In those cases when national trade union centres in the same country provided different opinions on the presence or absence of a problem, the problem was indicated in the table, if at least one organisation mentioned it.

	<ul style="list-style-type: none"> Excessive minimum membership requirements 	Belarus	Ukraine – in the draft LC
	<ul style="list-style-type: none"> Banning operation of unregistered trade unions 	Belarus	
5.	Adoption of anti-union legislation contravening the ILO freedom of association conventions	Belarus, Georgia	
6.	Adoption of legislation providing favourable conditions for certain unions (favouritism)	Belarus	
7.	Gradual legislative restriction of trade union rights	Armenia, Belarus, Georgia, Moldova, Russia, Ukraine	
8.	Trade unions lack real ability to influence the contents of legislation being adopted	Armenia, Belarus, Georgia, Moldova, Russia, Ukraine	
9.	Complex procedures for calling and conducting a strike that make strikes impossible in reality	Belarus, Russia	Georgia, Ukraine – in the draft LC
10.	Restriction of the right to mass actions, including authorisation-based procedure for carrying out mass actions	Belarus, Russia	
11.	Employer is not obliged to sign a CBA, is not responsible for its infringements	Ukraine, Belarus, Georgia	Armenia
12.	Restriction of ability to receive trade union aid from abroad	Belarus, Kazakhstan	
13.	Lack of legally defined and effective mechanisms of protection against anti-union discrimination	Armenia, Azerbaijan, Belarus, Georgia, Moldova, Russia, Ukraine	

SECTION III. TRADE UNIONS' UNDERSTANDING OF THEIR RIGHTS AND TAKING ACTION TO PROTECT THEM

3.1. Evolution of trade unions' understanding of freedom of association rights and opportunities to use international mechanisms to protect those

Due to the isolation of Soviet trade unions, their leaders' and members' understanding of trade union rights was based exclusively on the internal, domestic experience and interpretation of trade union rights. In the late '80s-early '90s, the surge of protest activity was followed by the rethinking of the role of trade unions and their rights.

However, until the late '90s the extent of knowledge of TURs and their content was largely confined to the Regional experiences. Gradually, due to expanding international ties and educational programmes run for trade unions, information on international, European, and American trade union experiences of defining the role of trade unions and building relations among employers, trade unions and the State started spreading¹⁴.

Furthermore, throughout the 2000s, national trade unions used a wide range of mechanisms to protect the freedom of association rights, both national and international (including regional) ones. The main tool of TUR protection used by the majority of unions in the Region remained the ILO international labour standards (ILS) and supervisory mechanisms.

The supervisory system to monitor observance of the ILS is composed of the regular supervisory system (functioning continuously) and the special system (used in case of alleged violations). Within the regular supervisory system, Member States are obliged to regularly submit to the CEACR their reports on implementation of the ratified Conventions (Art.22 of the ILO Constitution) and, from time to time, reports on measures taken towards ratification of Conventions that are not yet ratified (Art.19 of the ILO Constitution). The work of the ILC CAS also belongs here. The special supervisory system offers the following mechanisms: representations under Art.24 of the ILO Constitution concerning countries which have ratified the Conventions; complaints under Art.26 of the ILO Constitution concerning countries which have ratified the Conventions; representations concerning violations of freedom of association to the ILO CFA.¹⁵

¹⁴ In the late 1990s-early 2000s, through the efforts of the ILO, ICFTU, WCL, GUFs, the Moscow office of the Solidarity Centre, numerous seminars, workshops, round tables, discussions were held in Moscow that would help trade union activists become familiar with the international language and the contents of the freedom of association standards and principles, to acquire knowledge of ways to use international mechanisms of TUR protection in the area of freedom of association and international trade union solidarity.

¹⁵ For more detailed information on the ILO mechanisms the International Labour Standards page of the ILO site at: http://www.ilo.org/global/What_we_do/InternationalLabourStandards/ApplyingandpromotingInternationalLabourStandards/lang-en/index.htm

Over the years, all ILO mechanisms have been used by trade unions in the region, although to different extents and with varying degrees of effectiveness.

3.2. The ILO experts' comments on labour bills

Many bills, first and foremost, LC drafts, were submitted to the ILO seeking expert opinion on the bills' compliance with the ILO Conventions. In many cases, this was mainly done at the initiative of governments but also by trade unions'.

Though getting the ILO experts' comments is useful before a bill becomes a law, when experts are not given specific concerns and opinions with regard to the lack of compliance of certain proposed norms to the freedom of association Conventions, some aspects could escape their scrutiny.

Practically all countries in the Region have at different times sought the ILO comments on their Labour Codes. At the unions' initiative such comments were requested by Russian trade unions (VKT and KTR) before the adoption of the Russian LC and by Ukrainian trade unions (CFTUU) before the adoption of the Ukrainian Law "On Trade Unions, Their Rights and Guarantees of Operation" and the Labour Code of Ukraine.

Let us quote one example. From 2008 Armenia debated amendments to the national Labour Code initiated by the business community. It aimed at substantially undermining workers' rights. At the request of the Confederation of Trade Unions of Armenia (CTUA), in May 2010, the ILO sent its experts to the country who later submitted their recommendations concerning the amendments found to contravene the ILO standards to the Government. A number of press-conferences were held, the information on the amendments in question was widely covered by the mass media. As a result, a compromise was reached and thwarted the adoption of some of the radical proposals intended to worsen the workers' situation.

3.3. Filing complaints with the Committee on Freedom of Association (CFA) of the ILO Governing Body

In 1951, the ILO Governing Body took a decision to set up a standing Committee on Freedom of Association. The Committee on Freedom of Association meets three times a year immediately before the meetings of the Governing Body.

The Committee on Freedom of Association is a body that examines complaints of alleged violations of the right to association and collective bargaining. The Committee accepts complaints regardless of whether the Member State in question has ratified the freedom of association conventions or not, because the obligation to ensure freedom of association follows from the ILO Constitution, the Philadelphia Declaration and the ILO Declaration on Fundamental Principles and Rights at Work of 1998.

The Committee examines the complaint and additional materials supplementing and clarifying it and adopts a report containing recommendations. The Committee can, without closing the case, submit an intermediate report with recommendations in order to receive additional information; it can make a conclusion but, keeping the case open, continue monitoring the situation; it can make a final conclusion with recommendations. The Committee reports are approved at the Governing Body sessions after which they become binding for the governments in question. If a complaint is filed in connection with violations of the freedom of association conventions in the national legislation, the Committee can refer the legal aspects of a case to the Committee of Experts which will continue monitoring implementation of recommendations and application of conventions, following the usual procedure.

As of today, the majority of countries in the Region have experience in filing complaints alleging violations of freedom of association with the ILO CFA. Although the right to file complaints with the CFA is given to associations of both employees and employers, the majority of complaints from the countries of the Region came from trade unions. Complaints filed by trade unions can be divided into several groups: those concerning specific violations committed against specific unions; those concerning systematic violations of freedom of association rights in law and in practice; those concerning adoption of new legislation undermining the situation of trade unions.

Since the beginning of the '90s, Russian trade unions have filed the largest number of complaints –15 (another four were filed with regard to the USSR in 1954, 1956, 1962, and 1978). Currently, one complaint is being examined by the CFA (Case No. 2758). The CFA is monitoring the implementation of recommendations of another 2 Cases (Cases Nos. 2744 and 2642), and 13 cases are closed. The greatest activity in terms of complaints filed with the CFA was seen during the period of 2002-2003: two complaints concerning

provisions of the newly adopted RF LC (Cases Nos. 2216 and 2251) and five complaints concerning specific TURs violations by employers or the State. Some of them also involved certain systemic issues and the national legislation, for instance, Case No. 2199 (concerning availability of national mechanisms of protection against discrimination) and Case No. 2244 (concerning the right to strike action for railway workers).

Between 1994 and 2004, eight CFA complaints originated from **Ukraine**, one of them filed by an employer association (implementation of the CFA recommendations regarding this complaint is currently being monitored), the rest by trade unions. The bulk of them (five complaints) fall in the period between 1998-2000 and concern legislative violations resulting from the adoption of new laws, denials of registration following adoption of new legislation, anti-union discrimination, State's interference in trade union internal affairs.

Four complaints came from Georgia, two of them (Case No. 2144 of 2001 and Case No. 2387 of 2004) are now closed, while the other two filed in 2008 (Cases Nos. 2678 and 2663) concerning discrimination based on trade union activities and the lack of protection mechanisms against discrimination are currently being examined.

Trade unions from **Belarus** have filed three complaints with the CFA: in 1995 (Case No. 1849) and 1996 (Case No. 1885) concerning concrete facts of anti-union discrimination and then in 2000 (Case No. 2090). The events of 1999-2000 which triggered off the complaint to the CFA were linked to the State embarking on a broad programme of establishing total control over trade union activities. This Case, like no other, shows grave, systematic and prolonged TUR violations and is described in detail below in a special paragraph.

Trade unions from **Moldova** filed a single complaint in 2004 (Case No. 2317) and the CFA currently continues to monitor the implementation of the recommendations given. The TUR violations included: coercion to leave the unions affiliated to the Confederation of Trade Unions of the Republic of Moldova (CSRМ) to join another trade union association; initiation of criminal proceedings against the leader of the national union AGROINDSIND; tax claims brought against AGROINDSIND; massive inspections and seizure of documents belonging to AGROINDSIND; delayed transfers of trade union subscriptions; removal of the leader of the SINDASP union (a trade union federation of public sector workers) and denials of registration to the newly formed independent unions. The CFA which examined the complaint repeatedly recommended to the Government that they carry out an independent inquiry into all aspects of TUR violations alleged in the complaint, which was never done. Only after the two national trade union centres merged into a single Confederation and new political forces came to power in the country did the policy of active interference in trade union affairs stop. A further two complaints have been filed by employers.

Trade unions from **Armenia** and **Azerbaijan** have not filed any CFA complaints concerning violations of freedom of association principles.

