



«CURRENT STATE AND DEVELOPMENT PROSPECTS OF TRADE UNIONS GOVERNMENT-
CIVIL SOCIETY ORGANISATIONS DIALOGUE» FORUM
SUMMARY-RECOMMENDATIONS

FEBRUARY, 2019



CONTENTS

INTRODUCTION 3

OPENING OF THE FORUM: PLENARY SESSION 4

1. The Vision and Strategic Approaches of the RA Government regarding the Development of Trade Unions..... 4

2. The Vision and Strategic Approaches of the Confederation of Trade Unions of Armenia regarding the Development of Trade Unions 5

PANEL DISCUSSION 1..... 11

“The Movement of Trade Unions in the Republic of Armenia: History, Current State, and Development Prospects” 11

PANEL DISCUSSION 2..... 14

“The Compatibility of the RA Labour Code with the Conventions of the International Labour Organisation (ILO)” 14

PANNEL DISCUSSION 3..... 21

Prospects for Social Partnership Development in Armenia..... 21

PANNEL DISCUSSION 4..... 24

Mechanisms of Social and Labour Rights Protection in Armenia 24

CONCLUSION 25

RECOMMENDATIONS 27



INTRODUCTION

The “Commitment to Constructive Dialogue” project was launched on 15 December 2016. Project duration is 34 months. It is implemented with the financial support of the European Union by a consortium of civil society organisations, which are the “Armenian Lawyers’ Association” NGO (the lead partner), Agora Central Europe o.p.s (an NGO from the Czech Republic), the “Armenian Center for Democratic Education-CIVITAS” NGO, the “International Center for Human Development” Public Organisation, the “SME Cooperation Association” NGO and the Union of Communities of Armenia.

The project has 9 target sectors: Public finance management, Human rights, Justice, Business, Education, Agriculture, Economy, Energy, Social sector: social inclusion of children with disabilities.

On 31 July 2018, **the Government-Civil Society Organisations Dialogue forum entitled “Current State and Development Prospects of Trade Unions”** was held in the scope of the CCD Project. The forum was organised by the Armenian Lawyers’ Association in cooperation with the RA Ministry of Labour and Social Affairs and the Confederation of Trade Unions of Armenia.

Around 160 participants from state agencies, trade unions, civil society and business organisations attended the forum.

The main objective of the forum was discussion of the trade unions’ activities, revealing problems in this area and outlining prospects of trade unions’ development through dialogue. Among the objectives of the forum was the discussion of expediency of implementing reforms in labour relations with the full, comprehensive, mutual protection of workers and employers’ rights, with the involvement of responsible persons of different sectors of the society.



OPENING OF THE FORUM: PLENARY SESSION

The forum was a large-scale event involving people interested in trade unions. All actors of the field representing public and private sectors, international and civil society organisations (CSOs) including the RA Deputy Minister of Labour and Social Affairs and other representatives of the Ministry, the President and the Vice President of the Confederation of Trade Unions of Armenia (hereinafter referred to as the CTUA), Heads of the branch trade unions, representatives of the CTUA staff, CSO and media representatives were involved in the work of the event.

Mr. Karen Zadoyan, President of the “Armenian Lawyers’ Association” NGO, “Commitment to Constructive Dialogue” Project Manager; Mr. Eduard Tumasyan, President of the Confederation of Trade Unions of Armenia; and Mr. Arman Udumyan, RA Deputy Minister of Labour and Social Affairs delivered welcoming speeches at the forum

In his welcoming speech **ALA President Karen Zadoyan** mentioned that the ALA, having tens of years of experience in human rights protection activities, has always supported the protection of workers' rights, including at the RA Constitutional Court and the European Court of Human Rights. **President of the CTUA Eduard Tumasyan** in his welcoming speech noted that trade unions are independent of government agencies, employers, political and non-governmental organisations and they operate transparently. He also added that the government-civil society dialogue is very relevant to identify sectoral problems and find solutions.

Further Mr. Arman Udumyan, RA Deputy Minister of Labour and Social Affairs and Mr. Boris Kharatyan, Deputy President of the Confederation of Trade Unions of Armenia presented reports:

1. **Mr. Arman Udumyan, RA Deputy Minister of Labour and Social Affairs “The Vision and Strategic Approaches of the RA Government regarding the Development of Trade Unions”**
2. **Mr. Boris Kharatyan, Deputy President of the Confederation of Trade Unions of Armenia “The Vision and Strategic Approaches of the Confederation of Trade Unions of Armenia regarding the Development of Trade Unions”**

1. The Vision and Strategic Approaches of the RA Government regarding the Development of Trade Unions



Mr. Arman Udumyan, RA Deputy Minister of Labour and Social Affairs first introduced the historical overview. Further, the speaker pointed out the objective **problems** for full protection of workers' rights by the trade unions among which:

- **Termination of the State Labour Inspectorate activity, as a separate structure.**

In 2013, the State Hygiene and Anti-Epidemiological Inspectorate of the RA Ministry of Health and the State Labour Inspectorate of the Ministry of Labour and Social Issues of the Republic of Armenia were reorganised through a merger to State Health Inspectorate of the Staff of the Ministry of Health of the Republic of Armenia. Later it was renamed to Health Inspection Body of the RA Ministry of Health, which, in its turn, was reorganised into the Healthcare and Labour Inspectorate of the Government of the RA, and currently is regulated by the RA Law on Inspection Agencies.

- **Employees' constraint as an authorized representative of the trade union established at the employer.**
- **Prohibition of forming trade unions in certain structures, such as power structures.**
- **Lack of regulation of membership in trade unions of subjects registered as self-employed persons to work in remote villages.**
- **Low level of awareness among trade unions and employees**, while the State Labour Inspectorate had an awareness function as well.

Based on the above said, the speaker is convinced that there is a need for institutional, financial and managerial changes and development of trade unions, as a result of which the independence of trade unions will be strengthened and confidence in them will be formed. Here the speaker also pointed out that the Republican Union of Employers of Armenia also has a lot of work to do, particularly in raising awareness of employees.

