

A ROADMAP FOR GEORGIA

INTERNATIONAL TRADE UNION CONFEDERATION EUROPEAN TRADE UNION CONFEDERATION

The European Trade Union Confederation (ETUC) and the International Trade Union Confederation (ITUC) have been closely following the negotiations for a deep and comprehensive free trade agreement (DCFTA) with Georgia, which take place in the framework of the Eastern Partnership (EaP) and the European Neighbourhood Policy (ENP). Considering that the economic integration should provide benefits for working people in both the EU and Georgia, the ETUC and ITUC have several times raised serious concerns about the state of labour rights in Georgia.

For many years, the ITUC's affiliate in Georgia, the Georgian Trade Union Confederation (GTUC), has faced sustained and serious acts of repression by the Government of President Saakashvili. Such anti-union acts are part of the government's strategy to attract foreign investment. Indeed, it has touted in financial magazines and newspapers that the country has low taxes, minimal regulations and "unprecedented freedom to do business."

In 2006, the Georgian government gutted the Labour Code, in direct contravention of ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise and ILO Convention No. 98 on the Right to Organise and Collective Bargaining – both of which Georgia has ratified. Indeed, the Labour Code establishes near complete freedom to fire a worker for no reason whatsoever, denies workers effective protection against discrimination, including on the basis of trade union membership, undermines collective bargaining and eliminated labour inspection, among others. In several cases, trade union activists have been dismissed, and the courts, despite protections in the trade union act against anti-union discrimination, have upheld the sackings on the basis of the 2006 Labour Law. Together, these changes led to a severe imbalance of power in the employment relationship, to the extreme detriment of workers. As a result, the GTUC has lost roughly 100,000 members in recent years.

Perhaps the most striking recent example of anti-union practices in Georgia is the Hercules Steel case. Last year, the governor and dozens of police broke a strike of roughly 150 workers at the Hercules Steel plant in Kutaisi. The workers were forced to return to work or face jail and/or dismissal, and several were forced to sign a document renouncing the union. Those workers struck to demand the reinstatement of dismissed trade union leaders and to demand collective bargaining in good faith. Several Indian workers were also employed in squalid conditions, at low pay and had their passports withheld. Some who had requested permission to return home had been denied.

Despite repeated calls from the ILO to remove a raft of legal obstacles to trade union rights, and to guarantee protection from discrimination, the Georgian government has done almost nothing to comply. The ILO-led process to initiate the revision of the law by the means of social dialogue, in spite of certain formal advances – such as setting up a national tripartite council and signing a national tripartite agreement – has not led to more than very marginal changes of the Labour Code.¹

In July 2012, the government informed the International Trade Union Confederation (ITUC) and the European Trade Union Confederation (ETUC) that it had drafted a 14-point action plan to address the issues in question. However, this action plan has not been done in consultation with GTUC nor has it been presented to them. Rather, the ITUC and the ETUC believe that any plan should be developed through social dialogue and focus first and foremost on the implementation of ILO recommendations in law and in actual practice.

Below are the issues that we believe should be addressed in a plan of action and considered in the context of the EU's negotiations for a Deep and Comprehensive Free Trade Agreement (DCFTA).

A. Amendments to Georgia's labour laws:

The International Labour Organization (ILO) has identified several areas where the nation's labour laws and institutions fail to comply with international standards. These same issues have been raised in the context of the Generalised System of Preferences (GSP) petitions before the EU Commission and U.S. government, with the latter having accepted the petition for review. In its responses to the US Government, the Government of Georgia has claimed that it will indeed undertake the needed reforms but has moved only on lower priority amendments that do not address the core concerns. According to the ILO, the remaining needed amendments include:

1. Protection Against Anti-Union Discrimination

The CEACR has repeatedly criticized the labour legislation for failing to provide adequate protection against anti-union discrimination. In particular, the CEACR has identified the following provisions: 1) 11(6) of the Law on Trade Unions and section 2(3) of the Labour Code, which they found “prohibited, in very general terms, anti-union discrimination, [and thus] did not appear to constitute sufficient protection against anti-union discrimination at the time of recruitment of workers and at the time of termination of their employment”; 2) section 5(8) of the Labour

¹ In the spring of 2012, the government did make minor changes with regard to the right to strike and the minimum membership number for establishing a trade union organisation.