3.4. Setting up of a Commission of Inquiry

The setting up of a Commission of Inquiry is one of the extreme measures used within the ILO mechanisms in cases of particularly grave and systematic violations. Throughout the whole history of the ILO, Commissions of Inquiry have only been set up 12 times, one of those in this Region.

This supervision mechanism for monitoring application by Member States of the ratified conventions, including the freedom of association conventions, is used very rarely and only in most serious cases and is provided for in Articles 26-43 of the ILO Constitution. Article 26 of the Constitution states that any Member State of the ILO can lodge a complaint with the ILO against another Member State that allegedly does not ensure effective application of a convention ratified by both of them. To consider this complaint, the Governing Body sets up a special Commission of Inquiry. A Commission for Inquiry can also be set up on the initiative of the Governing Body or at the request of a delegate or delegates of the ILO Conference made in the course of the Conference. The Commission independently determines the inquiry procedure and mechanisms, using, among other things, testimonial evidence and visits to the country. Upon the completion of the inquiry the Commission produces a full report (Art.28 of the ILO Constitution) which is published and sent to the Governing Body and each of the Governments involved in the dispute (Art.29 of the ILO Constitution). If the Government disagrees with the recommendations, the case is referred to the International Court of Justice. According to Art.33 of the ILO Constitution, failure by an ILO Member State to carry out the Commission's recommendations or the ICJ decision within a specified timeframe gives the Governing Body the right to recommend to the Conference such action as it deems expedient for ensuring compliance with those recommendations. Such action can be discontinued only after a new inquiry is carried out by a Commission following a similar procedure (Art.34 of the ILO Constitution) and the Commission recommends the discontinuance.

A Commission of Inquiry was set up in 2003 to investigate violations of freedom of association in Belarus after the Belarusian Government failed for three years to implement recommendations approved by the Governing Body for Case No. 2090. It was the first time that the Commission was set up in the European region and the first time that the Government facilitated the investigation (See more details under 4.2.4).

3.5. Communication of trade union comments to the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR)

According to Art. 22 of the ILO Constitution, each Member State is obliged to make annual reports to the International Labour Office concerning the measures taken to implement the ratified conventions. The ILO Governing Body which has

the appropriate mandate set up a system for presenting the reports. Reports on the ten most important conventions including the freedom of association conventions Nos. 87 and 98 are to be presented every two years.

The Government of each Member State presents the report using a uniform model. Governments are obliged (Clause 2 of Article 23 of the Constitution) to communicate copies of their reports to organisations of employers and employees (trade unions) both before the completion of the report so as to reflect in the report and respond to the comments of employer and employee organisations, and after the completion of the report, at the same time communicating the report to the International Labour Office. Organisations of employers and employees (trade unions) can communicate their comments to the report either to their Government or directly to the International Labour Office.

Trade unions have the right to communicate their comments to the government's reports on application of ILO standards to their own governments to be included in the reports which are then sent to the CEACR, or send their comments directly to the CEACR. The first path – sending the comments to the Government – is followed, for instance, by the Confederation of Trade Unions of Armenia. The second path – communicating the comments directly to the Committee – is opted for by the Georgian Trade Union Amalgamation. The Committee also supervises the implementation of the CFA recommendations approved for the complaints of violations of freedom of association after the CFA cases are closed. Thus, the Committee continues to monitor, to request information and to draw conclusion on the situations that were the subject of the CFA considerations concerning complaints of Belarus, Georgia and Russia.

3.6. Discussions in the Committee on the Application of Standards (CAS) of the International Labour Conference (ILC)

The Committee on the Application of Standards of the International Labour Conference is composed of representatives of employee organisations, employer organisations, and governments. The Committee on the Application of Standards reviews cases that have already been considered by the Committee of Experts and referred by it to the Committee on the Application of Standards. The latter deals mainly with legislative issues rather than actual individual violations of the international standards.

Every year, during the ILC, the CAS considers 25 cases out of those transmitted by the CEACR for consideration and separate discussion in the course of the ILC sessions in June. The list is determined by the Conference delegates from workers and employers. The Committee may require governments to provide case details in oral or written form.

The practical value of having cases considered at the meeting of the CAS is that it allows public attention to be drawn to the case under review,

to put pressure on the government. In practice, such a decision is taken with regard to the more complicated cases, when the Government does not make the required changes in the legislation.

The situation with regard to the application of the freedom of association conventions in the countries of the Region has been discussed by the CAS many times. For instance, it repeatedly discussed the situation in Belarus vis-à-vis the observance of Convention No. 87, in particular, in 2008, 2009, and 2010; The implementation of Convention No. 87 in Russia was discussed in 2005 and the implementation of Convention No. 98 in Georgia in 2008 and 2010.

3.7. Actions at the regional level. References to the European Court of Human Rights (ECHR)

One of the regional mechanisms available to trade unions of Armenia, Azerbaijan, Georgia, Moldova, Russia, and Ukraine is the reference to the European Court of Human Rights. A unique experience of successfully defending the right to association in the ECHR has been acquired by the workplace union organisation of the Commercial Sea Port of Kalinigrad affiliated to the Russian Dockers' Union¹⁶. On July 30, 2009, the European Court of Human Rights published its decision on this complaint finding for the plaintiff.¹⁷

3.8. The use of economic mechanisms: The Generalised System of Preferences (GSP) of the European Union (EU)

Currently, the GSP+ preferences have been granted in the Region to Armenia, Azerbaijan and Georgia. These preferences can be taken away from any country for a certain period and with regard to all or a part of the supplied goods. Grounds for withdrawal of GSP+ trade benefits may include violations of the ILO core labour standards banning discrimination, use of child and forced labour, ensuring freedom of association. Withdrawal of granted preferences is an extreme measure and is only applied in cases of "grave and systematic" violations of these principles.

Belarus is one of the countries that enjoy the GSP, yet due to grave and systematic violations of rights in the area of freedom of association its GSP+ preferences have been withdrawn (for more details see 4.2.5).

¹⁶ Case No. 67336/01 Danilenkov et al. v. Russia

¹⁷ See more details under 4.1.6

The EU's Generalised System of Preferences (GSP) is a trade arrangement through which the EU provides preferential access to the EU market to 176 developing countries and territories, in the form of reduced tariffs for their goods when entering the EU market. There is no expectation or requirement that this access be reciprocated. It is implemented by a Council Regulation applicable for a period of three years at a time. GSP covers three separate preference regimes. One of those, the special system of preferences also known as GSP+s an incentive for sustainable development and good governance. It offers additional tariff reductions to support developing countries in their ratification and implementation of international conventions in these areas. Currently, the list consists of 16 conventions on human and labour rights, including the ILO conventions on freedom of association.

In order to enjoy the GSP+ preferences a country needs to submit a request to the EU that is duly prepared in accordance with the requirements formulated in the EU documents and show that the country observes the Conventions and requirements listed in the Council Regulation (EC), i.e. prove the country's eligibility for the additional preferences.

3.9. Actions at the national level

When faced with the violation of freedom of association rights, all trade union organisations started using domestic instruments of legal protection. None of the countries in the Region have special courts for considering labour disputes, nor have they any bodies to examine discrimination cases, including anti-union discrimination. In this situation, facing violations of freedom of association rights, trade union members and leaders would take their cases to courts of general jurisdiction where, some typical problems arise.

However, the law enforcement bodies, including the courts, prosecutors and labour inspectorates, usually have very little knowledge of the specificities involved in defending TURs. As for the international standards, in particular, the norms elaborated by the ILO supervisory bodies, the national bodies, in most cases, feel apprehensive about using them. As a consequence, TUR violation complaints considered by national judicial bodies often fail to yield satisfactory results. In some cases, like, for instance, in Russia, all this has been further aggravated in recent years by the lack of real independence of the bodies considering such complaints, by their bias and ties with employers against whom the complaints are lodged.

Apart from using the means of specifically legal protection, trade unions would also appeal to parliaments, demanding amendment of legislation; be involved in the work of various commissions and working groups with the aim of preparing the necessary amendments or ensuring their adoption; advise government officials; run public campaigns and involve mass media; use the support of the International Trade Union Confederation (ITUC) (formerly, the International Confederation of Free Trade Unions - ICFTU), Global Union Federations (GUFs),

other national trade union centres; run international campaigns; organise the sending of protest letters to companies encroaching on trade union rights and other protest actions.

3.10. Taking cases to national Constitutional Court (CC)

One of the mechanisms of defending freedom of association rights used by trade unions is an appeal to the Constitutional Court. Here, trade unions often make use of available decisions and recommendations of the ILO supervisory bodies to support their claims that a certain legal norm contravenes the national Constitution. Since the Constitutions recognise that the ILO principles and standards form a part of their countries' legal system, trade unions get a legal chance to make references to the relevant decisions. However, having conclusions of the ILO supervisory bodies that the national legislation contradicts the ILO Conventions ratified by the country is far from being sufficient to ensure a positive resolution of a dispute by the Constitutional Court. Given below are two polar examples.

Ukraine: the decision of the Constitutional Court of Ukraine that the norms of the Law on Trade Unions are in conflict with the Constitution of Ukraine

In 1999, Ukraine was preparing to adopt the Law of Ukraine "On Trade Unions, Their Rights and Guarantees of Operation". Articles 8, 11, 16 of the Law contained provisions that were dubious in terms of the ILO freedom of association conventions. For instance, Art. 11 stated that, in order to attain a regional and All-Ukrainian status, a trade union should organise more than half of all workers in a given sector or should have affiliates in the majority of Ukraine's' administrative units; Art. 16 stipulated that a trade union was considered established only after it was registered by a relevant state authority. The Law also obliged all existing trade unions and their associations to renew their state registration within six months of the Law coming into effect, those who failed to do so were subject to automatic dissolution.