2. The Vision and Strategic Approaches of the Confederation of Trade Unions of Armenia regarding the Development of Trade Unions

Mr. Boris Kharatyan, Deputy President of the CTUA began his speech with a historical overview as well and underlined the importance of trade unions, including, the principle of the CTUA on volunteering: according to the Constitution of the Republic of Armenia, *“Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the*



protection of labour interests. No one may be compelled to join any private association.”¹ Then, the speaker spoke about **the CTUA’s structure, membership, management, operation, international representation and other issues**. The CTUA activities are governed by the Labour Code of the Republic of Armenia, the RA Law on Trade Unions and the Charter of the CTUA.

The latter is *“a non-commercial, public association, which unites more than half of the republican sectoral unions of trade unions and to which the majority of members of trade unions operating in the Republic of Armenia are members, for the purpose of representing and protecting workers’ professional, economic and social rights and interests in their relationship with the Government of the Republic of Armenia and the Republican Union of Employers”*.² At present, it unites 19 branch republican trade unions (henceforth, the BRUs) and has around 191,000 members. Based on the principle of voluntarism, not all trade unions today are members of the BRUs or CTUA. *“The BRUs shall maintain their autonomy and the status of legal person within the structure of the CTUA”*.³

It should be noted that, *“In a collective labour relationship with the employer, a trade union may act as a representative of workers if more than half of the employees who have signed a labour contract with the employer participate (is member) in the trade union. The provisions of the collective agreement concluded with the employer by a trade union with such representative authority shall also extend to all employees who have entered into a labour contract with the employer but who are not members (participants) of the trade union. If no more than half of the employees who have signed employment contracts with the employer participate (are affiliated) in the organisation’s trade union organisation, then the trade union represents and protects only the interests of its members in a collective labour relationship.”*⁴

The BRU pays an **entry fee** of three hundred fold of the minimum wage, and the **monthly membership** fee is defined:

- *“trade union with up to 2000 members - 5,000 AMD,*
- *trade union with from 2001 to 5000 members - 10,000 AMD,*
- *trade union with from 5001 to 10000 members - 15,000 AMD,*
- *trade union with from 10001 to 20000 members - 20,000 AMD,*

¹The Constitution of the Republic of Armenia adopted on 5 July, 1995, Amendments of 2015 Article 45 (1).

²The Law of the Republic of Armenia on Trade Unions, adopted on 5 December 2000. HO-135 Law’ Article 2.

³ CTUA Charter, adopted on 23 November 2012, Article 14.

⁴ The Law of the Republic of Armenia on Trade Unions, adopted on 5 December, 2000. HO-135 Law’ Article 2.



- *trade union with from 20001 to 30000 members - 25,000 AMD,*
- *trade union with more than 30001 members - 30,000 AMD.*⁵

*The CTUA bodies are: the CTBU General Assembly (hereinafter referred to as the Assembly), the CTUA Board (hereinafter referred to as the Board), the Executive Committee of the CTUA (hereinafter, the Executive Committee), the CTUA President and the CTUA Auditing Committee. **The Board and the Executive Committee are the governing bodies of the CTUA.** The Governing Body of the CTUA, as well as the Auditing Committee, shall be formed for a term of five years.⁶ BRUs are represented in the board according to the number of their members.⁷ **The Supreme Body of the CTUA is the Assembly,** which is convened no later than once in five years.⁸ The last Assembly was held on 6 October, 2017.*

*“The CTUA **means** are generated from membership fees of member BRUs, entry fees, payments of the funds, economic companies to which CTUA is a member, payments of the separated subdivisions, institutions of CTUA, donations from legal and natural persons, other sources not prohibited by the legislation of the Republic of Armenia.”⁹*

The CTUA **participates** and is full member of the two international organisations: **International Confederation of Trade Unions**, which unites 176 million members from 166 countries in the world and **General Confederation of Trade Unions**, which joins the trade union structures of CIS countries.

At its last Assembly, the CTUA has adopted a program to carry out its five-year activity. It consists of the following sections:

- **Social partnership**
- **Protection of labour rights and interests of workers,**
- **Workers’ Safety and Health,**
- **Inter-trade-union work,**
- **International cooperation.**

⁵ CTUA Charter, adopted on 23 November 2012, Article 14.

⁶ CTUA Charter, adopted on 23 November 2012, Article 20

⁷ CTUA Charter, adopted on 23 November 2012, Article 26.

⁸ CTUA Charter, adopted on 23 November 2012, Article 21.

⁹CTUA Charter, adopted on 23 November 2012, Article 42:



Further, the speaker presented the **issues that exist in the sphere**.

- **The first issue is related to the incomplete implementation of the rights by the trade unions.** To that end, the speaker noted that the analysis of international experience shows that trade unions use **two basic tools** provided to them. They are:
 - **The right to make a decision on declaring a strike;** which the trade unions use to protect their interests. This right is defined by the International Covenant on Economic, Social and Cultural Rights,¹⁰ the Constitution of the Republic of Armenia and the Labour Code of the Republic of Armenia. According to the RA Constitution *“Workers shall have the right to strike for the protection of their economic, social and labour interests. The procedure for holding a strike shall be prescribed by law.”*¹¹ Under the Labour Code of the RA, *“The right to adopt a decision to call a strike shall be vested in the trade union in the manner prescribed by this Code and its Statute. A strike shall be called in case where the decision thereon has been approved by secret ballot, by two-thirds of the total number of employees of an organisation when calling a strike in an organisation.”*¹² Thus, the legal regulations of the Labour Code of Armenia regarding the strike make practically impossible realisation of the strike in practice.
 - **social partnership, a system** for the coordination of workers' and employers' interests in labour relationships, which also involves the Government when signing a trilateral agreement and negotiations. This tool has been formed about 100 years ago, when in 1919, the International Labour Organisation (ILO) was established. It is the only international organisation that has a trilateral format when the parties involved in the decision-making process are representatives of the government, employers and workers represented by the representatives of the trade unions. At present this tool is also provided in the Labour Code of the Republic of Armenia.¹³ 456 collective agreements have been signed between the members of the *CTUA*.

The speaker noted that **the analysis of Armenia's practical experience shows that trade unions use the second of the tools provided to them, which is social partnership rather than the right to strike. The**

¹⁰ “International Covenant on Economic, Social and Cultural Rights” adopted on 16 December 1966, Article 8.