Code, which does not require an employer to substantiate his/her decision for not recruiting an applicant which “in practice might result in placing on a worker an insurmountable obstacle when proving that he/she was not recruited because of his/her trade union activities”; and 3) sections 37(d) and 38(3) of the Labour Code, which allowed an employer to terminate an employment contract at his/her initiative, provided only that the employee is given one month’s pay. The CEACR concluded that “While noting that general provisions prohibiting discrimination exist in the legislation, in the light of the numerous alleged cases of anti-union discrimination, the Committee considers that the system currently in place in Georgia does not afford an adequate protection. The Committee therefore once again requests the Government to take the necessary measures to revise sections 5(8), 37(d) and 38(3) of the Labour Code in consultation with the social partners, so as to ensure that the Labour Code provides for an adequate protection against anti-union discrimination taking into account the principles above.”²

2. *Collective Bargaining*

Articles 41-43 of the Labour Code appear to put collective agreements on equal footing with individual agreements and allow an employer to negotiate individual agreements when a collective agreement already exists. The ILO CEACR has opined that “Considering that direct negotiation between the undertaking and its employees, bypassing representative organizations where these exist, runs counter to the principle that negotiation between employers and organizations of workers should be encouraged and promoted, the Committee requests the Government to take the necessary measures in order to amend its legislation so as to ensure that the position of trade unions is not undermined by the existence of other employees’ representatives or discriminatory situations in favour of the non-unionized staff.” The Committee requested that the Government to amend its legislation “to ensure that the position of trade unions is not undermined by the existence of other employees’ representatives or discriminatory situations in favour of the non-unionized staff and to promote collective bargaining with trade union organizations.”³

Noting the paucity of regulation on the collective bargaining agreements and the bargaining process, the CEACR had in 2008 opined that the Labour Code is insufficient to protect the right to collective bargaining. As it explained, “with the Law on trade unions containing one general provision on the right of trade unions to collective bargaining, and the Law on collective contracts and agreements

² ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, 101st Session, International Labour Conference, Report III (Part 1A), March 2012, p. 156

³ *Id.* at 157.

repealed, it is clear that collective bargaining is not sufficiently regulated (Article 41 even stipulates that collective agreements follow the same principles as individual agreements)... [T]he Committee requests the Government to take the necessary measures, either by amending the Labour Code or by adopting specific legislation on collective bargaining, so as to promote collective bargaining and to ensure the regulation by legislative means of the right of employers' and workers' organizations to bargain collectively in full conformity with Article 4 of the Convention"⁴

3. Strikes

Under Article 48(5) of the Labour Code, if no agreement has been reached between the parties with regard to a labour conflict within 14 days after initiating amicable settlement procedures, the other party is entitled to go to court or arbitration. The ILO CEACR has held that Article 48(5), which permits either party to unilaterally submit the dispute for compulsory arbitration, "effectively undermines the right of workers to call a strike." The CEACR recommended that government of Georgia amend Article 48(5) to ensure that arbitration is limited only to situations where the right to strike can be restricted or banned, namely in essential services in the strict sense of the term.⁵

Article 51(2) of the Code prohibits strikes in sectors where "work is impossible to suspend due to the technological mode of work." The CEACR again urged the Georgian government to amend the law to establish a system of minimum services⁶

Articles 51(4) and (5) prohibit strikes where employees who are informed about the termination of the contract before the dispute arises and following the termination of a time-based contract. The CEACR repeated its request to amend these sections of the code.⁷

Section 49(5) of the Labour Code provided that, after a warning strike, the parties shall participate in the amicable settlement procedures. The CECAR found that the Code still does not contain any such procedures to facilitate dispute settlement. The Committee explained that dispute settlement procedures usually involve a neutral and independent third party who can facilitate overcoming an impasse.

⁴ ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, 101st Session, International Labour Conference, Report III (Part 1A), March 2008.

⁵ 2012 Report, p. 154

⁶ Id.

⁷ p. 154-55.