The Confederation of Free Trade Unions of Ukraine (CFTUU) sent a formal enquiry to the ILO International Labour Standards Department asking for an expert opinion on the provisions of the draft law and subsequently filed a complaint with the CFA. The ILO's opinion concerning the draft law was received, followed by the ILO CFA decision on Case No. 2038 confirming that provisions of Articles 11 and 16 of the Law contravene the ILO Convention No. 87. As early as October 24, 2000, the Constitutional Court of Ukraine announced its decision that Articles 11 and 16 of the Law of Ukraine on Trade Unions were found unconstitutional and, thus, abrogated.

Russia: the Constitutional Court of Russia refused to apply freedom of association standards

The RF LC and the Federal Law "On Railway Transport in the Russian Federation" banned strike action in the railway transport. This became one of the subjects in the complaints filed by the Confederation of Labour of Russian (KTR) and the Russian Trade Union of Railway Engine Crews (RTUREC) with the CFA (Cases Nos. 2244 and 2251). The CFA noted in its conclusions that railway

workers cannot be restricted in their right to strike action through a complete ban on strikes and recommended the RF Government to introduce appropriate amendments into law. As the Russian Government did not implement those recommendations, the RTUREC in defence of its right to strike resorted to the only remaining protection tool available to it and lodged a complaint with the RF Constitutional Court.

Yet on February 8, 2007, the RF CC made a decision refusing to accept for consideration the complaint of the RTUREC Vice-President concerning the violation of his constitutional rights by Cl.2 Art.26 of the Federal Law “On Railway Transport in the Russian Federation”. Vice-President Linev, referring to the ILO standards with relation to the right to strike action and the CFA recommendations, sought recognition of Cl.2 Art.26 of the Federal Law “On Railway Transport in the Russian Federation” of January 10, 2003, stating that a strike... by general railway transport workers involved in train traffic, shunting, and servicing of passengers, consignors and consignees in the general railway transport and whose list of professions is determined by the federal law is unlawful and not permissible.

In its ruling, the RF CC completely ignored the CFA recommendations referred to the plaintiff; they were not even mentioned in the descriptive part of the ruling.

The RF CC noted in its ruling that the Labour Code had precedence in the regulation of labour relations; the federal legislature had the right to issue a ban on strike, when a strike poses a threat to the country’s defence and security of the state, to people’s health and safety. Including railway transport in the list of the vitally important branches of economy and asserting that it was to contribute to the creation of conditions for economic development and ensure the cohesion of the economic space in the territory of the Russian Federation and that the means of transportation used on railways were a source of increased danger, the Constitutional Court noted that “any circumstances potentially disruptive for the normal functioning of the railway transport affect the interests of both every individual and the State as a whole, which gives grounds to impose restrictions on the exercise of the right to strike by certain categories of railway transport workers [...]”

SECTION IV. SPECIAL FOCUS ON THE RUSSIAN FEDERATION, THE REPUBLIC OF BELARUS AND GEORGIA

4.1. Russia

4.1.1. Adoption of the Labour Code of the Russian Federation

The second half of the 1990s and early 2000s, labour relations in Russia were marked by debates on the challenges of reforming the labour legislation and the need to adopt a new Labour Code of the Russian federation instead of the Soviet RF Code of Labour Laws. Over the course of several years, a whole number of fully fledged draft LCs were prepared and proposed to the RF State Duma, reflecting a wide range of economic, social, and political view of their authors on the regulation of labour relations and the role of trade unions. In 2001, a draft proposed by the Government received powerful support and was being actively prepared for adoption by the State Duma.

During the discussion stage in August 2001, the RF Government asked for the comments of the International Labour Office on the Draft LC. With regard to TURs, the ILO experts noted that “there are no serious problems with the Draft in the area of freedom of association and collective bargaining [...]. At the same time, specific issues related to strike actions in the Draft remained unchanged. The Government is recommended to remove the requirement for trade unions to indicate the duration of the strike in their strike notice, lower the quorum required for a strike ballot, and amend the norms regulating the minimal services so as to make possible reconciliation of the parties to a dispute outside of a conflict situation and refer all controversial issues for settlement by an independent body”.

Throughout the drafting of the Labour Code and the discussion process and adoption, some trade unions (mainly the new ones, created in the 1990s) expressed concerns and challenged the proposed Draft concept which undermined the fundamentals of trade union pluralism. Trade unions organising less than the majority of workers were to lose their right to bargain for separate collective agreements and put forward demands in a collective labour dispute, or to strike.

Since the recognition of collective bargaining rights does not contravene the principles of freedom of association, the ILO experts took a neutral position on these issues, stating that the models regulating the involvement of different unions in the social partnership should be determined through agreeing them with the parties concerned at the national level. So, it was impossible to make references to international standards in this issue.

However, other dubious provisions in terms of freedom of association, visible to trade unions, remained untackled by the ILO experts. For that reason,

immediately after receiving the conclusions on the Draft LC in response to the RF Government's enquiry the All-Russian Confederation of Labour (VKT) and the Russian Labour Confederation (KTR) sent a letter to the ILO requesting an assessment of certain provisions of the Draft LC specifically in terms of freedom of association. The conclusions confirming inconsistency of certain provisions of the Draft LC with the freedom of association standards were received right before the adoption of the Code and were ignored. The RF LC was however adopted and became effective as of February 01, 2002, in a version that undermines the position of many unions and contains a whole number of violations of freedom of association.

4.1.2. Complaints to the ILO Committee of Freedom of Association concerning provisions of the RF Labour Code

Virtually immediately after the adoption of the RF LC, many trade unions found their ability to operate and exercise their rights substantially restricted. In particular, there were problems carrying out trade union activities for those trade unions whose structure did not follow the one prescribed by the Code, and for those who organised workers in a specific job or profession, because they were no longer eligible to conclude occupation-based collective agreements.

Two complaints concerning provisions of the new RF LC were filed with the ILO CFA. The complaint filed in 2002 by the Seafarers' Union of Russia (RPSM) claimed inconsistency of the RF LC provisions with the principles of freedom of association, namely: the RF LC does not recognise trade unions created on the basis of a specific occupation, promotes a uniform system of trade unions, allows for discrimination of trade unions that do not organise the majority of workers, denies the right to collective bargaining at the enterprise level to a higher level trade union organisation, including federations and confederations, and interferes with the right to strike action.

The second complaint filed by the KTR in 2003 concerned, apart from the aforementioned, the RF LC provisions dealing with the right of workers to freely join trade unions of their own choosing and independently determine their structure and membership, the right to collective bargaining, and the right to strike. In particular, the KTR criticised those provisions which determined that at enterprise level the workers' interests could only be represented by a workplace union organisation of an industry-wide trade union; and allowed for election of a non-union workers' representative, if the workplace union organised less than half of the enterprise workers. It also criticised a large number of provisions dealing with the collective labour dispute resolution procedures and the right to strike.

The ILO CFA considered Cases No. 2216 (the RPSM Complaint) and No. 2251 (the KTR Complaint) for several years. The trade unions provided additional information for these cases. The recommendations resulting from the consideration of these cases (Case No. 2216 – November 2003, Case No. 2251 – March 2004) stated that a number of provisions of the RF LC contravened

the principles of freedom of association and need to be amended. Later, the Committee repeatedly returned to those cases, monitoring implementation of the recommendations and examining the information provided on developments in this area. The RF Government would cover only some of the issues raised or refrain from communicating any comments.

The ILO CFA turned to the RF Government with a request to introduce amendments into the RF LC, including amendments of provisions determining the level of a union that is created in an enterprise and can bargain collectively on behalf of the workers, the election of a representative body other than a union and the organisation of strikes. Furthermore, the Committee asked the Government to inform them about the practical application or understanding of certain provisions of the Code.¹⁸

4.1.3. Complaints to the Committee on Freedom of Association concerning restriction of the right to strike action in the railway transport.

The issue of the unjustified restriction of the right to strike for a specific category of workers was also raised in the complaint by the Russian Trade Union of Railway Engine Crews (RTUREC) filed with the ILO CFA within a broader complaint against interference in trade union activities and constant pressure, discrimination and obstruction of union activities by the employer – the RF Ministry of Communication Lines (railways) (Case No. 2244). In recommendations on this Case (337th Report, June 2005), the Committee pointed out that the ban on strikes in railway transport contravenes the ILO

¹⁸ Having considered Case No. 2251, the Committee on Freedom of Association formulated the following recommendation to the RF Government (Report No. 333, cl.1001):

- (c) To amend section 31 of the Labour Code so as to ensure clearly that authorisation to represent workers can be conferred on other representative bodies only in the event that there is no trade union in the workplace.
 - (d) To take all the necessary measures, including the amendment of sections 26 and 45 of the Labour Code, so as to allow the possibility of collective bargaining at occupational or professional level both in law and in practice.
 - (g) The Committee recalls that workers and their organisations should be able to call for a strike aimed at recognising a trade union, as well as in order to criticise a government's economic and social policies and should be able to take a sympathy strike, provided the initial strike they are supporting is itself lawful.
 - (i) To amend section 410 of the Labour Code so as to lower the quorum required for a strike ballot.
 - (j) To amend section 410 of the Labour Code so as to ensure that no legal obligation to indicate the duration of a strike is imposed on workers' organisations.
 - (l) To amend its legislation so as to ensure that any disagreement concerning minimum services is settled by an independent body having the confidence of all the parties to the dispute and not the executive body.
 - (m) to indicate the enterprises and services it qualifies as "directly servicing highly hazardous kinds of production or equipment" where the right to strike is prohibited (section 410 of the Labour Code).
 - (n) To amend its legislation so as to ensure that railroad employees, as well as those engaged in the public service, but not exercising the authority in the name of the state, enjoy the right to strike.
 - (o) To take the necessary measures, including the amendment of the legislation, in order to ensure that a strike would not be declared illegal when the list of minimum necessary services has not been agreed upon within five days from the time of calling a strike.
 - (r) The Committee recalls that when a strike is legal, recourse to the use of labour drawn from outside the undertaking to replace the strikers for an indeterminate period entails a risk of derogation from the right to strike, which may affect the free exercise of trade union rights.
 - (s) The Committee requests that the Government respects the principles mentioned in subparagraphs (c)-(o) and (r) above.
- Concerning the Case No. 2216, the Committee on Freedom of Association formulated the following recommendations to the RF Government (Report No. 332, cl.914):
- (a) To take all the necessary measures, including the amendment of section 45, so as to allow the possibility of collective bargaining at occupational or professional level both in law and in practice. The Committee requests the Government to keep it informed in this respect.
 - (b) To amend section 31 of the Labour Code so as to ensure that it is only where there is no trade union in the workplace that workers can elect other representatives to represent their interests. The Committee requests that the Government keep it informed in this respect.
 - (c) To amend its legislation so as to ensure that higher union structures, as well as federations and confederations have access to the collective bargaining process and enjoy the right to conclude collective agreements.
 - (e) To amend section 410 of the Labour Code so as to lower the quorum required for a strike ballot and to keep the Committee informed in this respect.

Convention No. 87, requested that the Government amend section 26 of the Federal Act on Rail Transport so as to guarantee the workers' right to strike and ensure its conformity with the minimum services provisions of the RF LC.

4.1.4. Review of the RF LC provisions in other supervisory bodies of the ILO

The Labour Code provisions were repeatedly analysed in terms of their consistency with freedom of association by the ILO CEACR. From 2001, the Committee regularly communicated to the Russian Government its recommendations on reconciling the provisions of the PR law regulating the calling and carrying out of strikes with the ILO Convention No. 87. In 2005, a discussion on this issue was held at the meeting of the ILC CAS.

The Committee of Experts' Individual Observations expressed the Committee's hope that the following provisions of the Labour Code and the relevant federal acts would be amended in the following manner:

- section 410 of the Labour Code (stipulating that, for a strike ballot, at least two thirds of all workers should be present at the meeting and at least half of those present should vote in favour of the strike for it to be called) so as to lower the quorum required for a strike ballot which the Committee found too high and potentially interfering with workers' right to industrial action, particularly at the larger enterprises;
- section 410 of the Labour Code so as to remove the obligation to indicate the duration of a strike;
- section 412 of the Labour Code so as to ensure that any disagreement concerning minimum services in an organisation whose activities are connected with people's safety and health and essential public interests and where provision of minimum services should be ensured during a strike is settled by an independent body having the confidence of all the parties to the dispute and not the executive body.
- section 413 of the Labour Code so as to ensure that when a strike is not permitted, any disagreement related to collective dispute is settled by an independent body rather than the RF Government; and
- section 11 of the Law on Fundamentals of Public Service and the relevant articles of the Law on Federal Railway Transport so as to ensure the exercise of the right to strike by public servants who do not hold office of authority on behalf of the State as well as by railway workers.

4.1.5. Russia's response to the ILO supervisory bodies' Recommendations regarding the amendment of the RF Labour Code

With the view of implementing the ILO recommendations, a Working Group was set up involving the RF Ministry of Health Care and Social Development, the KTR, and the RPSM; the Group produced the necessary amendments to the RF LC.

The Federal Act No.90-FZ through which amendments were introduced into the RF LC was adopted on July 30, 2006, and became effective in September

2006. However, it dealt with only one of the Recommendations, namely, the lowering of the quorum required for a strike ballot in section 410 of the Labour Code.¹⁹ The article in question set the quorum for a meeting (conference) on proposed strike action at two thirds of workers concerned (conference delegates). The currently effective version of the RF Labour Code (cl.3 Sec.410 of the Code) stipulates that a workers' meeting is deemed competent if attended by at least half of the workers concerned. At the same time the quorum for workers' conferences remained unchanged – at least two thirds of the delegates. Recommendations on the amendment of Article 29 of the Code dealing with the election of a representative body other than a trade union were also implemented in part, although the new wording does not fully reflect the ILO Recommendations.

In October 2006, the State Duma held a Round Table “On Ways Forward to Improve the Labour Law of the Russian Federation in View of Best Practices of the World’s most developed nations and the International Labour Organisation”, the agenda of which revolved around the implementation of the ILO Conference recommendations on democratisation of the Russian Labour Law in the area of organising and carrying out strikes. In 2008, a working group of experts was established at the RF Federal Agency for Labour and Employment (Rostrud) that also prepared a voluminous and motivated package of proposals for reforming the labour legislation. The proposals were elaborated with the ILO Recommendations in mind, discussions were held involving Rostrud representatives, and on the absolute majority of proposals all participants in the group agreed it was expedient to adopt them. Yet Rostrud took no steps to further promote the prepared amendments.

There were other attempts to introduce bills reflecting the ILO supervisory bodies' recommendations, but none of them has as yet born fruit.

4.1.6. The issue of protection against discrimination in connection with trade union activities

As trade unions grew more active, the ever growing number of union organisations and officers in the second half of the 1990s and early 2000s faced pressure, intimidation and different forms of discrimination.

The case of Kaliningrad Dockers

In 1997, members of a primary union of the Dockers' Union of Russia (RPD) at the Commercial Seaport of Kaliningrad faced discrimination after the union had held a two-week strike. They were transferred to teams made up entirely of RPD members that were kept idle and almost completely deprived of wages. The return to normal working conditions was offered to those who would leave the union.

The trade union sought protection of its rights in public prosecution bodies, the Federal Labour Inspectorate, and in courts. Yet they could not ensure its members' protection against discrimination. Moreover, on August 14, 2000, the Regional Court of Kaliningrad terminated proceedings with regard to the case of

19 Case No. 2216, doc GB.288/7, clause 914, sub-clause «e»

finding the transfer of RPD members to separate teams based on union membership unlawful. The Court ruled that the resolution of disputes over violation of workers' rights because of union membership (discrimination) is outside of the court's jurisdiction when it considered civil cases, because it did not entail legal consequences, while protection from discrimination is only possible by imposing a criminal punishment on the perpetrator.

Complaint to the ILO Committee on Freedom of Association. In December 2001, the KTR filed a complaint with the ILO CFA, quoting facts of anti-union discrimination by the management of the Commercial Seaport of Kaliningrad (Case No. 2199). In its 331st Report (par.706), the CFA found that anti-union discrimination did take place and requested the Russian Government to "take the necessary measures, including amendment of the legislation, to ensure that anti-union discrimination complaints are examined in the framework of national procedures that are clear and prompt" and keep it informed in this respect.

In particular, The Committee's Conclusions note: "703. As concerns the means of redress against alleged acts of anti-union discrimination, the Committee recalls that the existence of basic legislative provisions prohibiting acts of antiunion discrimination is not sufficient if these provisions are not accompanied by effective procedures ensuring their application in practice... the Committee considers that the legislation providing for protection against acts of anti-union discrimination (in Russia) is not sufficiently clear. It therefore requests the Government to take the necessary measures, including the amendment of the legislation, in order to ensure that complaints of anti-union discrimination are examined in the framework of national procedures which are clear and prompt. The Committee requests the Government to keep it informed in this respect".

However, no measures aimed at adopting a law on protection against anti-union discrimination in labour relations have been taken since that time. The lack of special procedures for protecting trade union rights and the ineffectiveness of the existing ones were behind the complaint that Russian trade unions filed with the CFA in January 2010.

Appeal to the European Court of Human Rights (ECHR). In 2001, 32 Kaliningrad Dockers turned to the ECHR with a complaint against the court ruling that denied them protection from discrimination²⁰. The complainants referred to the breach of articles 6, 11 and 14 of the European Convention on Human Rights and claimed violation of their right to freedom of association, as the State took no actions to stop discrimination practiced by their employer and refused to examine their discrimination complaint in the civil court.

On July 30, 2009, the ECHR unanimously recognised the violation of the complainants' rights. The Court unanimously ruled that infringement of article 14 (prohibition of discrimination) along with provisions of article 11 (freedom

²⁰ The Case of Danilenkov and Others v. Russia, No. 67336/01

of assembly and association) of the European Convention on Human Rights did take place, taking into account the authorities' inability to provide effective and precise judicial protection from anti-union discrimination.

In addition, the Court reiterated that it was in the sphere of state obligations to ensure protection from discrimination committed in violation of freedom of association whereby any worker should have the right to freely join a trade union of his own choosing without any threat of punishment. Despite the fact that prohibition of discrimination based on trade union affiliation or non-affiliation is present in the Russian private law, the Court found that the State failed to provide clear and effective protection against discrimination based on trade union affiliation and was in breach of articles 11 and 14 of the Convention.

4.1.7. Systematic TUR violations and the lack of effective protection mechanisms. The VKT-KTR complaint of violation of freedom of association of 2010 (Case No. 2758)

On January 20, 2010, the VKT and the KTR filed a complaint with the ILO CFA against the violation of the principles of freedom of association (Case No. 2758). The complaint quotes concrete facts of TUR violations faced by primary trade union organisations.²¹ The main reason for filing the Complaint was that trade unions faced a systemic inability to use the existing mechanisms of protection and redress of violated rights. In many cases their actions towards this end proved completely futile and in some cases entailed an even greater pressure on them, also from state authorities. In this regard, the complaint alleged that Russia lacked effective and efficient mechanisms for the protection of the freedom of association. The complaint was supported by the ITUC, the International Metalworkers' Federation (IMF) and the International Union of Food Workers (IUF). The complaint was joined by the Federation of Independent Trade Unions of Russia (FNPR).²²

The complaint alleges the following types of violations:

1. Civil rights violations (right to life, safety, physical and moral inviolability of person, freedom of speech).
2. Violations in the area of trade union creation without prior authorisation (denials of state registration, juridical changing of a trade union's status, etc.)
3. Worker discrimination based on union affiliation and involvement in union activities; failure of state authorities to provide protection against discrimination.
4. Employers' refusal to recognise trade unions and interact with them
5. Denial of access to union members' workplaces to trade union leaders
6. Violations of trade unions' right to collective bargaining
7. Interference of state authorities in trade union affairs

²¹ Including the VKT-affiliated Interregional Automobile Industry Workers' Union (MPRA), All-Russian Commercial and Services Workers' Union (OPRTU), and Independent Miners' Union of Russia (NPGR) and the KTR itself and its affiliates: the Russian Trade Union of Railway Engine Crews, the primary union organisation of the Dockers' Union of Russia at the Commercial Seaport of Novorossiisk, members of seafarers' unions

²² For further information on the complaint see the ILO CFA reports.

8. State authorities' failure to provide protection of trade union rights and the lack of a state system of TUR protection

The complaint gives examples of prolonged and unpunished pressure on trade union members and activists which in some case actually destroyed trade union organisations.²³ It describes events taking place in 2008-2009 when leaders of several primary trade union organisations suffered threats, intimidation and assaults. Several leaders in different companies were threatened and in some cases beaten

For example, in October 2009, flyers and other agitation materials distributed by the VKT-affiliated Interregional Automobile Industry Workers' Union (MPRA)-affiliated primary union organisation of the joint stock company (OAO) "Centrsvarmash" in the town of Tver' were added to the Federal List of Banned Extremist Literature, of which the union was notified only after the updated List had been published. A year-long effort to appeal this decision proved fruitless.

There are also examples of the ineffectiveness of trade unions' discrimination complaints to the State Labour Inspectorate and public prosecution bodies.

Discussing further steps to redress the situation with the RF Government in connection with this Complaint, the complainants have drafted proposals to reform the Russian law and law enforcement practice with the aim of ensuring the exercise and protection of freedom of association rights and sent them to the Ministry of Health Care and Social Development.

4.2. Belarus

4.2.1. The general situation in Belarus and the first representations to the ILO Committee on Freedom of Association (CFA)

Republic of Belarus (RB) has been an ILO Member State since 1954 and has ratified both Convention No. 87 and Convention No. 98. The Neo-Soviet social policy adopted by the Belarusian regime once again reduced the role of trade unions to that of "accessory drive belts" of the State machinery. Those trade unions that were independent of the Federation of Trade Unions of Belarus (FPB) and refused to become another structural element of the system, along with other independent non-governmental and non-commercial organisations in the country, found themselves the target of the State's repression and busting tactics.

The first TURs violation complaint of the Belarusian trade unions was filed with the ILO CFA in 1995. At that time, the Free Trade Union of Belarus (SPB) and the Belarusian Congress of Democratic Trade Unions (BCDTU), supported by

²³ In particular, it quotes acts of discrimination against members and leaders of the MPRA-affiliated primary union organisations of the joint stock company (OAO) "Centrsvarmash" (Tver), "Edinstvo" (Togliatti), the closed corporation (ZAO) "Festapline Arkada Profil" (Yartsevo, Smolensk region), the limited liability company "GM AUTO" (Saint-Petersburg), ZAO "GM – AUTOVAZ" (Togliatti), "TagAZ" (Rostov-on-Don), the State institution of higher professional education "Saint-Petersburg University of the RF Ministry of Interior" affiliated to the All-Russian Commercial and Services Workers' Union (OPRTU), "Nevskiyе porogi" (OPRTU-affiliated); the Federal Post Service Agency for Saint-Petersburg and Leningrad Region "Pochta Rossii Piter" of the OPRTU (VKT).

the ICFTU and the World Confederation of Labour (WCL), lodged a complaint informing the ILO of severe restrictions imposed on the right to industrial action, of the suspension of trade union activity following a Presidential Decree, of grave instances of discrimination against trade unionists, apprehension and confinement of trade union leaders in connection with strike actions in Minsk and Gomel in August 1995 (Case No. 1849).

The second complaint was filed by the ICFTU in 1996, following the deportation of the Polish “Solidarnosc” unionists during their visit to the FTUB, the subpoenaing of trade union leaders for their involvement in a trade union meeting, and the ongoing threats to prohibit the FTUB activities and dissolve the organisation (Case No. 1885). The Belarusian government chose to ignore the request of the ILO Committee on Freedom of Association (CFA) to respond to the allegations, and the CFA had to consider the case in absence of any comments from the Government.

4.2.2. The deterioration of legislation and the increased pressure on trade unions. Filing a complaint with the ILO Committee on Freedom of Association (Case No. 2090)

On January 26, 1999, the President issued Decree No. 2 “On Certain Measures to Promote the Orderly Functioning of Political Parties, Trade Unions, and Other Non-Governmental Organisations” that obligated all trade unions and their associations to renew their registration. The Decree entailed a regulation on the state registration (re-registration) of political parties, trade unions and other NGOs, based on which the Ministry of Justice adopted the Rules for the filing and reviewing of the registration documents. Those statutes required applicants to submit a multitude of documents, established a complex registration procedure, and had a long list of grounds to deny registration. The required registration package included a document certifying the applicant’s legal address (an office rent contract or a letter of guarantee signed by the site manager, if a union sought to have the legal address of the enterprise where its members worked as its own legal address). A large number of unions were refused such a letter by their enterprise managers and were, thus, unable to re-register their organisations. Trade unions would be denied re-registration on farfetched, often ridiculous, grounds, for instance, authorities denied registration to the Belarusian Independent Association of Industrial Trade Unions “inasmuch as the Association is composed of trade unions that represent and protect the rights and legitimate interests of their members”. And the Supreme Court of the Republic of Belarus endorsed this ruling.

The Presidential Decree No. 2 (P. 2, Cl 3) also set up high membership thresholds for trade unions: to be eligible for registration, a nation-wide trade union was expected to have at least 500 founding members representing the majority of the country’s regions (oblasts) and in the city of Minsk; territorial unions were to have at least 500 founding members from the majority of the relevant territory’s administrative units; and a workplace union was to have the membership of at least 10%, but not less than 10 people, of the workforce or the students at the relevant enterprise/educational institution. Those

requirements made it impossible to establish new national and territorial trade unions and organise the larger workplaces.

The new RB LC, effective since January 1, 2000, has an amended set of provisions with regard to collective bargaining, collective labour dispute resolution, and strike action, making the latter equally impossible.

The growing interference of the State authorities with the unions was also reflected in the national legislation: the provision banning all and any interference that could encroach on trade union rights and hamper their effective exercise was deleted from the country's Law on Trade Unions (cl.1 Art.3).

Furthermore, since early 2000, the Presidential administration has taken steps to ensure its control over trade union elections in order to put people they control into key leadership positions. The banks would freeze trade unions' accounts, tax authorities and other State supervisory bodies began monitoring the functioning and activities of trade unions. At the national level, the Ministry of Justice would register only those NGOs which were recommended by the Republican Commission composed of representatives of the Ministry of the Interior, the Tax Inspectorate, the Committee on Religion, the Security Council, the Minister of Justice, and the Head of Presidential Administration. The unions were increasingly required to support the course set by the country leaders and engage in cooperation with the State authorities. The RB State Security Committee became involved in monitoring trade unions' activities.

Officers and members of independent trade union organisations faced discrimination, pressure, refusals to renew employment contracts, refusals to prolong employment after the term of an elected union position expired etc.

On June 16 2000, the Belarusian Automobile and Agricultural Machinery Workers' Union, the Belarusian Radio and Electronic Industry Workers' Union, the Free Trade Union of Belarus, and the BCDTU turned to the ILO CFA to file a complaint against violations of the fundamental principles embodied in the ILO Conventions Nos. 87 and 98 by the Republic of Belarus (Case No. 2090). The FPB initially was one of the complaining parties, but after the FPB was taken over by forces subordinate to President Lukashenko, the Federation withdrew its complaint.

In March 2001, (Report No. 324), the CFA concluded that Decree No. 2 constituted a serious violation of freedom of association principles, and suggested to the Belarusian Government that it should exclude trade unions from its scope and repeal restrictions related to the issue of the legal address. The Committee stressed that the State authorities' interference with trade union activities was unacceptable, and requested the Government to provide information on the rectification of the violations that had taken place against the specific trade union organisations and their leaders mentioned in the Complaint.

"In conclusion, having reviewed the complaints in their entirety, the Committee has to express its deep concern with the numerous and varied attacks on trade

union rights and the whole trade union movement in the Republic of Belarus; these attacks can only be qualified as regular and systematic interference with the operation of trade unions in violation of the majority of fundamental principles of freedom of association. The Committee expects the Government to do everything within its power to ensure that any attempts to interfere in the internal affairs of trade unions are immediately stopped, allowing the trade union movement of the Republic of Belarus to develop under conditions of total independence and autonomy” (para. 83).

4.2.3. The failure of the Belarusian Government to implement the ILO CFA recommendations. Inclusion of the Belarusian case into the special paragraph of the Committee on the Application of Standards’ report to the International Labour Conference

During the period of 2000-2003, Case No. 2090 was reviewed by the CFA seven times²⁴; it was also discussed by the ILC CAS in 2001, 2002, and 2003; the legal aspects of the Case were annually reviewed by the CEACR.

The ILO CFA called upon the Belarusian Government to reconcile the national legislation with the principles of freedom of association, and, in particular, amend its provisions with regard to the registration of trade unions, excessive membership requirements, international financial aid, collective bargaining, the right to industrial action, assemblies, rallies, marches and picketing actions, as well as investigate cases contained in the Complaint initially and included therein later on.

While the Case was being reviewed, new evidence of freedom of association violations in Belarus arose, and, at the same time, the Government of Belarus would not implement a single recommendation of the Committee on Freedom of Association.

Moreover, concurrent with the review process of the Complaint, a series of new regulations were enacted and new actions were taken to further impede trade unions’ exercise of their right to organise workers and carry out union work. In particular, on March 12, 2001, the President of Belarus issued Decree No. 8 (subsequently complemented by Decree No. 24 dated November 28, 2003) that precluded any assistance to NGOs, including trade unions, coming from international organisations. The Presidential Decree No. 11 of May 7, 2001, on assemblies, rallies, street marches, demonstrations, and picketing actions made it virtually impossible to actually carry them out. Later on, Decree No. 11 was rescinded, while its provisions survived, in an even stricter form, as amendments to the Law on Mass Events in the Republic of Belarus.

At the same time, many unions saw interference in their internal affairs continuing; the Belarusian Air Traffic Controllers’ Union was dissolved; trade union leaders would get arrested; the authorities would bring pressure to bear on independent unions’ grass-root membership, deny union organisations registration and commit other grave violations; trade union activists would be

²⁴ See CFA Committee Reports Nos. 324, 325, 326, 329, 330, 331, 332

dismissed, some of them were blacklisted and were therefore unable to find another job.

Ever since the ILO started reviewing the Complaint, the Government of Belarus has never eluded the dialogue with the ILO and never directly refused to implement the recommendations. It presented its own viewpoint on the whole situation, claiming that “Western experts” might not be aware of the country’s specificities. However, it never attempted any concrete steps to fulfil the CFA recommendations.

At the 89th ILC in June 2001, the CAS placed Belarus in a special paragraph of its report to the Conference. Such a procedure is stipulated for Member States that engage in repeated grave violations of workers’ rights including those embodied in the core labour standards.

In November 2002, the ILO CFA yet again discussed the situation in Belarus and noted (Report No. 329) “a serious deterioration of the situation in the country in relation to trade union rights”, expressing “a particular concern, seeing no progress at all in the implementation of its recommendations ever since the Complaint was filed in the year 2000. Moreover, it appears that the country sees a serious deterioration of the situation in relation to the respect for trade union rights”.

At the 91st session of the ILC in June 2003, the CAS again placed its conclusions regarding the Case of Belarus in a special paragraph because of the failure to implement recommendations and highlighted it in connection with the Belarusian Government’s continued refusal to observe the ILO Convention No. 87.

4.2.4. The filing of a complaint under Article 26 of the ILO Constitution and the setting up of a Commission of Inquiry

As a result, at the 91st ILC on June 18, 2003, 14 delegates, workers’ representatives, filed a complaint under Article 26 of the ILO Constitution, stating that it was necessary to set up a Commission of Inquiry to examine observance by the Republic of Belarus of the ILO Convention No. 87 on the right to organise and Convention No. 98 on the right to organise and bargain collectively. Based on this complaint and in accordance with the ILO procedures, the ILO Governing Body at its 288th session in November 2003 took a decision to set up a Commission of Inquiry under Article 26 of the ILO Constitution.

The ILO Commission of Inquiry started its work in January 2004. Between June 15 and 23, 2004, a mission in Minsk gathered comprehensive information related to the complaint against TURs violation. To ensure that stakeholders could speak freely in a safe and confidential environment, the Commission met 70 witnesses representing the complainant organisations and high-ranking government officials including the Minister of Labour and Social Protection, the Minister of International Affairs, the Deputy Prosecutor-General, the Minister of

Industry, the Minister of Justice, the Chair of the State Committee on Aviation and others.

The formal hearing of the case of TURs violations in Belarus took place in Geneva on April 27-28, 2004. In the course of the hearing, witnesses for the complainants and the Government were examined. Witnesses for trade unions submitted a number of additional documents in support of their statements.

The final Report of the Commission of Inquiry was adopted at the third session held in Geneva 19-23 July, 2004, and presented at the ILO Governing Body meeting in November 2004. The Report contained almost 200 pages, and in it the Commission noted, among other things, that the system of labour relations in Belarus and the trade union practices still have many features of the Soviet era, particularly when it comes to managers' and state officials' direct involvement in the decision-making process of trade union statutory bodies.

In the Recommendations, the Commission noted the "crucial importance of taking measures in the near future that would enable unions outside of the FPB to freely create their organisations and engage in trade union activities. Only in such circumstances will it be possible to say that Belarus has freedom of association". The Commission formulated 12 Recommendations to the Government for immediate implementation.

Recommendations of the Commission of Inquiry:

1. Take necessary measures to immediately register the non-registered workplace trade union organisations listed in the Complaint, regardless of the alleged obstacles resulting from Decree No. 2.
2. Amend Decree No. 2 in such a way as to eliminate any obstacles to registration related to the legal address and the 10% minimum union membership requirement.
3. Disband the Republican Registration Commission and execute registration of trade unions at the relevant local, regional (oblast) or national level.
4. Make all conclusions and recommendations of the Commission public through their wide and immediate dissemination; make a public statement on the inadmissibility of acts of interference in the internal affairs of trade unions; review any interference complaints submitted by trade unions.
5. Guarantee protection in terms of unimpeded functioning to all organisations mentioned as victims of interference.
6. Clearly instruct all managers and directors of enterprises who are still union members not to take part in their unions' decision-making.
7. Conduct independent inquiries of all pending complaints of anti-union discrimination to be carried out by persons enjoying the trust of all parties concerned.
8. Establish effective protection procedures against anti-union discrimination and other repressive measures. In order to ensure that such protection is further guaranteed through an unbiased and independent judicial system and proper practices of administration of

justice, The Commission recommends the Government to implement recommendations of the UN Special Rapporteur with regard to the independence of judges and lawyers.

9. Amend Decree No. 24 on the use of foreign gratuitous aid so as to ensure that organisations of workers and employers can effectively organise their work and use aid provided by international organisations of workers and employers.

10. Amend the Law on holding Mass Events (as well as Decree No. 11).

11. Make sure that the BCDTU which already has one seat on the National Council on Labour and Social Affairs (NCLSA) could participate in the Council's meetings and be represented there by any person appointed by it; ensure the right of all composite union organisations of Belarus to participate in the work of the NCLSA.

12. Conduct a comprehensive review of the labour relations system aimed at establishing a clear delineation between the role of the Government and the roles of social partners, as well as promoting the development of totally independent organisational structures of workers and employers.

By the decision of the Commission of Inquiry, all further monitoring of the implementation of the Commission's Recommendations was referred to the CFA. The Committee annually reviewed the implementation of the Recommendations by the Government of Belarus. In the course of all such reviews the Committee would diplomatically point out that "despite a number of positive steps taken by the Belarusian Government, the current situation in the country is far from the total observance of freedom of association principles, and some of the Recommendations of the ILO Commission of Inquiry still remain unfulfilled". Every time, the Committee appealed to the Government of Belarus to continue co-operation with the International Labour Office and social dialogue with all the partners, including trade unions that are not affiliated to the Federation of Trade Unions of Belarus (FPB).

4.2.5. *Withdrawal of EU trade benefits from Belarus*

As was mentioned earlier, "GSP+" , a special system of trade preferences, is a kind of reward and incentive for countries that ratify and effectively implement international conventions, including the ILO Conventions on freedom of association. Belarus had been enjoying tariff benefits within the standard systems of GSP and GSP+ until 2005.

In January 2003, the ICFTU, the European Trade Union Confederation (ETUC), and the World Confederation of Labour (WCL) informed the European Commission about violations of freedom of association in Belarus. The EU deemed that it had sufficient grounds for inquiry and approved a decision to set up an appropriate Commission. The independent inquiry carried out by the EU Commission experts concluded that Belarus had indeed permitted multiple and varied violations of trade union rights which could only be described as grave and systematic violations of the most essential rights in the sphere of freedom of association.

During its meeting on August 17, 2005, the EU Commission decided to monitor and evaluate the situation in Belarus for six months and, if during that period the Government of Belarus should fail to show its readiness to make real progress in the implementation of the ILO Commission of Inquiry's Recommendations of 2004, the EU Commission would put forward a motion to the EU Council to withdraw trade benefits from Belarus.

As no meaningful steps to correct the situation had been taken during the monitoring period, the European Commission took a decision to reduce Belarus' trade benefits.

Currently, Belarus remains excluded from the GSP+ preferences. The Government of Belarus has been lobbying for the return to the former volume of its trade preferences. Yet, since the withdrawal of the benefits was linked to the failure of the Belarusian Government to implement the Commission of Inquiry Recommendations, their reinstatement is impossible until the recommendations in question are fulfilled.

4.2.6. Subsequent actions of the Government of Belarus

After the withdrawal of trade preferences the Government of Belarus changed its position on this issue. The Government claims that it has included all unions, and not just the FPB-affiliated ones, in the social dialogue; a tripartite Council on improvement of social and labour legislation is functioning under the auspices of the Belarusian Ministry of Labour and Social Protection and the BCDTU is a part of it; trade union registration issues are dealt with in accordance with the legislation and the number of registered trade union organisations has reached 22,000, with 2 trade union associations; the Government makes sure that employers observe trade union rights; collective bargaining in Belarus takes place on national, sectoral and local levels, as well as on the level of individual workplaces; and the Government of Belarus takes concrete steps to develop social dialogue in the country, namely: all trade unions, including those outside of the FPB, (the BCDTU included) now sit on the National Council on Labour and Social Affairs (NCLSA).

In June 2008, the Government held a seminar on non-discrimination attended by the ILO representatives and tripartite partners.

On February 20, 2009, an Action Plan to implement the Commission of Inquiry Recommendations was adopted and the Government is of the opinion that it "has shown considerable progress in terms of observing freedom of association principles". Actions were taken to reconstitute the rights of a number of specific workplace union organisations listed in the Complaint.

Having taken due note of these developments during their latest review of the situation in Belarus in June 2010, the ILO CEACR and the ILC CAS stated, nevertheless, that to date they had received no concrete proposals for the amendment of Presidential Decree No. 2 in terms of the registration of trade unions, the Law on Mass Events, Presidential Decree No. 24 covering the

receipt and the use of foreign gratuitous aid as was required by the Commission of Inquiry Recommendations adopted 6 years previously; they expressed hope that Presidential Decree No. 2 would be amended or rescinded to eliminate all remaining obstacles to exercising the right to organise; they called upon the Government to step up the efforts to implement the Recommendations fully and without delay.

***Results: Implementation of the Recommendations by
the Government of Belarus***

Over the whole period, the Government of Belarus has implemented only two of the Commission of Inquiry recommendations (3 and 11) and, in part, recommendations 1 and 4.

- the Belarusian Congress of Democratic Trade Unions (BCDTU) has been reinstated to the NCLSA and became party to the elaboration and signing of the General Agreement among the Government, employer associations, and trade unions for 2009-2010;
- the Republican Registration Commission has been dissolved;
- individual trade union organisations affiliated to the BCDTU and the Belarusian Radio and Electronics Workers' Union (REWU) have been duly registered;
- a short extract from the Commission of Inquiry's Report was published in the "Labour & Social Protection" magazine of the Ministry of Healthcare and Social Development in 2005 and in the "Respublica" newspaper; however, the run of these publications and the form of their distribution made sure that the texts was only available to a minimal audience who could glean neither the meaning, nor the contents of the Commission's Recommendations.

At the same time, real cases of continued worker harassment to press them into giving up their union membership, refusals to register workplace union organisations and put them on the books, bans imposed on trade union gatherings, demonstrations, rallies, picketing actions show that no meaningful progress in the implementation of the ILO Recommendations has been made. There have been no prescribed amendments to the legislation; moreover, new regulations further restricting trade union rights have been enacted in the meantime.

As a conclusion, it seems that the Government of Belarus is only creating an impression that it is actually implementing the Recommendations. It has devised a peculiar tactic: one of the less complicated issues gets resolved immediately before the ILO Conference and the whole matter is then trumpeted by the Government of Belarus at the Conference to highlight the efforts taken. For instance, in spring 2009, after a trial initiated by the BCDTU the court ruling reinstated the previously dismissed Alexei Gabriel, Chairman of the workplace union organisation at the Novolukomskaya State Territorial Power Plant, and the Government reported this to the ILO Conference. Yet, several months later, this ruling was recalled when a retrial took place and Gabriel was again dismissed.

4.3. Georgia

Georgia is an ILO Member State and has ratified both the ILO Convention No. 87 on freedom of association and protection of the right to organise (August 3, 1999) and the Convention No. 98 on the right to organise and bargain collectively (June 22, 1993).

4.3.1. Representations to the Committee on Freedom of Association in connection with the interference in trade unions' activities and the seizure of trade union property

For the first time, the GTUA was forced to resort to the use of international mechanisms to defend its rights in June 2001, when it made a complaint to the ILO. The Georgian trade union delegation made a representation on the violation of freedom of association principles in Georgia during the ILO Conference (Case No. 2144). The GTUA informed the Conference about attempts by the State to nationalise a building, the Trade Union Palace of Culture, owned by the unions and the interference of State authorities in trade union elections and activities. The building of the GTUA's Palace of Culture was sequestered and turned over to the Georgian National Guard Headquarters in 1992, and even the ruling of the Constitutional Court of the Republic of Georgia on July 15, 1998, stating that the relevant order of the Cabinet of Ministers was unconstitutional did not help the unions to get it back. The complaint also quoted facts of pressure brought to bear on the GTUA leaders and officers in the course of preparation for the 5th GTUA Congress held on November 24, 2000, in an attempt to establish State control over the Amalgamation. The CFA in its recommendations asked the Government of Georgia to take the necessary steps to return the sequestered building to the trade unions and ensure that all allegations listed in the Complaint were properly investigated; however, none of those recommendations were implemented by the Georgian Government.

After the "Rose Revolution" in November 2003, the new Government of Georgia embarked on reforming the economy and the system of governance, yet those reforms only resulted in increased harassment of the GTUA by the State authorities. The GTUA filed a new complaint with the ILO CFA, alleging that the State demanded that the unions yield their property to the State, threatened trade union leaders and was carrying out a public anti-union campaign (Case No. 2387). In order to force trade unions to yield their property to the State, the authorities initiated a number of criminal cases, launched a massive anti-union campaign, and motioned to amend the Georgian Law on Trade Unions to obligate the unions to renew their registration within an extremely short period. Under the pressure from the State, the GTUA Council took a decision on gratuitously transferring to the State the majority of its resort and sports facilities, to which effect an agreement was signed with the Ministry of Economy Development.

With regard to this Case, the CFA urged the Government to observe the principle which allows trade unions to set up their staff and structures, organise their operation, and formulate their action programmes without any interference from the State authorities. This Case is quite revealing in that all the events that

resulted in the filing of the Complaint happened so fast that the CFA was only able to make a post-factum evaluation of the things that had already happened; and the ILO could not help influence the situation.

4.3.2. The Adoption of the 2006 Labour Code of Georgia that contravenes the principles of freedom of association

In 2006, a new Labour Code was adopted in Georgia with a significant number of provisions contravening the ILO Conventions Nos. 87 and 98. The Georgian LC was based on the concept of liberalisation of labour relations and turned out to be more laconic and primitive than the labour legislation that regulated labour relations, rights and status of trade unions previously. The whole Labour Code of Georgia has but 55 articles and superseded all laws and regulations that had governed labour relations previously: the Georgian Labour Code of 1973, the Georgian Law on collective bargaining agreements of 1977, the Georgian Law on resolution of collective labour disputes of 1998, the Georgian Law on Employment of 2001 and others. The regulation of labour relations became simplistic to the extreme; due to the absence of properly elaborated and stipulated procedures in the legislation, many rights became impossible to exercise in practice.

One of the more relevant problems resulting from the adoption of the new LC in Georgia was that now the employer had the right to enter a labour contract “in oral or written form, for a fixed or indefinite term or for the period required to perform a job” (Art. 6.1 of the LC of Georgia). The Law contains no criteria or restrictions to determine in what circumstances a fixed-term contract could be permissible.

Provisions of Articles 37 and 38 are not transparent enough and are interpreted to mean that the employer has the right to terminate an employment contract at any time and without any grounds. According to Article 38.2, in the case of an employment contract being terminated at the employer’s initiative, the employee is entitled to one month’s wages as a severance package. Article 5.8 of the Labour Code says that the employer does not have to give any reason for refusing to conclude a contract of employment.

In practice it has cumulatively led to the universal spread of short-term employment contracts easily terminated by employers without any notice or justification. In the majority of cases tried in court previously, it was admitted, also by the Supreme Court of Georgia among other instances, that Clause d of Article 37 of the Labour Code allows employer to dismiss an employee without giving any advance notice or explanation. It was only recently that a number of court decisions, including, for instance, the ruling of the Common Pleas Chamber of the Supreme Court of Georgia dated April 28, 2010, on the case of Dali Jonjua et al. v. “Abkhazia Media-Centre”, expressed an opinion that Clause d of Article 37 of the Code did not in itself constitute sufficient grounds for arbitrary dismissal without any justification; however, this interpretation came only by way of recommendation and did not have any impact on the judicial and law enforcement practices.

After the new LC became effective, the Law on Trade Unions has not been abrogated and is, formally, in force. Article 23 of the Law states that employer can only dismiss employees who have been elected Chairpersons of trade union organisations with the consent of the union, yet in reality, after the adoption of the new LC, this provision is now ignored.

All these have become an extremely serious obstacle to the creation and functioning of trade unions. The new legislation offers boundless opportunities for discrimination against trade union activists. At the same time, the Georgian LC contains no provisions that would protect unionists from discrimination or union from systematic violation of their rights.

The GTUC has taken a number of steps to try and ensure the adoption of a law that would protect unionists from discrimination including repeated protest actions held in front of the Parliament building. The GTUC also prepared a bill to amend and supplement the Georgian LC. According to Georgian Law for a new bill to be introduced for consideration directly by the citizens it should have 30,000 signatures. The GTUC gathered 100,000 signatures and introduced the bill to Parliament on February 3, 2009. Yet, the Georgian Parliament ignored the introduced bill and refused to consider it.

The LC has significantly restricted the right to industrial action. The right to strike was taken away from employees of the Ministry of Interior, the Defence Ministry, the Prosecutor's office, and "all employees whose work is linked to the security, health, and safety of the population". Such a broad definition denies the right to strike to a multitude of employee categories and does not allow prior knowledge of how the court would determine if workers belong to a category that is forbidden to go on strike and, consequently, whether such a strike would be legal.

As the adoption of the new Labour Code in Georgia has led to the abrogation of the former law on collective bargaining agreements and in the new LC collective bargaining is regulated by just three Articles (41-43), whose contents are primitive, superficial and sometimes nonsensical, bargaining for collective agreements has been made impossible in practice. As a consequence, employers are not obliged to enter collective bargaining, even if a trade union or a group of workers approach them with such an initiative.

In connection with violations of the freedom of association conventions in the LC, the GTUC submitted its comments to the ILO. The CEACR in its annual reports was extremely critical of the Georgian legislation, noting that it contained vague and ambiguous provisions that do not ensure workers' protection in the case of anti-union discrimination, and urged the Government to amend the LC so as to ensure effective protection against anti-union discrimination.

Due to the absence of legal protection against anti-union discrimination, one of the more significant problems facing the Georgian labour movement is the pressure, harassment, and dismissals that union activists and members find themselves victims of. As of today, two such cases have become the subject of complaints filed with the ILO CFA.

4.3.3. Discrimination of trade union activists of the Poti Sea Port and the BTM Textile union organisation

On October 15, 2007, the union organising the Poti Sea Port workers since 2000 held a 45-minute protest action during the lunch break. Workers demanded that the Sea Port management enter negotiations with them on the issue of the Ports impending privatization. Several days after the action, the union's office was sealed and the union leaders denied entry to the office, and several days later the union leaders and activists were dismissed. The Municipal Court of Poti that examined the case for reinstatement found for the defendant quoting the employer's right to terminate employment relations with an employee. The Court refused to apply Article 23 of the Georgian Law on Trade Unions as contravening the effective Labour Code of Georgia which has no provisions for seeking trade unions' consent for dismissals. The Court examining the appeal came to the same conclusion.

Members of a trade union organisation created at the BTM Textile facility in the Autonomous Republic of Adzharia faced similar anti-union discrimination. On April 10, 2008, after a meeting with the manager of the enterprise where he was informed of the establishment of a union, nine women workers elected to the trade union committee of the new organisation were dismissed.

In view of those facts, the GTUA filed a complaint with the ILO CFA in July 2008 (Case No. 2663). The CFA made a clear conclusion that the Georgian legislation does not provide sufficient tools to protect union members from discrimination and asked the Georgian Government to take the necessary measures to introduce amendments to the Labour Code of Georgia that would ensure protection of workers against anti-union discrimination, including dismissals, and also see to that employees have the right to receive an explanation of the reason for dismissals.

4.3.4. Interference in activities of the Teachers' and Scientists' Trade Union of Georgia

Since 2005, the Teachers' and Scientists' Union organises over 100,000 workers in the sphere of education. In January 2008, a new union, the Education Workers' Union, funded and supported by the Ministry of Education and school head-masters, was created. The management in schools, using diverse methods of administrative pressure and harassment, began forcing members of the Teachers' and Scientists' Union to leave their union and enter the new organisation. Among many ways of coercion used were threats of dismissal. In School No. 11 of Dedofliskaro District, 11 teachers who refused to become members of the new union were dismissed. The Ministry of Education held a number of meetings attended by head-masters of all schools who were called upon to make efforts to fight the Teachers' and Scientists' Union and informed that they did not have to transfer union membership fees stopped from the salaries to the account of the Teachers' Union.

In connection with this situation the GTUA filed a complaint with the ILO CFA in November 2008 (Case No. 2678). Apart from making recommendations

concerning specific cases of trade union rights violations, the Committee once again stressed its request to the Government of Georgia to take immediate measures, in consultation with social partners, to amend the country's Labour Code to ensure protection from anti-union discrimination, including dismissals in connection with trade union activity, and also provide sufficiently convincing sanctions against perpetrators.

In 2008 and 2010, the ILC CAS raised the issue of observance of Convention No. 98 in Georgia. The CAS noted that the CEACR had already raised issues related to the deficiency of the national legislation in terms of providing proper protection against discrimination and ensuring the real possibility of conducting collective bargaining. The CAS yet again pointed out that the Government of Georgia was in a position to use technical aid from the ILO to elaborate such legislation and set up social dialogue.

4.3.5. Other violations of freedom of association. Refusal of limited liability company "Georgian Railways" to transfer union membership subscriptions. Refusal to recognise the union created in the LLC "Georgian Post"

The Railwaymen's Union of Georgia, one of the largest affiliates of the GTUA, organises 14,000 workers of the limited liability company "Georgian Railways". The Georgian Government would constantly refer in the ILO to the CBA signed in 2006 by the company and the railwaymen's union as a success story in the social dialogue in Georgia. In July 2010, a representative of the OOO "Georgian Railways" sent a proposal to the Railwaymen's Union to introduce a number of changes into the CBA, in particular, to discontinue the stopping and transferring of union membership fees. Without waiting for the Union's response, the company unilaterally stopped transferring the fees.

The Railwaymen's Union together with the GTUA attempted to resolve this issue at national level: a commission was set up with a single aim of negotiating a new CBA with the company. In August 2010, the employer agreed to conclude a new agreement.

Workers of the limited liability company "Georgian Post" owned by the State and managed directly by the Ministry of Economic Development of Georgia also faced numerous challenges. One of the more serious issues is the 1-to-3-months-long employment contracts that the company signs with employees. For several years, the employer has been denying recognition to the union created by the company workers, ignoring the union's requests to rectify violations of workers' rights. It also regularly failed to transfer union membership subscriptions to the union's account which actually paralysed the union's activities.

None of the problems raised have been resolved; moreover, the employer began interfering in the union's affairs and violating its rights. In 2009, the union was driven away from the offices previously provided by the employer. In response to the letter from the Union demanding the payment of 0.07% of the amount of trade union fees that was not transferred to the Union's bank

account in time, the “Georgian Post” General Manager, threatening dismissals, forced 29 members of the Union to write their disaffiliation notes to the Union.

As a result of the pressure from international organisations, a Commission on Social Dialogue was established in Georgia in 2009; the Commission has had one meeting. Also, the ILO provided technical assistance to the Georgian Government, sending experts in 2009 and 2010 who helped the social partners discuss the necessary amendments to the legislation. Yet in May 2010 the Georgian Minister of Labour, believing that the parties had failed to agree on the contents of the amendments, stated that the anti-discrimination law would be drafted by the Ministry of Labour and, once the draft was ready, sent to the GTUC. To date, there have been no developments in this area.

SECTION V. CONCLUSION

In twenty years, the independent trade union movement of the region has accumulated considerable experience in fighting for its rights, carrying out industrial actions, using both judiciary systems and international mechanisms to protect trade union rights. These experiences were gained against a background in which trade unions struggled with concepts of identity, as well as the rethinking of priorities and mission in a new social and economic environment.

In almost all countries, the last years are marked with steps taken towards the ‘simplification’ of labour laws, leading to a decrease in social and labour protection for workers and an increase in attacks on trade union rights. In some cases, it has been linked with the efforts of the business community to increase “flexibility” in labour relations, in others, with the efforts of the governments to place freedoms – of association, of expression, of action – under its control. In many cases, it has been both.

Regardless of ideology, in all the countries of the region, the close attention devoted by authorities to the union movement usually implies direct interference in union affairs, either through legislative and normative acts, or through direct intrusion.

As shown in the report, such practices are widespread. And the sheer number of ILO complaints from the region, not to speak of the numerous discussions held in various ILO structures with the expertise and opinions they have provided, signals the serious nature of the infringements. It also signals the maturity of the trade union movement’s comprehensive understanding of such mechanisms, its readiness to utilise all the means available to them in order to carry out their responsibilities and improve the situation of workers.

The report cannot of course, show or do justice to the great energy and efforts expended by unions in building solidarity actions, enhancing their rank-and-file members’ capacity at enterprise or branch level, to fight for their rights or networking with civil society activists.

International mechanisms to protect trade union rights can help bring the problem to the international level – both in legal and in political terms. Yet, it is often not a ‘universal cure’. While taking strategic decision about the use of such mechanisms, one should understand the responsibility that this political dimension creates.

Any appeal to the ILO through a complaint, request, or comments brings the problem from local to global level. It attracts the attention of international organisations, and in some cases of the international community as such. However, the complaining organisations often face accusations in their own countries that they are “washing dirty laundry in public”. And in some cases, there are even direct accusations that the organisation is acting against the national and the workers’ interests.

On the other hand, as the experiences show, the ILO mechanisms work best when the nature of the violation is of a systematic or systemic nature and cannot be dealt with through the use of existing local or national mechanisms. In addition, they rarely provide for immediate recourse.

When the problem is serious enough to be brought to the international level, it is necessary to channel the information, to provide updates and properly inform the relevant institutions. It is a serious and scrupulous work. Furthermore, when the conclusions and recommendations are issued, the unions need to take initiatives to get them enforced through campaigns, lobbying, community actions as well as working with their respective officials. If these efforts are not undertaken, the achievements will be reflected on paper only.

In addition to the ILO, the Council of Europe provides other avenues for action through the European Social Charter (Revised) and the European Court for Human Rights. As stressed by the report, the European instruments have been used effectively by unions, as demonstrated in the cases of the Kaliningrad Dockers and the Belarusian democratic unions.

Workers in the Region understand that the impact of the crisis presses governments and societies to face hard policy choices in terms of efficient recovery and positioning in the realities of the post-crisis world. Genuine social dialogue, collective bargaining and trusted dispute resolution mechanisms can make a major contribution in the process and secure sustainability through maintaining sufficient public consensus on the way.

To these ends it is necessary to remove the obstacles to utilising that potential which have already been identified and refrain from developing new ones in the future. The sooner issues like the obligatory registration procedures for organisations, the unbalanced power relations in collective bargaining, the dominant perception of differences of interests as a reason for outright conflict and war with trade unions, and the easy resort to intimidation involving physical violence against trade union activists are resolved, and trade unions are given the chance to operate freely and independently, the easier it will be to

consolidate and further develop democratic processes, consensus in society and support for the policies of necessary reforms and adjustments along the way.

There is an obvious need to strengthen our trade union work in the region with regards to trade union rights through all available means.

Within the trade union movement, efficient trade union networking and practical solidarity actions are necessary to ensure rights are properly implemented. The constant monitoring of national policies and legislation and practices towards trade union rights is an essential aspect of our ongoing work.

These are the fundamental principles of the ITUC and the PERC strategies for the region to protect and promote trade union rights in line with the decisions of the ITUC Congress in June 2010.

The main elements for future action include:

- In order to achieve social progress and realize decent work in the region, to campaign for the respect of ILO Conventions No. 87 and No. 98. The ILO needs to allocate more resources in assisting countries and social partners to give effect to these rights (in law and in practice).
- Together with the ILO, we need to work with public authorities in Newly Independent States on ways to create safeguards that enables an independent trade union movement, through legislation, but also through through institutions and other mechanisms, such as the adoption of policies and guidelines ensuring that public officials are not involved in the internal affairs of trade unions.
- More efficient solutions should be sought to create proper avenues for workers and employers to meet and encourage and promote social dialogue in the interest of both workers and employers.
- Protracted proceedings and lack of proper enforcement are important barriers to the full enjoyment of trade union rights, and countries in the region need to create speedy and affordable dispute resolution mechanisms, or labour courts, which will afford victims of anti-union harassment real access to justice.
- Law enforcement bodies and labour inspectorates need to be strengthened through training of inspectors and investigators and through an increase of funding of such bodies.
- Discussions should be undertaken with Employers' organizations in the region to achieve their commitment for the respect of trade union rights in line with ILO principles, and to bring them to take a stronger stand against anti-union practices by many employers in the region.

- To accompany and support the regional trade union organisations in using all relevant ILO and European mechanisms
- To support a network in order to enhance regional and international solidarity in terms of joint protest actions, community and communication work, institutional awareness and lobbying, and to build up the capacities of the regional trade union structures.

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