¹¹ Constitution of the Republic of Armenia, adopted on 5 July, 1995, Amended in 2015, Article 58:

¹² Labour Code of the RA, adopted on 09.11.2004, HO-124-N Law, Article 74.

¹³ Labour Code of the RA, adopted on 09.11.2004, HO-124-N Law, Article 39.



speaker explained this fact by the following legal regulations, which in his opinion significantly complicate realisation of the strike.

- The next problem is related to the **State Labour Inspectorate, in particular the termination of its activities**, which was also noted by the first speaker representing the Armenian Government. The Inspectorate was carrying out the control and supervision related to the application of labour norms.
- The last issue mentioned was **the absence of effective extrajudicial mechanisms for solving individual disputes**, because today any dispute is finally resolved in court, whereas many are inclined to resolve disputes in an extrajudicial way. According to the speaker, until 2013, when the activity of the Inspectorate was terminated, the *CTUA* cooperated with the latter, and as a result the violated rights of the workers were quickly and effectively restored without the need to appeal to court.

After the plenary session, the attendees were given the opportunity to ask questions to the speakers and express their views and concerns about the subjects, which are presented below:

- **Private sector workers are not particularly inclined at creating trade unions** for various reasons:
 - Low level of awareness about the opportunities provided by the RA Labour Legislation;
 - Low level of trust towards trade unions,
 - Fear of losing the job.
- **Cooperation between the CTUA and the RA state bodies in many cases is not properly implemented:** For example, the decisions on changing the status of the State Labour Inspectorate have been taken without consideration of the opinion of the CTUA. Additionally, in connection with the non-application in practice of the “Law on the Minimum Subsistence Basket and the Minimum Subsistence Budget” adopted in 2004 and consisting of only 8 articles, the CTUA has repeatedly applied to the RA Government and the National Assembly, but no steps have been taken by them.
- **The traditional model of trade unions operating in Armenia has exhausted itself and there is a need to switch to alternative trade unions.** Traditional and alternative trade unions offer two different types of directions regulating employment relationships. The first type of unions protects the non-equal or subordination relationships in labour relations. **The alternative trade**



unions stand for equality as an alternative. In addition, **alternative trade unions are proposing solutions in non-standard situations and by new methods** such as offering new jobs.¹⁴

- **The structures of CTUA member branch regional unions do not comply with the structure of branches of the Employer's Union and there is a need for coordination.**
- **Employers, especially in the private sector, allow different types of violations of employees' rights** (pay less than the minimum wage, the duration of the work day is over 8 hours, do not provide time for rest and for lunch during the working day, do not pay for the trial period, do not sign employment contracts, do not inform workers about their rights, do not provide a vacation of proper duration, do not apply the necessary labour protection measures and so), **and the effective controlling levers are missing.**
- **A number of employers lack workers' internal disciplinary rules and internal policies regulating a number of other issues.**

¹⁴ "Alternative Trade Unions in Russia and the Reasons for their Separation", Pyotr Bizukov.



PANEL DISCUSSION 1

“The Movement of Trade Unions in the Republic of Armenia: History, Current State, and Development Prospects”

The speakers of the first Pannel Discussion on “The Movement of Trade Unions in the Republic of Armenia: History, Current State, and Development Prospects” were:

- **Mr. Garnik Vagharshakyan, President of the Republican Branch Union of Professional Organisations of Institutions of Higher Education in Armenia,**
- **Mr. Armen Abrahamyan, Founder of the “Faith” Trade Union,**
- **Mr. Gevorg Gyozyalyan, Advocate.**

Mr. Karen Zadoyan, President of the “Armenian Lawyers’ Association” NGO, “Commitment to Constructive Dialogue” Project Manager, was the moderator of the panel discussion.

The role of trade unions in the protection of human rights and intereststs is highlighted throughout the world, and their establishment and development is encouraged through different means. The norms regulating the activities of trade unions are included in the Armenian legal system in the RA Constitution, the Labour Code of the Republic of Armenia and the RA Law on Trade Unions. They are voluntary public associations of citizens, which are formed for the protection of economic, social, labor and cultural rights and interests.

In the mid-19th century, trade unions were widely spread in **the UK, Germany, the United States**, and then to some other European countries whose main social backbone was the so-called labor aristocracy.¹⁵ Under the ideological and political domination of communism, real labor movements were absent, and trade unions were decorative, being part of the state administration system. After the collapse of the USSR, however, the level of efficiency of trade unions in the field of labor relations continued to remain low, given the fact that Soviet trade unions used state support and thus provided certain material benefits and privileges for the workers. Post-communist trade unions, deprived of state support, have not gained workers' confidence at the same time.

¹⁵ In 1868, the British Congress of Trade Unions was set up in England, in Germany, the Hirsch-Dunkern Reformist Trade Union, in 1881, the American Labor Federation.



Garnik Vagharshakyan in his speech touched upon the problems of small and medium-sized organisations, which directly impact the efficiency of trade unions' work as well. For example, referring to trade unions operating in the branch level at state-owned universities, the trade unions' activities in state universities have been viewed or perceived as a subdivision attached to the university's rector so their work can not be considered effective under such conditions.

Armen Abrahamyan and **Gevorg Gyozyalyan** presented their experience, which was a practical example of a strike. Armen Abrahamyan mentioned: *"We have fought as a trade union against ArmenTel for 3 years when a number of employees were dismissed without a legal basis. As a result, a number of employees submitted applications to the RA Constitutional Court (CC)."* Gevorg Gyozyalyan added, *"The Constitutional Court recognized unconstitutional all the provisions of the Labor Code of Armenia that banned the strike unless it came from collective agreements."* As a result, employees who were illegally dismissed from work received benefits, and many others were reinstated at work.

Further, the reports were followed by discussion, as a result of which the following opinions and issues were raised:

In the Armenian reality, almost all the labor movements that have come to the attention of the public have been implemented without the organisation or intervention of trade unions.