The CEACR requested additional information regarding the function of a tripartite working group, which the government claims mediates disputes.⁸

4. Child Labour

The Committee of Experts Report of 2011 made several observations with regarding to child labour, and reminded the government that children under 15 years of age cannot be permitted to work, with the exception of light work. It specifically recommended the government to take the necessary measures to:

- ensure that children working in the agricultural sector, whether paid or unpaid, as well as those working on their own account, are entitled to the protection afforded by the Convention;
- determine light work activities permitted for children between 14 and 16 years of age and to prescribe the number of hours during which and the conditions in which light work may be undertaken by such persons;
- ensure that children under 15 years of age who participate in artistic performances benefit from the protection laid down by ... Convention [138];
- ensure the effective monitoring and implementation of the provisions giving effect to the Convention. It also requests the Government to provide information on the types of violations detected by the competent authority with regard to child labour, the number of persons prosecuted and the penalties imposed.⁹

Some Additional Concerns of the GTUC

Article 11 of the Labour Code gives employers' the right to make "insubstantial" amendments to the employment agreement. Employers may change the check in and out times of the employment by up to 90 minutes without renegotiating the employment contract with the employee or trade union. In practice, this allows employers to force employees to work overtime without consent or remuneration.

Georgia also has excessive civil and penal sanctions for workers and unions involved in non-authorized strike actions. A violation of the rules on strikes can result in two years of prison time for strike organizers. Penal sanction for peaceful, albeit illegal, strikes runs afoul of international norms.

⁸ Id. at p. 154

⁹ ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, 100th Session, International Labour Conference, Report III (Part 1A), March 2010, p. 332-33.

In its reply brief to the US Government under the GSP review, the Georgian government stated that it would undertake the following but has as yet failed to accomplish them.

- Streamline the definition of grounds and procedures for the suspension of an association
- Ensure a clear and better-articulated prohibition of discrimination based on trade union membership during pre-contractual as well as contractual labour negotiations
- Provide effective and dissuasive sanctions against acts of interference into trade union activities
- Enhance the collective bargaining and related provisions in Georgia's labour laws to ensure and further promote collective bargaining
- Avoid misinterpretation of the Labour Code provisions regarding the voluntary character of arbitration
- Streamline workers' rights to participate in sympathy or protest strikes
- Clearly define the minimum age for employment to eliminate any ambiguity
- Strengthen the restrictions on working hours for legal youth employment
- Precisely determine the age of admission to hazardous work and
- Clarify the provision on an employer's right to make "insubstantial" amendments to an employment agreement."

B. Reinstatement of Dues Deduction

Teachers: In 1998, there was a collective bargaining agreement (CBA) in effect between the Ministry of Education and Science (MoES) and the precursor union to the Educators and Sciences Free Trade Union of Georgia (ESFTUG). Among other things, that agreement included a dues deduction clause which provided that the MoES would ensure that educational institutions would transfer dues to the union's account. Post-merger, the ESFTUG asked minister to bargain a new national agreement but there was no response from the minister. In 2005, the union filed a lawsuit. In 2007, the court of first instance found that the MoES was the employer and therefore had an obligation to bargain collectively with the ESFTUG. The decision was appealed up to the Supreme Court. The MoES subsequently withdrew its appeal, which allowed the decision of the court of first instance to remain in force (which ruled in union's favour and ordered the MoES to bargain). Despite the order, the government refused to do so despite several efforts on the part of the union to engage the government. The terms of the CBA remain in force, which among other things allows for the continued transfer of funds.

Although the agreement remains in force, the union has attempted to comply with the government's demand to collect statements of authorization to collect union dues (even though such statements from 1998 remain valid) and to sign collective agreements with

the individual schools. A tri-partite process was established to draft a model agreement between the schools and the union. It is not really a CBA but is an agreement that allows for the transfer of dues. However, despite signed agreements across the country, the government has since disassociated itself from the agreement and fails to recognize their validity. The government has also urged schools not to sign the agreement, and where signed, to withdraw from those agreements. The union has also collected new authorization forms from teachers, which are also not being recognized.

After the election of Ms Kobakhidze in 2010, the government suspended any cooperation and ended the recent dues transfers. The government informed schools not to sign the model agreements that the government itself helped to prepare and to prohibit deduction of dues, or even transfer of funds from personal accounts to the union or dues collected by hand. In fact, in the county of Martvili the schools had transferred membership dues to the trade union's account. As a result of pressure from the Martvili Resource Centre (a county office of the MoES) on the school principals, the local union was forced by the school principles to return transferred dues from the bank to the school's accounts.

As a result of international pressure, late 2011 and early 2012, the MoES held several meetings with Teachers' Union. During these events, the issue of dues deduction was discussed. However, to delay and block the negotiations, the Minister imposed illegitimate conditions such as the unionization of one third of teachers in a school. As a consequence, collection of membership dues continue to be done through individual bank transfers which remained difficult. Furthermore, cases of interference in trade union internal affairs such as the obstruction of trade union meetings or in the collection of dues despite agreements are on the rise all over the country. Pressure on unionized teachers upon MoES' instructions to have them revoke their membership in the ESFTUG as well as on Schools principals to refrain them from cooperating with trade unions have also been reported. As a consequence, teachers do not dare to meet (including outside the workplace) and join the independent trade unions. At the same time, a yellow union, the Educational Professional Syndicate (PES) is given full access to the schools and can freely organize meetings and collect dues. In July 2012, the President of the PES was appointed to a position at the MoES. All this happened despite a Minister of Education and Science letter the ESFTUG President sent in January 2012 informing her about the readiness of the MoES to cooperate with the union.

Georgia State Railway: As their CBA was about to expire, the Georgian Railways Trade Union sent a letter to the Railway administration, fully owned by the state, to commence negotiation for a new agreement as was past practice. A letter was sent to management on Feb 18, 2008, which requested that the parties commence negotiations and create a joint commission to conclude the new agreement. The union developed proposals through an internal process, which were approved by membership.

Management declined to form a joint commission; however, the union delivered the proposals to management in any case.

On November 12, 2008, an order was issued to create a commission with 7 representatives from each party. The commission met only once. A proposal was tabled but was not signed by management, which argued that the global financial crisis prevented them from signing the agreement. The union agreed to postpone the negotiations to the beginning on 2009. In January 2009, there was an agreement to continue negotiations. However, company rejected a draft proposal and thereafter refused to continue bargaining. Under Georgian law, even if it expires, the CBA continues in force until new one is bargained.

On July 29, 2010, the union received a letter which gave them a five day period to accept a number of items, including the union assuming the costs of medical and other benefits – to the tune of 3.5 million Lari (~ EUR 1,7 ml). The company said that if the proposal was not accepted in 5 days, there would be no further talks. The union began examining the proposal, but the very next day, before the union could send its official reply, on July 30, 2010, the company issued a decree by which it unilaterally terminated clause number 3.2 of the agreement, which governed the check-off system. As a result, the deduction and transfer of membership dues to the union's account was stopped. The union went to court to annul the order on August 12. The court ruled against the union.

The union is now going member by member to get agreements to have their dues transferred from their accounts to the union's account. This is a very slow process, and has seriously affected the finances of the union. The banks also charge a transfer fee, which eats up 25% of the dues transferred. Many members are also afraid to sign for fear of reprisals as the laws provide no real protection against government/company threats and intimidation.

Medical: There has been a new wave of privatizations in the healthcare sector, with the consequent downsizing and wage reductions. The new owners of hospitals and polyclinics, with the active support of state institutions and local self-government bodies, have followed the example of public agencies' anti-union policies and practices and have prohibited check-off system of membership dues and transfer.

C. Re-establishing the Labour Inspectorate

The labour ministry, while it exists in name, no longer has an inspection function. It currently does not have a single person who is responsible for handling anything related to industrial relations-related matters (labour disputes, reconciliation, collective

bargaining, relations with trade unions, etc.). Nor does it have anyone responsible for the handling of occupational safety and health.