- **In the Armenian reality, almost all the labor movements that have come to the attention of the public have been implemented without the organisation or intervention of trade unions.** This evidenced the weak role of trade unions, as well as lack of appropriate social responsibility. In fact, trade unions did not provide counseling and methodological support for realisation of the activities outside their immediate functions,
- **Trade unions are not transparent enough and do not publicly present their expenses,**
- **Trade unions lack internal regulations and strategic plans,**
- **Young people and women are almost not involved in trade union activities,**
- **a number of capacities of trade unions are not sufficiently developed, for example, they do not cooperate with sectoral CSOs and employers' associations at a constructive level,**
- **Leadership of the trade union and the employers are often intertwined, so there is a need for introduction more democratic elements in trade union bodies,**
- **Trade unions do not have sufficient levers, for example they are not involved in the hiring, subsequent assessment, promotion and what is more important in dismissal processes of the employees. Whereas the study of international practice shows that procedures for informing trade**



unions are effective in many countries. In addition, trade unions do not initiate and encourage employers to develop and adopt internal rules on hiring, disciplinary liability, incentive measures and dismissal.

- Trade unions are not involved in the protection of personal data.



PANEL DISCUSSION 2

“The Compatibility of the RA Labour Code with the Conventions of the International Labour Organisation (ILO)”

The speakers of the second Panel Discussion on “The Compatibility of the RA Labour Code with the Conventions of the International Labour Organisation (ILO)” were:

- **Ms. Christine Hovhannisyan, Project Coordinator at the “OxYGen” Youth and Women’s Rights Foundation**
- **Mr. Marat Atovmyan, Board Member of the “Armenian Lawyers’ Association” NGO**
- **Mr. Narek Yenokyan, Lawyer/Expert of the “Commitment to Constructive Dialogue” Project**

Mr. Zhora Sargsyan, Head of the Labour and Employment Department of the RA Ministry of Labour and Social Affairs was the moderator of the panel discussion.

Ms Kristine Hovhannisyan in her remarks first touched upon the issue that the discussions of the the issue of protection of labor rights as well as thee need to introduce effective mechanisms for the protection of those rights were always held in ideological, camping formats and they were not participatory. For example, trade unions, organisations involved in the protection of labor rights, business representatives, and gender groups have initiated separate and narrow thematic discussions, summarized their findings, and presented various recommendations to the government. Further she presented in details, the project implemented by their organisation, spoke about the participatory platform formed within that framework of the project, which in its nature is inclusive; involving all stakeholders interested in the protection of labor rights. She highlighted the fact that the idea of social partnership is a priority in the platform. The speaker also added that all stakeholders have a consensus that labor rights are currently the most vulnerable and the circumstances contributing to it are: the existence of insufficient mechanisms for the protection of labor rights from the viewpoint of legislative gaps; the low level of public awareness on labor rights and ways to protect them; as well as the incomplete implementation of the Conventional obligations by the State and the harmonization of national legislation with the requirements of those conventions.

Mr. Marat Atovmyan mentioned that Armenia, being a member of the International Labor Organisation (ILO), has ratified 29 conventions. In this regard, there is also a references in international and domestic reports:



✓ **ILO Conventions # 87 and # 98: Convention on “Freedom of Association and Protection of the Right to Organise” and Convention on “Right to Organise and Collective Bargaining**

The RA Law on “Trade Unions” and the RA Law on “Employers’ Unions” have been adopted quite early, and their applicability over the years has revealed a number of shortcomings and gaps. Moreover, the Law on Employers’ Union was adopted in 2007 and has not yet been amended. The norm provided in Article 45 of the amended Constitution of the Republic of Armenia which states that ‘everyone has the right to freedom of association with others, including the right to form and join trade unions for the protection of labor interests,’ has not yet been incorporated in subordinate normative legal acts. The state should take effective measures to ensure that the constitutional right of the citizens is an effective right. That is undertaking a positive obligation and provides mechanisms for the realization of those rights. Therefore, the RA Law on “Trade Unions” and the RA Law on “Employers’ Unions” need large-scale reforms.

- Thus, *Article 23 of the Labor Code of the Republic of Armenia contains some uncertainty about how the trade unions or the elected representatives (entity) elected by the assembly (staff meeting) can be formed. In particular, “Where there is (are) no trade union(s) in the organisation or none of the existing trade unions unites more than half of the number of employees of the organisation, representatives (an entity) may be elected by the staff meeting (assembly). The existence of representatives (an entity) elected by the staff meeting (assembly) in the organisation shall not impede the performance of functions of trade unions. Where there are no representatives of employees in the organisation, the functions of the representation of employees and protection of interests may be delegated to the relevant branch or territorial trade union by the staff meeting (assembly). In that case, the staff meeting (assembly) shall elect a representative(s) to participate in the collective bargaining conducted with the given employer in the delegation of the branch or territorial trade union.” The above-mentioned Article 23 was amended in 2010, to promote the development of trade unions and the establishment of the representation institution. However, so far it has not had any significant impact from the aspect of the development of trade unions or the provision of proper representation. The above mentioned is conditioned by the fact that **currently, the existence of trade unions and ensuring representation are entirely dependent on the employer's decision, and this is especially expressed in the case of representatives (bodies) uniting less than half of the organisation's employees***



(hereinafter also referred to as trade unions representing minority interests). Thus, from the above-mentioned analysis it becomes clear that the above mentioned provision, in the absence of a trade union uniting more than half of the organisation's employees, makes it possible (or can even be said makes inevitable) for the physical representative to be elected both in the organisation and in the branch trade union. Neither Article 23, nor other articles of the RA Labour Code do not provide an opportunity to form an association of "workers" for the workers' minority groups to represent their rights and interests, including negotiating with their employer on their behalf. Moreover, neither the RA Labour Code nor the RA Law on Trade Unions determine the possibility of direct membership by the same or different employees to branch trade unions "without the mediator-representative". In practice, as a result of such regulations unfavorable conditions are created for trade unions representing minority interests to work and to ensure the proper representation of workers. Thus, usually representatives of half of the organisation's employees (bodies) are almost missing. Even if such unions are formed, they represent only a small part of the workers, putting them in quite a disadvantageous situation, because considering the large volume of labor force in the market, this small segment can always be exposed to pressure or dismissed. Usually, workers do not elect representatives because employers are not interested in the issue, and employees are trying to protect their labor rights by using their individual contracts or do not even use the contracts at all. Even if employers become interested in this issue (for example, this is controlled by supreme bodies in the public sector), they immediately "assign" a physical representative of the regional or branch trade union, which is part of CTUA. It is noteworthy that there is no analyses of the percentage of employees represented in different trade unions and the representatives (bodies) uniting less than half of the organisation's employees. Thus, in spite of the fact that the legislation of the Republic of Armenia provides for the possibility of forming trade unions representing minority interests, but it does not create favorable conditions for their further development, and, moreover, define such terms and conditions concerning trade unions uniting over half of the organisation's employees, which eliminate the possibilities of trade unions representing minority interests to survive and develop. As a result of the above-mentioned, we face a situation when there are generally no employment contracts or collective labor contracts, particularly in SMEs, or, in the case of contracts, they are not comprehensive and do not include job functions and job descriptions, and in many cases employers are unable or unwilling to comment on them.