Thus, since 2006, the government no longer inspects workplaces to ensure compliance with the labour code and other laws within its jurisdiction. Similarly, the ministry does not respond to complaints. In general, labour violations are addressed by recourse to the courts by the parties. To the extent inspections are undertaken, they are done by the police – which have little if any training in labour law or industrial relations. In its 2010 report, the CEACR notes that “with the abolition of the labour inspectorate by the Labour Code of 2006, there exists no public authority to observe the implementation of labour legislation, including child labour provisions” and “requests the Government to envisage the possibility of re-establishing the labour inspection services, including in the informal sector, in order to ensure the effective implementation of the provisions giving effect to the Convention [138].”¹⁰

D. National Tripartite Commission and tripartite review of the labour code

The national tripartite commission established in 2009 commits to discuss the legislative initiatives connected to the social and economic issues; to develop activities, as in terms of legislation so in terms of practice, in order to reach the progress inter alia related to the Labour Code, Collective Bargaining and Freedom of Association and to expand cooperation and consultations with the ILO in order to carry out activities related to securing the decent work and life conditions. It also says that the tripartite dialogue and specific activities shall also be conducted in relation to the following issues:

1. The healthcare activities for employed in both formal and informal sector, skills training, retraining of the unemployed
2. Situation in connection to the protection of both workers’ and employers’ interests and rights
3. Protection of the health and safety conditions in the work places, development of the safe work standards in different sectors of economy (e.g. construction, mining etc.)
4. Unemployment insurance systems
5. Reform of the pension system
6. Development of the tripartite dialogue on the regional and sectoral levels

Despite the announced commitments the tripartite body fails to deliver practical results. No progress has been achieved on the issues above. The commission rarely meets and there is no meaningful discussion on the cases raised by the trade union, nor follow up

¹⁰ Supra, fn. 9 at p. 332.

action are taken. After two and a half years, the commission has not solved a single issue and none of the decisions and recommendations taken thereof have been acted upon.

The commission also has no role in discussing governmental policies with regard to DCFTAs and the respective commitments the government takes or promises. The Georgian government is still not serious about reforming law, and in fact still believes in some cases that ILO is simply mistaken in its reading of the labour code.

Recent cosmetic amendments introduced by the government – that decrease number of workers necessary to form a union and cancellation of the 90 days strike limit – fail to address the core incompliances (as indicated above). Moreover, they were implemented in unilateral manner, without any discussion by the national tripartite commission. The announced by the government “plan to address ILO concerns” also has not been discussed (nor shown) by the commission.

The national tripartite body has to be enhanced to function as defined in the tripartite agreement signed in 2009 and has to be transformed into real social dialogue body. In case of predicted workforce changes due to DCFTA, the sectoral and cross sectoral social dialogue will be of extreme importance and has to be prioritized.

E. Stop harassment and discrimination of trade unionists

The government officials openly interfere in trade union affairs. Below are just a few recent examples:

Education: The harassment and intimidation of the ESFTUG leader Manana Ghurchumalidze led to her resigning and applying for asylum in Canada. ESFTUG members were forced to quit the union and join the yellow union or risk being fired. In Zugdidi (Samegrelo region) almost 1,000 teachers resigned from the ESFTUG in one day alone, and in Kutaisi around 550 teachers left the ESFTUG. The officials in the Ministry tried to urge the newly elected president of the union, Maia Kobakhidze, to resign. After she has refused the proposal, she was intimidated by the anonymous people by phone, who threatened to kill her.

Railway: On 8 April 2011, in Khasuri, Ms Gocha Chubinidze, the head of the Carriage Depot of the Georgian State Railways advised delegates not to attend the Railway Workers Trade Union Congress and threatened them with dismissals. Also in Khashuri, the Head of the Rail Track Department, Mr Zaza Chkoidze, threatened 8 delegates with dismissal if they attended the congress. The Head of the Railway Station, Mr Vasil Kurtanidze, threatened one of 2 delegates with dismissal if he attended the congress. On 10 April, in the morning when delegates from Khashuri were in the station intending

to attend the Congress, unknown persons came and tried to convince delegates not to go. As a result, some delegates didn't go to congress. Indeed, only 9 delegates out of 24 attended the Congress from that region. From Samtredia, another region, only 15 out of 38 elected delegates attended the Congress. In Tbilisi a few days before the congress the delegates were threatened by the representatives of the Georgian Railway's administration in Rail-track Department and also in Carriage-Exploitation Department.

On June 22, 2011, Merab Targamadze, a member of board of the Georgian Railway Workers Union, was fired by the administration without prior notice. In December 2011, under the pretext of reorganization, Vitali Giorgadze, one of the most active members of the board of the Railway trade union, was dismissed. Other members of the board were also subjected to continuous pressure and a majority have ceased activity.