- *The RA Law on “Employers’ Unions” creates indirect restrictions for the unions representing the interests of the minority, as it provides them the opportunity to operate only at the territorial, branch and national levels, provided that **more than half of the employers** involved in the relevant level should be involved in the union. Here also, we face the problem related to the trade unions, when, on the one hand, the law provides for the creation of such associations with the legal arrangements envisaged by the Civil Code, on the other hand, these unions are restricted to conduct activities in the the three levels above, which implies the concluding of collective agreements and, in the future, provisison of their judicial representation, presentation of recommendations to the NA Deputies or the Government, etc.¹⁶*

“The following factors continue to cause concern:

- *certain groups of civil society workers, self-employed, free professionals and unregistered workers have no right to create or to become part of the already established trade unions,*
- *The minimum threshold for members of trade unions and employers' associations is quite high at all levels,*
- *Legislative provisions on the representation of employees in the absence of trade unions are uncertain,*
- *There are limitations on the right to call strike.”¹⁷*

The National legislation creates a number of problems in two important issues:

- *in collective labor disputes, provides opportunity to bypassing trade unions,*
- *Provides the employers a unilateral opportunity to terminate the collective employment contract when the company is subjected to privatization (decentralization).*

✓ «N 100 and N 111 ILO Conventions on Prohibition of Discrimination

- *“According to 2016 World Bank data, gender discrimination in workplace remains high in Armenia at approximately 19 per cent. According to the 2016 **Global Gender Gap***

¹⁶ ENP Progress Reports and Assessment Reports on Armenia’s compliance with GSP+ Obligations, Final Report for the period of December 2015 – December 2017, Final version of May 31, 2018, ALTAIR, CEU GmbH and Ameriagroup, pages 270-274.

¹⁷ Recommendations of the “Committee of Experts on the Application of Conventions and Recommendations” (CEACR), International Labour Conference (ILC), 103rd Session, 2014.



*Incompatibility Index, Armenia takes the 102nd position among 144 countries and is regarded as one of the countries with the lowest index in Central Asia and Eastern Europe. Gender-based payment differences in the workplace, in spite of the small progress reached in the last decade, continue to remain big at around 33.5%. The **system of RA Domestic Legislation** (RA Labour Code and RA Law on Equal Rights and Equal Opportunities for Women and Men) **does not contain provisions for eliminating discrimination, in particular, the principle of “equal work, equal payment” is lacking.** In this regard, in 2017 the Committee of Experts on the Application of Conventions and Recommendations (independent experts) (CEACR) again submitted a recommendation to RA authorities on making legislative amendments.*

- *According to the changes in the Constitution, discrimination is banned but similar requirements have not been set out in norms regulating labour rights and employment. **The right to have equal employment opportunities has not been clearly defined in the RA legislation.***
- *The code must contain practical provisions also on **protection from sexual harassment at workplace.***

✓ N 29 and 106 Conventions on Forced Labour

- *Article 3 of the RA Labour Code defines that forced labour is banned; however, it doesn't answer the question on what forced labour is;*
- *The main rules and norms for ensuring employees' safety and health protection are not defined.*

✓ N 138 and 182 ILO Conventions on the Minimum Age for Admission to Employment and Worst Forms of Child Labour

- *“After the termination of the functions of the State Labour Inspectorate, there is no similar agency that would ensure application of children's labour rights: in this context, the work of custody and guardianship agencies is evaluated as weak;*
- *Armenia must involve social partners and ILO in the area of children's rights protection.”*

✓ Convention N 81 on Labour Inspection in Industry and Commerce



- *“The latest developments related to the State Labour Inspectorate are quite worrisome. The RA immediately needs to create (re-create) an independent state labour inspection agency¹⁸.”*
- No representatives of employees and employers are included in the governing board of the changed RA Health and Labour Inspection Agency, there are only representatives of state government agencies and non-governmental and scientific organisations.
- The functions of the changed RA Health and Labour Inspection Agency and the number of staff have significantly decreased, and they are not sufficient for minimal oversight of the application of the labour legislation by the agency and are not in line with international standards.¹⁹

Narek Yenokyan, summing up the above-mentioned, addressed the fact that **labour rights of significant meaning** are fixed in ILO conventions and the revised European Social Charter, **of which the following ones are partially fixed or not fixed:**

Not fixed at all:

- **Right to work**, as foreseen in Article 1 of the Revised European Social Charter, Article 23 of the Universal Declaration of Human Rights, Article 6 of the International Covenant on Economic, Social and Cultural Rights, Article 5 of the Convention on the Elimination of All Forms of Racial Discrimination;
- **Right to dignity in work**, foreseen in Article 26 of the Revised European Social Charter;
- **Right to be protected in case of dismissal from work**, foreseen in Article 24 of the Revised European Social Charter.

Partially fixed:

- **Right to exclude discrimination and equal access to workplaces**, foreseen in N 100 and 111 ILO Conventions on Prohibition of Discrimination;
- **Prohibition of forced labour**, foreseen in N 29 ILO Convention in Forced Labour;
- **Right to healthy and safe labour**, foreseen in N 106 ILO Convention on Forced Labour;

¹⁸ The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') assessment of Armenia covering the period 2016-2017. EU High Representative for Foreign Affairs and Security Policy, as well as the European Commission, worked on the document, Brussels 19.1.2018, page 6-10, available at: http://trade.ec.europa.eu/doclib/docs/2018/january/tradoc_156537.pdf.

¹⁹ “System of the State Labour Inspection in Armenia” Avetik Mezhlumyan, Artyom Tarzyan, prepared in the scope of the “Support to Partner Countries in Efficiently Applying the Standards of the World Labour Organisation and the Obligations Stemming from them” project, 07.11.2017.



- **Protection of claims/suits in case of the employer's insolvency**, which is regarded as one of the principles of the Revised European Social Charter.



PANNEL DISCUSSION 3

Prospects for Social Partnership Development in Armenia

The speakers of the third panel discussion on the “Prospects for Social Partnership Development in Armenia” were:

- **Mr. Hrach Tadevosyan, the President of the Nairit CJSC Trade Union of the Republican Branch Union of Industry Workers’ Trade Organisations;**
- **Mr. Zhora Sargsyan, the Head of the Labour and Employment Department of the RA Ministry of Labour and Social Affairs;**
- **Mr. Ashot Yesayan, RA first Minister of Social Security, Associate Professor at the Armenian State Pedagogical University;**
- **Mr. Gagik Makaryan, the President of the Republican Union of Employers of Armenia.**

The moderator of the panel discussion was **Marat Atovmyan**, a Board Member of the “Armenian Lawyers’ Association” NGO.

Speaking about social partnership, **Hrach Tadevosyan** noted that as an initial organisation, for a trade union, first and foremost, a given organisation or employer is regarded as a social partner when their relations are regulated through collective agreements. Thus, he finds that partnership must not have a formal character and that both sides must showcase willingness to realise the provisions of their collective agreement.

Firstly, **Zhora Sargsyan** presented the existing levels of social partnership, attaching importance to the work done in that format. Addressing the opinion on the state not showing serious approach to that format, he noted that the state and state agencies need social partnership the most as when the relevant agency possesses consensus decisions made in trilateral format of social partnership, it enables the agency to advance them more confidently, being sure that the solutions suggested in the decisions are acceptable and valid for all stakeholders.

Speaking about the prospects for social partnership development, he mentioned two development directions:

- 1) Making changes and improving the legislation regulating the activities of three parties of social partnership;



- 2) Taking into account the expiration date of the social partnership collective agreement, he suggests signing a new collective agreement where radical changes would be made, as well as making sure that its provisions are strictly enforced.

Ashot Yesayan spoke about **the vision of social partnership, its essence, principles, mission, reasons, targets and toolset**. Thus, social partnership is a condition for negotiation and compromise, civic stability, social reconciliation of the society, a means for reconciling opposite interests, a method for regulating potential conflicts between paid employees and employers to solve socio-economic issues and for reaching social peace. That is, globally speaking, participants of social partnership are the state, the employer, the employee, and cities, villages, etc. can also be involved. Then, the speaker addressed the **negative political** (e.g., **selective enforcement of the obligations assumed by international documents**), **economic** (e.g., **shadow cash payments**) and **social** (e.g., **lack of the relevant state agencies protecting labour rights and manifestations of gender inequality in the field of labour**) **reasons** that emerge in case of lack of effective social partnership. **Targets of social partnership** are: radical revision of social partnership policy and legislation, selection of an ideology and toolset needed for new social quality, instilling deep respect for work, employee and employer, and readiness for a dialogue between partners. **Recommendations on the social partnership toolset** are presented in the section of recommendations.

Gagik Makaryan spoke about social partnership from the perspective of the existing situation and development prospects. When mentioning the existing situation, he said that the past nine years had not been easy as state agencies had psychological issues regarding preservation of the principle of equality at the partnership level in that format and constantly tried to advance their agenda, but all of it had been overcome overtime. Then the following unsolved problems were discussed:

- 1) In the social partnership format, the government mostly doesn't use in its discussions the decisions and stances made by consensus of three parties, when making decisions or initiating legislative processes; as a development perspective, it is suggested that the government respect and apply at least 50 per cent of the decisions made by consensus.
- 2) In social and labour relations, of the four levels of partnership mandate, the most active one is the developed national or republican level and social partnership systems are incomplete, i.e. they do not essentially work at branch and territorial levels.
- 3) It is necessary that the parties involved in the format of social partnership adopt a workstyle of assuming voluntary obligations and be more active. Trade unions are brought as an example, and



it is mentioned that if trade unions organise strikes more frequently, then political solidarity, so to speak, will be broken in trilateral format and in that case the state will show more careful attitude and will take steps to preserve the atmosphere of political solidarity.

- 4) It is also important to include economic components in the social and labour partnership mandate and collective agreements, as well as to form commissions in that partnership format in the way for them to encompass all fields of economy.
- 5) There is a huge lack of awareness on social partnership in Armenia.
- 6) It is necessary to make changes in the social partnership format and introduce a principle of rotation management.

During this session, the participants also mentioned the following problems:

- **There is no statistical data on workers' protected and restored rights, including summarisation of judicial practice;**
- **The problems and violated rights of small community workers are not voiced sufficiently.**



PANNEL DISCUSSION 4

Mechanisms of Social and Labour Rights Protection in Armenia

The speakers of the fourth panel discussion entitled “Mechanisms of Social and Labour Rights Protection in Armenia” were:

- **Mr. Alik Hakobyan, Deputy Head of the Health Inspection Agency of the RA Ministry of Health;**
- **Ms. Lusine Sargsyan, Head of Department for Legal Analysis, Human Rights Defender’s Office;**
- **Ms. Varduhi Shahmuradyan, Assistant to RA National Assembly Deputy Gevorg Petrosyan;**
- **Mr. Karen Vardanyan, Executive Director of the Union of Advanced Technology Enterprises.**

The panel discussion was moderated by RA Deputy Minister of Economic Development and Investments **Hakob Avagyan**.

Alik Hakobyan pointed out the fact that the **clear methodology for revealing risks is under development** in their agency. However, awareness work and administrative proceedings are already being implemented.