Medical: The hospital sector is now controlled by two companies - JSC Aldagu BCI and JSC GPI Holding. These new owners of privatized hospitals and polyclinics have refused to negotiate with unions and actively intimidate any staff cooperating with trade unions. Out of fear of dismissal, many medical workers have withdrawn from trade unions. Now, 116 trade union organizations (45%) ceased to exist and membership reduced by 7,968 (41%). Further, 32 collective bargaining agreements were terminated and not a single new collective bargaining agreement has concluded. JSC Aldagi BCI has simply refused to recognize the unions. JSC GPI Holding recognizes the union but is not negotiating in good faith with the union. Regardless, industrial relations has ceased to function in the hospital sector.

Public Servants: In August 2011, as a result of interference by the central and local governments, 14 city and district level organizations of the Public Servants Trade Union ceased to exist – amounting to a loss of 2,350 members. Territorial agreements in 4 district municipalities were terminated and 4 expired. Only one territorial agreement is now in effect. Earlier in 2011, union members who had recent organized unions at the municipal level were forced to sign identical forms resigning from the union, under threat of dismissal, resulting in a loss of hundreds of members. In private conversations with the union leaders, local authorities admitted that there had been a verbal order from high officials of the government to eradicate the local unions.

Telecommunications:

JSC Silknet is a telecommunications firm in Georgia. In the past year, the company has dismissed the chairs of 19 trade union committee members in Tbilisi and in the regions. A letter was submitted to the Chair of the Tripartite Social Partnership Committee on July 20, 2012 regarding the dismissals but the case has yet to be reviewed. The government has used the collective bargaining agreement concluded with this company as an example of successful social dialogue and partnership. However, after the

departure of the manager in charge of the negotiations, the situation deteriorated quickly. The company refuses to engage in any dialogue with the union. In 2012, the number of trade union members of the Communication Sector Workers Union declined by 37.7%.

F. Precarious Work:

In the private sector, 80-90% of contracts are short-term contracts of 2-3 months. However, it is not unusual for workers to work several consecutive years under such contracts. Employment by short term contract has an impact of leave, pension and other benefits. These contracts are also used to discipline labour. Short term contracts are also found in the public sector, especially for those performing technical work.

A possible way forward

This is a long list of challenges. So far, the main external pressure has been the ILO supervision and US pressure via the GSP. However, the creation of a formal structure to deal with the issues on the initiative of the ILO – the national tripartite commission - has made little if any real contribution. The blatant violations are gradually building a deep-seated feeling of powerlessness and resentment among the workers. This fuels a strong mistrust of the government and employers and erects barriers to overcoming the current situation.

The impact on the GTUC has been severe, with the weakening of several key affiliates and the consequent heavy loss of membership and resources.

The ILO's idea for developing a mediation mechanism – a natural element in normal labour relations systems – is a well-intended initiative to facilitate tripartite interaction. However, in the absence of an appropriate legal framework consistent with ILO standards and the end of harassment of trade unionists, mediation cannot be expected to be embraced or be effective.

Talk of a 14 point plan by the government, if genuine, is some indication of a possibility to negotiate a way forward. As explained above, the ITUC and the ETUC support the development of a roadmap that addresses the issues raised herein and meet the following objectives:

1. A roadmap will only provide real opportunities for delivering results if it is the product of genuine social dialogue, i.e. the product of the tripartite body and is based on consensus among the parties concerned. External support and advice, primarily from the ILO, can facilitate the work and find solutions.

2. All of the issues raised by the ILO will need to be addressed, but they should be organised in line with their priority and the extent to which they will lead to substantial changes in practical terms for workers and unions. For example, so long as a worker can be fired at any time without explanation (or not hired) with no effective recourse when fired for union activity, reform of the law as to sympathy strikes will not be entirely meaningful.
3. Legal reform will be more effective if accompanied with necessary institutional reforms that will secure the effective implementation and supervision monitoring of the labour relations system. Obviously, a top priority in this line is the introduction of an efficient labour inspection service. The sooner it starts, the quicker the overall process of change.

Brussels, October 2012