Lusine Sargsyan noted that the Human Rights Defender had two functions in protection of paid employees’ rights: **addressing labour rights when studying individual complaints and improvement of legislation**. She also mentioned the fact that in terms of labour rights protection the Human Rights Defender tried to provide assistance both to state agencies and individuals.

Varduhi Shahmuradyan spoke about the **RA Draft Law on Making Additions to the RA Law on Trade Unions**²⁰ presented by some RA National Assembly deputies as a legislative initiative. As a rule, trade unions are formed by the employees of a given employer, hence there are some constraints caused by the working relations with the employer. That is to say, **authorised trade union representatives, being an employer’s employees and using employer’s property, means of communication and transportation, cannot fulfill their powers as trade union members independently and objectively**. Apart from that, **the budget of trade unions working at local level is mainly replenished from the employer’s allocations**, which undoubtedly puts the trade union in dependence from the employer. Experience shows that **the trade unions working under an employer almost always abstain from going to court to protect workers’**

²⁰ It is worth mentioning that at the 21.02.2019 session, the RA Government approved the recommendations of the RA Government on the RA Draft Law on Making Additions to the RA Law on Trade Unions, according to which article 6 of the existing law discussed in article 1 of the presented draft law will remain unchanged.



interests, and protection of workers' interests is limited to the level of exchange of consulting, purely professional evaluation at best. The draft **proposes to define an opportunity of establishing a trade union that is independent from employers and their funds and is funded by other means, exclusively employees' membership fees and any other sources not banned by the law, as well as a possibility to become its member which will be accessible to various specialists working under different employers if membership in trade unions is not banned for the workers of this category by the law.**

Karen Vardanyan addressed the issue of institutionalisation which is regarded as a priority for sustainable formation of authorities, that is, appropriate to the issue of creating both state, non state and cooperating institutions, adding that the mentioned problem is not easily solved as we have the least experience and desire in that matter. He said that there should be one desire, to unite and defend which is easily projected onto the social partnership format where it is necessary to make an attempt to combine the vital interests of all parties.

It should be noted that **the participants voiced their concerns** which were particularly related to the mentioned draft. To be more specific:

- A question emerged regarding the regulations suggested in the draft on **how people with different professions, getting united in a trade union, will protect the labour rights of people with other professions**, if clarification of the alleged violations is conditioned by the absence of professional knowledge;
- The draft jeopardises the future work and development prospects of trade unions as **attempts are made to create a “monopoly” in the field of trade unions**, even though the idea of “independent” trade unions is defined;
- **The draft was not presented for public discussion** and was not discussed with stakeholders, including the Confederation of Trade Unions of Armenia, CSOs and individual employers. In this regard, the representative of the Ministry of Labour and Social Affairs said the opposite, noting that the mentioned draft had been presented by the ministry to receive the opinion of the confederation; however, the latter never presented any written recommendations;
- **The functions of the inspection agency are limited;**
- **Regulations of working relations with foreign nationals are incomplete and subject to revision;**
- **High income tax rates result in shadow turnover, due to which some employers do not register their employees and the employees meet difficulties in terms of restoring their violated rights.**

CONCLUSION



Summing up the conference, we can state that the setting of the latter was quite effective and constructive. Opinions on the necessity of making such events continuous were voiced, particularly in terms of defining a certain format to discuss and find complex solutions to the raised issues and other priority issues in different sectors, with participation of all stakeholders.

The following ones are prioritised among the general issues raised:

- **Independence of trade unions;**
- **Inefficient work of trade unions;**
- **Lack of transparency and accountability in the activities of trade unions;**
- **Recognisability of trade unions;**
- **Difficult system of representation in trade unions;**
- **Provision of insufficient leverage to trade unions.**

Apart from that, a number of other issues related to **strikes, social partnership, lack of an effective mechanism for labour rights protection and insufficient implementation of international labour obligations** were mentioned.

Summing up all the recommendations, the views expressed and the understanding of the present people of the existing issues and possible solutions, we can state that quite a huge number of issues and recommendations were collected during the conference. They can become a foundation to trigger regulation of labour relations, particularly in order to make the necessary urgent changes in the field of trade unions.



RECOMMENDATIONS

1. To make cooperation in the field of labour relations more intensive, particularly **in the institutions of trade unions and social partnership institutions, and create an *ad-hoc* CSO-Government-Trade Unions-Unions of Employers working group to reveal the existing problems, develop recommendations for their solution and conduct monitoring**; define CSOs' membership in the latter and, if available, criteria for provision of the necessary financial means.
2. **Conduct a public awareness campaign and training through CSO-Government-Trade Unions-Unions of Employers cooperation, including the street law format, aiming at raising the knowledge on employees' or potential employees' and employers' rights, including success stories of workers' rights protection, office passports and qualifications system, formation and role of trade unions, as well as knowledge on social partnership, as a result of which the public trust towards trade unions will also increase. In addition, it is necessary to also ensure a series of large-scale public discussions of the legislative package presented by the *ad-hoc* CSO-Government working group.**
3. **Synchronise the branch structures of branch republican union members of the Confederation of Trade Unions of Armenia and those of the Republican Union of Employers of Armenia.**
4. **Develop in the RA the culture of alternative trade unions and create preconditions to introduce that institution.**
5. **Develop and advocate for the establishment of the trade unions foreseen in paragraph 2 of article 6 of the RA Law on Trade Unions which are independent from the system of the Confederation and whose participants (members) can also be the employees who have signed job contracts with different employers in the respective branch (related branches) of economy (industry, service, profession). That is to say, people who have the same profession but work in different organisations can become members of such a trade union.**
6. **Give new leverage to trade unions, including participation in hiring employees, their promotion, evaluation of their work, subjecting them to disciplinary action, applying measures of encouragement, and, most importantly, dismissal process.**
7. **Define certain quota in order to ensure high level of youth and women's participation in trade unions, including branch republican unions and confederations of trade unions.**



8. Discuss the legislative expediency of **creating trade unions for freelancers**²¹.
9. Discuss the legislative expediency of **civil servants' membership in trade unions**.
10. Discuss the legislative expediency of **membership of persons providing services and working based on civil contracts in trade unions**.
11. Create incubators of trade unions where the capacities of trade unions will be developed, particularly those of constructive dialogue and cooperation with other stakeholders and between each other, development of reform-oriented evidence-based policies and internal strategic and other documents, implementation of monitoring.
12. In order to increase the level of transparency in trade unions, the financial means should be non-cash.
13. Increase the level of accountability of activities of trade unions, including announcement/presentation of a quarterly report requirement instead of the existing annual report requirement, definition of the requirement to create a mandatory website for each trade union and publishing reports there, as well as definition of the requirements of presenting the mentioned reports through trade union members' e-mail addresses and publishing them in a publicly accessible space of employers. If preparation of websites creates financial difficulties for trade unions at the initial stage, creation of a united e-portal is suggested as a mid-term solution, one through which the transparency and accountability of the trade unions working in the RA and not having separate websites will be ensured.
14. Introduce more democratic elements in the governing bodies of trade unions, particularly ensure a proportion of employees having different positions/classifications in the governing agencies of trade unions.
15. Revise and lower members' minimal threshold at all levels in terms of formation of trade unions and employers' unions.

²¹ It is worth mentioning that the RA Government developed a legislative package of the RA draft law on Making Changes and Additions in the Tax Code of the Republic of Armenia and related draft laws, after the adoption of which on 1 January 2020 the RA ՀՕ-261-Ն Law of 16 December 2016 on Freelancers' Tax Benefits will lose force. It should also be noted that after the adoption of the package of the mentioned drafts freelancers will be regarded as subjects of micro-entrepreneurship. You can get familiar with the package of draft laws at: <https://www.e-draft.am/projects/1475>.



16. **Make changes in the RA Labour Code (23 Article) and legislatively define the “representative” concept, how he/she is selected, what powers he/she has, who he/she reports to and other regulations, so that the mechanism of representation of the trade union protecting the interests of the minority becomes understandable, in case more than half the employees of an organisation do not unite.**
17. **Recognise powerless the provision of article 23 of the RA Labour Code, according to which employees' representation functions are fulfilled through a selected representative in case of being transferred to the respective branch or territorial trade union. Employees must be directly represented through branch or territorial unions, without any intermediaries, especially those who can be in a conflict of interest situation with the employees and employers represented by them.**
18. **Revise the labour code and recognise powerless the provisions of unilateral termination of collective job contracts by the employer in case of privatisation of organisations.**
19. **Take steps to ensure employees' representation through trade unions, in particular, give an opportunity to the trade unions representing the interests of the minority to represent their members' interests and negotiate on their behalf.**
20. **Revise the RA Law on the Republican Union of Employers of Armenia, particularly the norms defining employers being represented only on 3 levels.**
21. **Revise the restricting norms pertaining to the institute of strikes in the RA Labour Code and synchronise them with the provisions defined in international documents, in particular, so that trade unions do not encounter artificial complications in practice, when fulfilling their functions and exercising their rights.**
22. **Develop and introduce trade union development programmes in small communities.**
23. **Carry out analysis of the motives why the system of social partnership does not work in the RA at branch and territorial levels.**
24. **Develop a draft law on social partnership through CSO-Government-Trade Unions-Union of Employers cooperation, where the reasonable and evidence-based recommendations of all interested partners will be included.**
25. **Develop a republican, regional and community-level united policy model, based on the social partnership strategy, as well as a guide for introduction.**



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26. **Improve the extra-judicial mechanisms of workers' rights and legal interests, including the issue of having a labour inspection or a similar agency, in line with the requirements of N 81 ILO convention.**
27. **Revise the formation order of the RA Health and Labour Inspection Agency, involving people representing the interests of employees and employers.**
28. **Expand the scope of functions and powers of the RA Health and Labour Inspection Agency, foreseeing, but not being limited to the following:**
 - **Implementation of oversight and supervision over preserving job agreement** signing and termination order, adoption and preservation of legal acts on hiring and dismissal, discovery of illegal jobs, salary calculation and payment in the order and terms prescribed by law, in addition to **implementation of oversight and supervision over other legal processes;**
 - **Oversight and supervision over the process of fulfilment of the obligations foreseen in collective agreements** in the order prescribed by the RA legislation, taking the necessary measures to restore workers' violated rights;
 - Studying cases of hiring, other labour discrimination and sexual harassment **based on gender**, as well as taking measures to protect workers' violated rights;
 - **Implementation of oversight and supervision over children's labour rights;**
 - **Provision of a jurisdiction to carry out studies**, e.g., related to the involvement of children in forced labour, labour discrimination, etc.
29. **Collection of statistical data on workers' protected and restored rights, including when based on gender, as well as summarisation of judicial practice, in order to cooperate with the relevant agencies.**
30. **Enlarge the number of the employees of the RA Health and Labour Inspection Agency by the scope of functions.**
31. **Define criteria of the qualification and work experience (competence) of the RA Health and Labour Inspection Agency employees.**
32. **Develop the capacities of the RA Health and Labour Inspection Agency employees.**
33. **Increase the transparency and accountability of the RA Health and Labour Inspection Agency.**
34. **Give a legislative definition to the concept of "labour discrimination."**



35. Reduce the cases of applying indirect discrimination and fix the principle of “equal work, equal pay” legislatively.
36. Legislatively fix the right to be hired with equal opportunities.
37. Legislatively fix effective mechanisms for protection from sexual harassment at workplace.
38. Legislatively fix the concept of “forced labour.”
39. Legislatively define the main rules and norms of workers’ safety and health protection and make manuals.
40. Foresee mechanisms for protection of claims/suits in case of the employers’ insolvency.
41. Legislatively fix the right to work.
42. Legislatively fix the right to dignity in the workplace.
43. Legislatively fix the right to legally terminate the employment contract.
44. Revise the work of custody and guardianship agencies in the process of exercising children’s rights, particularly implementing trainings; compile manuals and strengthen oversight over the activities of the latter.
45. *Involve social partners and ILO in the field of children’s rights protection.*
46. Lower the income tax rates, in order to avoid shadow turnover, which will contribute to the efficient implementation of the process of restoring the violated rights by the workers themselves.
47. Revise the regulations of work relations with foreign nationals, particularly in case of employees not registered in the RA: