



International  
Labour  
Office  
Geneva

# Legal Frameworks for Employers' Organizations in Eastern European and Central Asian Countries

Angelika Muller



**WORKING PAPER N°45**

In collaboration with the Social Dialogue, Labour Law and  
Labour Administration Department



## Bureau for Employers' Activities

The Bureau for Employers' Activities of the ILO (ACT/EMP) is a specialized unit within the ILO Secretariat. Its task is to maintain close relations with employers' organizations in member States, to make the ILO's resources available to them and to keep the ILO constantly aware of their views, concerns and priorities.

ACT/EMP's mission is to foster well-functioning employers' organizations, which are crucial for shaping an environment conducive to competitive and sustainable enterprises that can contribute to socio-economic development. ACT/EMP assists employers' organizations in responding to the challenges faced by their members: (a) by assisting them to develop their management systems and processes to increase their representativity and improve their services to members; and (b) by assisting them to anticipate and respond to the issues faced by business that are emerging at national, regional and international levels.

ACT/EMP also runs a Technical Cooperation Programme, which provides assistance to employers' organizations in developing and transition countries. This work mostly takes the form of projects financed by the development assistance funds of donor countries. The Technical Cooperation Programme is designed to enhance the capacity of employers' organizations to:

- advocate a business-friendly environment; and
- provide services, whether representation and advocacy, or the provision of advice, training, information or research, to enable employers' organizations to address current and emerging issues.

For further information, please contact:

### **Bureau for Employers' Activities (ACT/EMP)**

#### **International Labour Office**

4, route des Morillons  
1211 Geneva 22  
Switzerland  
Tel. : +41 22 799 77 48  
Fax : +41 22 799 89 48  
Email : [actemp@ilo.org](mailto:actemp@ilo.org)

ISBN 92-2-117613-4



9 789221 176138

**Bureau for Employers' Activities**

**Working Paper N° 45**

**Legal Frameworks for Employers' Organizations  
in Eastern European and Central Asian Countries**

**Angelika MULLER**

In collaboration with  
the Social Dialogue, Labour Law  
and Labour Administration Department

International Labour Office, Geneva 2005

Publications of the International Labour Office enjoy copyright under Protocol 2 of the Universal Copyright Convention. Nevertheless, short excerpts from them may be reproduced without authorization, on condition that the source is indicated. For rights of reproduction or translation, application should be made to the Publications Bureau (Rights and Permissions), International Labour Office, CH-1211 Geneva 22, Switzerland. The International Labour Office welcomes such applications.

Libraries, institutions and other users registered in the United Kingdom with the Copyright Licensing Agency, 90 Tottenham Court Road, London W1T 4LP [Fax: (+44) (0)20 7631 5500; email: [cla@cla.co.uk](mailto:cla@cla.co.uk)], in the United States with the Copyright Clearance Center, 222 Rosewood Drive, Danvers, MA 01923 [Fax: (+1) (978) 750 4470; email: [info@copyright.com](mailto:info@copyright.com)] or in other countries with associated Reproduction Rights Organizations, may make photocopies in accordance with the licences issued to them for this purpose.

---

ISBN 92-2-117613-4

*First published 2005*

---

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them.

Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

ILO publications can be obtained through major booksellers or ILO local offices in many countries, or direct from ILO Publications, International Labour Office, CH-1211 Geneva 22, Switzerland. Catalogues or lists of new publications are available free of charge from the above address, or by email: [pubvente@ilo.org](mailto:pubvente@ilo.org)

Visit our website: [www.ilo.org/publns](http://www.ilo.org/publns)

---

Printed by the International Labour Office, Geneva, Switzerland

## TABLE OF CONTENTS

<b>ACKNOWLEDGMENTS.....</b>	<b>v</b>
<b>FOREWORD .....</b>	<b>vii</b>
<b>PART I. Existing legal frameworks and their evolution.....</b>	<b>1</b>
<b>COMPONENTS OF THE LEGAL FRAMEWORK.....</b>	<b>1</b>
National Constitutions .....	1
Ratified international conventions .....	2
Civil Codes and legislation on public associations .....	3
Labour Codes .....	4
Laws on employers' organizations .....	5
Regulations on social partnership and collective bargaining .....	6
Other legal and sub-legal acts .....	7
<b>LEGAL APPROACH.....</b>	<b>7</b>
Style and structure of legal acts .....	7
Why special laws on employers' organizations? .....	9
<b>PART II. Regulation and implementation of key issues for employers' organizations .....</b>	<b>11</b>
<b>RECOGNITION OF EMPLOYERS' ORGANIZATIONS .....</b>	<b>11</b>
Terminology and definitions .....	11
Typology of employers' organizations .....	12
Protection as independent institutions .....	14
<b>CREATING AND JOINING AN EMPLOYERS' ORGANIZATION.....</b>	<b>15</b>
Preconditions for creation and membership .....	15
Type of membership .....	16
Minimum membership requirements .....	16
Statutory document .....	17
State registration .....	18
<b>INTERNAL ORGANIZATION .....</b>	<b>19</b>
Right to free internal governance .....	19
Rights and duties of members .....	20
Fiscal deductibility of membership fees .....	21
Assets and property .....	22
Economic activity .....	23
<b>EXTERNAL ACTIVITIES .....</b>	<b>25</b>
Lobbying .....	25
Social dialogue .....	26
Collective bargaining .....	27
Criteria of representativity .....	29
Equality between employers' organizations and trade unions .....	30
Equality between employers' organizations and Chambers of Commerce and Industry .....	32
<b>REORGANIZATION AND LIQUIDATION .....</b>	<b>33</b>
Suspension and dissolution .....	33

Transitional provisions .....	34
<b>MAIN FINDINGS AND CONCLUSIONS .....</b>	<b>35</b>
Development of the legal environment for employers' organizations.....	35
Possible ILO technical cooperation.....	36
<b>BIBLIOGRAPHY .....</b>	<b>38</b>

## **ACKNOWLEDGMENTS**

The author wishes to express her gratitude for the support and useful information provided by representatives of national employers' organizations in the 12 countries (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, Uzbekistan), ILO national correspondents in Almaty, Baku, Kiev and Minsk, as well as colleagues at the ILO Subregional Offices in Moscow and Budapest, and headquarters in Geneva. Particular thanks are addressed to Mr Christian Hess, Senior Adviser of the Bureau for Employers' Activities, for his valuable contribution and detailed comments on the draft version of this paper.





## FOREWORD

Most Western market economy countries have well-established legal frameworks which govern the creation and activities of employers' organizations (EOs). With the setting up of EOs in the former communist countries of Eastern Europe and Central Asia, the question of legal frameworks for such associations emerged in this region. In a number of countries, general and specific laws, as well as other regulations covering EOs, have been adopted or are in the process of being elaborated.

The development of EO regulation in the former USSR countries has to be seen against the background of the far-reaching changes which took place during the transition from the socialist era to new regimes. No EOs existed before perestroika, because the only employer was the State. Since then, EOs in Eastern European and Central Asian countries have emerged mainly with a view to promoting their members' commercial interests within the political system. This contrasts with experience in Western Europe, where EOs were mostly set up as a response to workers' organizations.

The present comparative survey focuses on the legal framework for EOs as the major basis for their interaction with society. There is no doubt that legislation for EOs can have an important influence on the creation and functioning of these organizations. A basic requirement is respect for the employers' freedom of association. In this regard, it is important that the legal framework should anticipate possible problems so that it can provide solutions if difficulties arise. More generally, legal provisions should not be too prescriptive; they need to leave sufficient flexibility for self-regulation by EOs themselves.

In a number of cases, ILO constituents in Eastern European and Central Asian countries have requested the Organization to provide legal assistance in the framing of appropriate regulations concerning EOs. This points to a need for information and guidance and the present comparative survey is intended to address this need. More specifically, it seeks to identify current weaknesses and best practices regarding the legal framework for EOs. While it is addressed, in the first place, to law-making bodies and EOs in Eastern European and Central Asian countries, it is also meant to strengthen the basis for legal advice provided by the ILO in this area. The survey thus aims at contributing to a healthy environment for the development of EOs, as one element of the tripartite constituency in Eastern European and Central Asian countries. In addition, this working paper may also provide Western labour law and industrial relations practitioners with comparative information on the development of EOs and on legislative trends in Eastern European and Central Asian countries. Indeed, the review of research literature reveals a dearth of academic studies and a paucity of empirical data in this field.

It goes without saying that the 12 countries covered by the survey do not form a homogeneous group. First of all, there are three geographical subdivisions: Eastern Europe (Belarus, Moldova, the Russian Federation, Ukraine), the Caucasus (Armenia, Azerbaijan, Georgia) and Central Asia (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan). Moreover, the mentality,

political environment and level of economic development differ from one country to another. Nevertheless, with a common history and language within the Soviet Union, the juridical culture has remained relatively similar.

The survey falls into two parts. The first provides a brief review of legislation related to the activity of EOs. Given the numerous legal acts, a cross-national comparison has to concentrate on the principal categories of existing regulation. Special emphasis will be given to a particular trend – not observed in the West – the adoption of special laws on EOs. An attempt will also be made to examine the pros and cons of this kind of regulation. The second part of the survey gives a short assessment of legal provisions on issues of particular importance for EOs. It ranges from the recognition and creation of EOs, their internal organization and external activities, to conditions of suspension and dissolution. Although the general legal scheme is similar in the region, there are some specific issues regarding the practical application of legislation. The conclusion summarizes the review and explores future challenges faced by EOs in Eastern European and Central Asian countries, as well as opportunities for cooperation with the ILO.

Throughout the process of developing the publication there has been a good and close cooperation between the Bureau for Employers' Activities (ACTEMP) and the Social Dialogue, Labour Law and Labour Administration Department (DIALOGUE).

Jean-François RETOURNARD

Director,  
Bureau for Employers' Activities

Johanna WALGRAVE

Director,  
Social Dialogue, Labour Law and  
Labour Administration Department

## **PART I. Existing legal frameworks and their evolution**

### **COMPONENTS OF THE LEGAL FRAMEWORK**

The legal frameworks for employers' organizations (EOs) in the 12 countries covered by the present study basically consist of the relevant provisions of the national Constitutions, the international conventions ratified by the States, and national legal acts. As EOs exist and act within modern civil society, the general law, which, *inter alia*, consists of civil, criminal, administrative and fiscal law, is applicable to them. The national legal framework is complemented by the EOs' own regulations, such as statutes.

As it would not be practicable to describe all the legal components in detail, attention will focus on the relevant provisions of the national Constitutions, the Civil and Labour Codes, legislation concerning public associations and social dialogue. Particular emphasis will be placed on the special laws regarding employers' organizations. The description below reflects the hierarchical order of these legal instruments.

#### ***National Constitutions***

In the wake of the formation of new independent States after the collapse of the USSR, national Constitutions were adopted in all the countries of the region covered by the present study:

- Turkmenistan, Uzbekistan (1992);
- Kyrgyzstan, Russian Federation (1993);
- Belarus, Moldova, Tajikistan (1994);
- Armenia, Azerbaijan, Georgia, Kazakhstan (1995);
- Ukraine (1996).

The Constitution is the highest legal enactment in these countries. Laws and other legal instruments contradicting provisions of the Constitution have no juridical force. The Constitutions of all the countries lay down the principles of political and ideological plurality. Hence the right to freedom of association is established at the highest judicial level of each State. It forms the legal basis for the creation and operation of public associations, which are non-governmental and non-profit organizations whose membership is on a voluntary basis. The purpose of such bodies is to represent and protect the interests and rights of their members in the civil, political, economic, social and cultural fields. When the Constitutions were adopted, most EOs were at the very beginning of their activity, and, consequently, not yet perceived as one particular form of public association. By contrast, the Constitutions of Armenia, Azerbaijan, Georgia, the Russian Federation, Tajikistan, Ukraine and Uzbekistan cite trade unions as a concrete example of a public association.

Under the above Constitutions, the right to freedom of association includes the possibility for all citizens to create, on a voluntary basis, public associations in

order to protect their common interests and to achieve common goals. It also implies the right of each person to join or not to join a public association, as well as to freely withdraw from it.

While the backbone of the constitutional guarantees of the freedom of association is identical in all countries covered by the present survey, several emphasize particular aspects of this freedom. For instance, the Constitutions of Kyrgyzstan, Tajikistan and Ukraine state that all public associations are equal before the law. The Constitution of Uzbekistan adds that nobody is allowed to restrict the rights, freedom and dignity of persons making up the minority in public associations. In Kazakhstan, the Constitution forbids merging public and State institutions, and any governmental interference in the internal affairs of public associations is deemed unlawful. It is also prohibited to entrust the functions of State authorities to public associations or to allow any financing of public associations by the State. The Constitution of Belarus entitles public associations to use State mass media under conditions laid down by legislation. Finally, the Constitutions of Belarus, Tajikistan and Uzbekistan, oblige all public associations to publish accurate information concerning their activity on a regular basis.

However, freedom of association is not laid down as an absolute right in the Constitutions of these countries. Most of them ban associations which aim to overthrow the constitutional order, to violate the unity and security of the State or to incite social, racial and religious hatred. This is explicitly underlined in the Constitutions of Azerbaijan, Belarus, Georgia, Kazakhstan, Moldova and Tajikistan. On the other hand, the Constitutions of Armenia, Belarus and Georgia restrict the right to join political associations for judges, prosecutors, members of the armed forces, intelligence services and police. In principle, when the Constitution explicitly places possible limits on the freedom of association, legal instruments at lower levels may not establish additional restrictions beyond what the Constitution foresees. For instance, the Constitutions of Moldova and Ukraine clearly state that no legal act may prohibit or limit the fundamental personal rights and freedoms. Supplementary legislation may only set out in more detail the principles contained in the Constitution.

### ***Ratified international conventions***

In the countries of Eastern Europe, the Caucasus and Central Asia, ratified international conventions are deemed an integral part of the legal system. The Constitutions of these countries state that in case of discrepancy between international conventions ratified by a State and its internal laws, priority is given to the international treaties. On the other hand, international conventions contradicting the national Constitution may only be ratified if the Constitution is amended to bring it into line with the former.

The role of EOs is addressed in numerous ILO Conventions and Recommendations.<sup>1</sup> In particular, the following ILO Conventions are directly related to the activity of EOs:

---

<sup>1</sup> <http://www.ilo.org/ilolex/english/convdisp1.htm>

- the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);
- the Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
- the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144); and
- the Collective Bargaining Convention, 1981 (No. 154).

Table 1 shows the year of ratification for the main ILO Conventions related to EO activities for the countries covered by the survey. It is worth recalling in this context that ILO member States, even if they have not ratified Conventions No. 87 and 98, have an obligation, arising from the very fact of membership in the ILO, to respect, to promote and to realize in good faith, the fundamental constitutional principles regarding the freedom of association and the effective recognition of the right to collective bargaining. This is reiterated in the 1998 ILO Declaration on Fundamental Principles and Rights at Work.<sup>2</sup>

Table 1: Ratification of the ILO Conventions related to EOs

Country	Convention No. 87	Convention No. 98	Convention No. 144	Convention No. 154
Armenia	not ratified	2003	not ratified	not ratified
Azerbaijan	1992	1992	1993	1993
Belarus	1956	1956	1993	1997
Georgia	1999	1993	not ratified	not ratified
Kazakhstan	2000	2001	2000	not ratified
Kyrgyzstan	1992	1992	not ratified	2003
Moldova	1996	1996	1996	1997
Russian Federation	1956	1956	not ratified	not ratified
Tajikistan	1993	1993	not ratified	not ratified
Turkmenistan	1997	1997	not ratified	not ratified
Ukraine	1956	1956	1994	1994
Uzbekistan	not ratified	1992	not ratified	1997

### ***Civil Codes and legislation on public associations***

All the countries surveyed have Civil Codes and laws on public associations. The laws set out in more concrete terms the above-mentioned constitutional provisions on freedom of association, in particular: the exact content of freedom of association, the principal State guarantees, the status of these organizations, as well as rules for their creation, activity, reorganization and liquidation.

According to the generally accepted definition, a public association is a voluntary organization created for the objectives described in its statute and whose

<sup>2</sup> <http://www.ilo.org/ilolex/index.htm>

members share common non-financial interests. The terms vary from one country to another. The legislation of Armenia, Belarus, Georgia, Moldova, the Russian Federation, Tajikistan and Turkmenistan refers to “public associations” and the laws in Kazakhstan and Kyrgyzstan to “non-commercial associations”. In Uzbekistan, these organizations are called “non-State non-commercial”, in Azerbaijan “non-governmental” and in Ukraine “unions of citizens”. Some existing particularities concerning the membership of legal and physical persons in public associations will be examined in the second part of the survey.

As regards the relationship between the laws on public associations and special legislation for EOs, the following usually applies:

- In the countries without particular legislation on EOs, the scope of the laws on public associations includes EOs;
- In the countries which have adopted special laws on EOs, the laws on public associations and the special laws on EOs are complementary. This means: the primary regulation for EOs remains the law on EOs, but the law on public associations supplies further detail concerning their creation, activity and dissolution. The Ukrainian law on EOs explicitly refers, in case of lack of regulation, to the general law “On Unions of Citizens”. The Azeri draft law on EOs also recalls that the “Law on Non-Governmental Organizations” lays down the general legal basis for all aspects related to EOs.

## ***Labour Codes***

After the collapse of the USSR, the new independent States have undertaken, in some cases with ILO assistance, a partial or total reform of their national labour legislation. Presently, the Labour Codes remain the principal labour legislation in the countries of the region, drawing together the major regulations in the field of individual and collective labour relations. In particular, the Labour Codes specify the rights and duties of employers in individual and collective labour relationships. All the Labour Codes under review, except those of Georgia and Turkmenistan dated 1973 and 1972 respectively, emphasize, through special provisions, the right of employers to create their own new organizations, as well as to join existing employers’ organizations.

Several sections of the Labour Codes are devoted to collective contracts and agreements, their scope and possible content, as well as procedures for elaboration, conclusion and registration. For instance, the Labour Codes provide for clauses to be included in collective agreements, which concern, among others, duration, procedures for control of implementation and for amendments, as well as liability for non-execution. The general objective of the conclusion of collective agreements is to lay down conditions of employment and social guarantees, in addition to those contained in legal acts.

The concept of collective agreement (*soglasheniye*) is explained in the Labour Code of all the countries examined, with the exception of Turkmenistan

and Georgia.<sup>3</sup> This normative collective act is concluded by EOs and trade unions, sometimes with the participation of the State, at all the levels superior to an enterprise - sectoral, regional or national. Collective agreements normally contain commitments on working and rest conditions, vocational training, social guarantees, i.e. financial aid and compensation, additional preferential medical and social insurance for employees of a profession, branch or (and) region.

According to the Labour Codes of Kazakhstan, the Russian Federation and Uzbekistan, collective agreements are concluded for a maximum of three years. The Azeri Labour Code specifies the possible duration of a collective agreement to be from one to three years. Usually, any agreement in the field of collective bargaining must be in writing.

Special sections of the Labour Codes of Armenia, Azerbaijan, Belarus, Kyrgyzstan, Moldova and Tajikistan deal with the collective labour disputes. In addition, special legislation in this field exists in Belarus, Georgia, Kazakhstan, Moldova and the Russian Federation. In these laws, there is a definition of collective labour dispute, rules on calling strikes, rights and duties of the parties during strikes, organization of mediation and labour arbitrage; other rules govern the liability of employers and workers for violating the relevant legislation. The laws give EOs a role to play in the settlement of collective labour disputes, namely by taking part in the mediation procedures.

### ***Laws on employers' organizations***

Special laws on EOs exist in five out of the 12 States covered by the current survey. The first special legislation for EOs was adopted by Moldova in 2000. Following this, specialized laws for EOs came into force in Ukraine in 2001, in the Russian Federation in 2002 and in Tajikistan and Kyrgyzstan in 2004. Draft laws on EOs are currently being examined by the national Parliaments in Azerbaijan and Belarus and their adoption is expected for 2005. Table 2 summarizes the situation regarding laws on EOs in the region under study.

The main objective of special legislation appears to be the promotion and support of EOs as an institution in social and labour policy. The preambles of the Belarusian draft law and the Ukrainian law on EOs both emphasize that the aim of this legislation is to help employers realize their right to freedom of association and increase their participation in the definition of social and economic policies. The principal objective of the Tajik law on EOs is to contribute to a genuine representation and protection of employers' rights and interests in the sphere of labour relations. The Ukrainian law and the Azeri draft law underline the importance of legal regulation of the relationship between EOs, trade unions, State and local executive authorities. In Moldova, the law on EOs was adopted within the framework of the national *Development programme for the system of social dialogue*.

---

<sup>3</sup> A collective agreement (*soglasheniye*) should not be confused with a collective contract (*dogovor*). Under terms similar in all the Labour Codes, the collective *contract* is a normative act regulating labour and social-economic relations between an individual employer and his/her workers, as well as with trade unions and other representative bodies of workers.

The laws on EOs apply to all EOs acting on the territory of the given States. They mostly deal with matters such as the creation, State registration, typology, rights and duties, internal governance, assets and economic activity, reorganization and liquidation of EOs.<sup>4</sup>

Table 2: Special legislation on EOs

Country	Law on EOs	Law on EOs under discussion in Parliament	EOs intending to prepare a draft law on EOs	Presently no plan for a law on EOs
Armenia			+	
Azerbaijan		+		
Belarus		+		
Georgia			+	
Kazakhstan			+	
Kyrgyzstan	+			
Moldova	+			
Russian Federation	+			
Tajikistan	+			
Turkmenistan				+
Ukraine	+ <sup>5</sup>			
Uzbekistan				+

### ***Regulations on social partnership and collective bargaining***

Special regulations governing social dialogue and social partnership exist, for instance, in Kazakhstan, Kyrgyzstan and Tajikistan (laws on social partnership), as well as in Moldova (the *Development programme for the system of social dialogue*). Various legal instruments define social partnership as a system of collective relations between trade unions, employers and their organizations and the corresponding governmental structures, the main objectives of which are to promote in practice their social and economic rights and interests. In particular, the laws give EOs the right to take part in discussions on social and economic policies, as well as on draft labour legislation.

Kazakhstan, Kyrgyzstan and Moldova have also enacted special legislation on the establishment of tripartite commissions and councils on collective bargaining and on the regulation of social labour matters at the national, branch and local levels. According to these laws, EOs represent the employers' interests through participation in these bodies. For instance, in Ukraine, these issues are covered by the Presidential Decree on "the National Council of Social Partnership to the President of Ukraine". In the Russian Federation, laws on social partnership and tripartite commissions for social and economic questions exist at the *federal*

<sup>4</sup> The provisions on EOs will be described in more detail in the second part of the survey dealing with concrete issues related to EOs.

<sup>5</sup> At the present time, a group of lawyers from the three main EOs of Ukraine are working on a comprehensive reform of this law.



level, as well as at the level of several *subjects* (see Box 1 below). The *federal law* concerns general rules of social dialogue applicable to the whole country, whereas the laws of *subjects* only deal with social dialogue at the *subject* level. In Belarus, both the Labour Code and a Presidential Decree regulate the activity of the National Council on Labour and Social Issues.

In Azerbaijan, Belarus, Kazakhstan, Moldova, the Russian Federation, Tajikistan and Ukraine, special laws on collective contracts and agreements define general rules on the conclusion of this kind of document, implementation, control of their execution, and on liability for non-observance by the signatories. Here again, the role of EOs in the preparation and implementation of collective agreements at the branch, regional and national levels is emphasized.

### ***Other legal and sub-legal acts***

In addition to the dozens of laws and legal measures governing the activity of EOs, many complementary legal instruments of different types, such as Presidential Decrees or *ukases*, decisions of national Parliaments and governments, as well as ministerial and local by-laws, are directly related to EOs. Examples include Tax Codes and laws on accounting, Ministry of Finance by-laws concerning the fiscal status of EOs and Ministry of Justice by-laws on State registration procedures. The laws on Chambers of Commerce and Industry are also important insofar as these institutions in some countries either represent the employers in social dialogue or compete with existing EOs.

In most cases, the so-called “sub-legal” acts have lower status in the legal hierarchy, but sometimes they may have the force of law, as is the case for Presidential Decrees in Belarus. The hierarchy of all these legal documents is either explained in the Labour Code, as for those in the field of labour relations in the Russian Federation, or by a particular law, for example, in Belarus.

## **LEGAL APPROACH**

### ***Style and structure of legal acts***

As all the countries of Eastern Europe, the Caucasus and Central Asia follow the Roman legal system, the tradition of legislation is very strong. The level of detail in the labour legislation of these countries is similar to labour law in France, which is widely recognized as one of the most complex in Europe. Their common history within the USSR for a period of 70 years explains the similarities in the structure and content of the legal acts in all the countries under review.

The special laws on EOs are sometimes very detailed and contain many repetitions. This seems to indicate that the law also has an educating role in clarifying the identity and interests of employers and their organizations, and more generally, in promoting a culture of social dialogue. Some provisions are formulated in a complex manner and are difficult to understand, especially for non-lawyers. In other cases, legal provisions seem to state the obvious. For instance,

the Ukrainian law on EOs states that “EOs cannot be compelled to carry out orders and instructions not foreseen by law or those of manifestly criminal character”. Various controversial and ambiguous provisions in this law seem to justify the recently initiated reform and the preparation of a new draft.

Another striking feature is the fact that the differentiation between rights and duties is not always evident in the laws. Normally, promoting the rights and interests of members is a prerogative of EOs. However, in the Azeri draft law on EOs, this right becomes a duty. It is difficult to see how such a duty would be enforced. For instance, would a complaint by a dissatisfied EO member be successful before a court?

The same Azeri draft law on EOs differentiates between founders and members of an EO. For instance, it is stipulated that “members have equal rights” whereas “the rights and duties of the founders are defined by the statute”. Some questions arise in this respect. Why does the law distinguish between these two concepts? To what extent do members and founders have a different status? Where and in what way are the members’ rights and duties defined? The representatives of Azeri EOs explain that there is no difference of status between members and founders. In order to avoid any ambiguity, it would seem appropriate to use the same term consistently, or to repeat them both everywhere.

In addition, while laws often refer to other legal acts (for instance, “according to the legislation in force”), such references are not always very clear. For instance, the Uzbek law on public associations, prohibiting the distribution of the property of the liquidated organization among its members, does not explain clearly which legislation details “the established order” to do so.

Otherwise, the laws on EOs contain very detailed lists of the rights and duties of EOs and their members. On the one hand, these provisions suggest a possible orientation for EOs and may thus facilitate their development. On the other, in order to avoid any unnecessary limitation of the freedom of association and to leave sufficient flexibility to EOs for self-regulation, legislation should not be too prescriptive.

The old adage “too much law kills law” is worth mentioning here. Unclear and complex provisions make the practical implementation of legislation difficult. Disparate and scattered legal acts complicate and hinder the access to law and its transparency for users like EOs. This can be particularly detrimental when the limited financial resources of EOs do not permit them to hire lawyers for their staff.

One may observe that in some of the countries under examination, legislation in the field of collective bargaining and social partnership is fairly well-developed. At the same time, the question of transparency of such legislation could arise. It is not very easy for EO representatives, especially non-lawyers, to master these disparate regulations, as well as their hierarchy and interaction. An innovative proposal in this respect can be reported from Ukraine. During discussions on several draft laws on collective labour relations, EO lawyers concluded that present and future legislation on trade unions, EOs, social partnership, collective contracts and agreements, settlement of collective labour

disputes, should be comprehensively gathered in a kind of *collective labour code* as a particular volume of the Labour Code.

### ***Why special laws on employers' organizations?***

While there are no examples of special legislation for EOs in Western market economies, new laws on EOs have been adopted in countries such as Poland, Romania and Serbia, as well as in the above mentioned Eastern European countries.<sup>6</sup> Usually, these laws regulate the legal status of employers' organizations, the procedures for their creation, reorganization and liquidation, as well as the main activities, rights and duties of EOs and their members.

The adoption of these laws has to be seen against the historical background. All the countries mentioned above are former socialist economies, and they have been going through a phase of transition. They are endeavouring to establish a legal basis for social dialogue, an institution which was unknown under the previous regime.

In the countries covered by this survey, the first draft laws on EOs were prepared in the mid 1990s (Belarus, Moldova, the Russian Federation and Ukraine). The main EOs, usually the more developed ones at national level, initiated the proposals and took an active part in discussions on the draft law with governments and parliaments. Through the laws, these EOs aimed at strengthening the status of employers' organizations as important institutions in social policy. Another motive has also been to strengthen their own position in the competition with other EOs. In Tajikistan, by contrast, the adoption of the law on EOs was initiated and promoted by the Ministry of Labour along with trade unions, with a view to creating genuine EOs as partners for social dialogue.

Moldova, the pioneer of the process in the region surveyed, followed the Romanian experience. At the beginning, when the government proposed to discuss a special law, EOs were concerned about possible legal limitations. Five years after the adoption of the law on *patronats*, the Moldovan EOs are, on the whole, satisfied with it and find it useful. Russian employers also consider that the 2002 law has been very helpful in their development. In fact, the general character of its provisions and the relative brevity of the Russian text have given it a model character for other countries in the region: for instance, Kyrgyzstan and Tajikistan adopted more or less identical laws in 2004. By contrast, certain provisions of the 2001 Ukrainian law on EOs have been accused of serving particular corporate interests. Under the aegis of the ILO Project Declaration in Ukraine,<sup>7</sup> EO lawyers have been working together on reforming this law.

It is worth mentioning that in some countries it has taken five years or more from preparation of the draft to adoption of the law. This delay is partly due to the length of the parliamentary procedures, as well as to the weakness and lack of

---

<sup>6</sup> From comparative legal practice in other parts of the world, we only can cite a law on EOs which has been passed in Mozambique.

<sup>7</sup> <http://www.declaration.kiev.ua/>

interest of EOs. The long process of law adoption may, however, also indicate that the existing general legislation has not placed major obstacles in the way of starting EO activities.

In Belarus, although a draft law was prepared as early as 1995, the final adoption of a new law is expected only for 2005. In the opinion of the Belarusian Union of Entrepreneurs and Employers, this law would help employers to realize their right to freedom of association and promote their equal participation in tripartite social dialogue. In contrast to the two other parties of the social partnership (State bodies and trade unions) EOs have no legally established basis. Furthermore, before 2005 the legislation in force in Belarus was contradictory and did not provide for simultaneous membership of legal and physical persons in the same organization.<sup>8</sup> There are also some obstacles concerning the economic activity of EOs. Nevertheless, the employers in Belarus see no need to rush the adoption of the special law, because the main EOs are already operating. Their objective is to have a law that responds to the needs of real life, taking into account national and international experience. In this manner, they hope to obtain a “made-to-measure” law.

In Azerbaijan, a draft law on EOs was prepared in 2004. According to the National Confederation of Entrepreneurs (Employers), the absence of special legislation causes difficulties for the creation of EOs at the branch, regional and local levels, as well as for their participation in tripartite bodies.

The major EOs in Armenia and Kazakhstan have submitted proposals for specific laws on EOs to their national governments and parliaments. The Georgian Employers' Association also intends to prepare a draft law on EOs. Sometimes the legal situation seems to reflect the level of development of EOs in a country. According to the Business Women's Association of Uzbekistan, a law on EOs is necessary for the country, but not at the present moment, because the time is not yet ripe for it. By contrast, representatives of this Association believe that there is a real need for legislation on social partnership, which could contribute to the creation of a genuine EO at national level.

In conclusion, the development of special laws on EOs seems partly to be driven by a legal tradition, which seeks to cover all aspects of State and societal activity, partly by the EOs themselves which feel that such laws would help strengthen their status as a social partner, as well as clarify the relationship between the State and EOs. This has to be seen against the background of weak EOs which are still at the very beginning of their development and which have no clear profile in the public perception, whereas trade unions have been well-known to the public since Soviet times. Apart from Turkmenistan and Uzbekistan, respondents from EOs in the region under review are unanimous about the value of special legislation on EOs.

---

<sup>8</sup> More detailed information about these two separate legislations in Belarus, one concerning the association of legal persons and the other on the association of physical persons, will be given in the second part.

## **PART II. Regulation and implementation of key issues for employers' organizations**

The present section examines some key issues for the operation of EOs from both the legal point of view and that of practical implementation.

### **RECOGNITION OF EMPLOYERS' ORGANIZATIONS**

#### ***Terminology and definitions***

It is interesting to note that the Russian language versions of national legal acts reflect a slight difference in the terminology used. In Kyrgyzstan, Moldova, the Russian Federation, Tajikistan and Ukraine, the word for employer is *rabotodatel*, which means a person who gives work, whilst the term used in the Labour Codes of Belarus<sup>9</sup> and Kyrgyzstan is *nanimatel*, i.e. someone who engages or hires. As regards the expression for “employers’ organization”, the term *patronat* is used in Moldova.<sup>10</sup> While it seems that there is no tangible semantic difference between these synonyms, the linguistic nuances reflect the heritage of national legal traditions or the influence of the law and the language of neighbouring States.

Also of interest is the legal definition of the term “employer” which is contained in the Labour Codes of all the countries under examination, except for Georgia and Turkmenistan.<sup>11</sup> For instance, the definition of “employer” in the Kazakh Labour Code is “legal or physical person being in labour relations with a worker”. In Moldova, the law on EOs states in a more comprehensive way that an employer is “a legal or physical person, registered according to the established procedure, managing and using capital, regardless of its form, and hiring workers in order to earn profit in conditions of competition”.

The Labour Codes of Azerbaijan, Belarus, Kyrgyzstan and the Russian Federation define “employers’ organizations” as “representatives of employers in the system of labour relations”. According to the Labour Codes of Armenia and Kazakhstan, any physical or legal person possessing a mandate to do so may represent employers. As a rule, the definitions in the Labour Codes are repeated verbatim in the special legislation on EOs. While all the laws on EOs examined in the survey define the term “employers’ organization”, they take a variety of approaches. In Moldova, *patronats* are “non-commercial, non-governmental, independent and non-political organizations, established on the basis of freedom of association by employers from different fields of activity on an equal footing”. The laws on EOs of Kyrgyzstan, the Russian Federation and Tajikistan and, as well as the draft law of Belarus, are more laconic in that they define EOs as “non-commercial organizations, based on the membership of employers (legal and (or)

---

<sup>9</sup> In Belarus, the term “rabotodatel” is used with a broader and slightly different meaning for the purposes of the Social Security Law.

<sup>10</sup> The common meaning of the word “*patronat*” in Russian is “patronage” (support).

<sup>11</sup> These two Labour Codes were adopted in the 1970s, and at that time it was not necessary to define the term “employer”, as the only employer was the State. Partial reforms occurred in the 1990s, but they did not define the term “employer”.

physical persons)”. In these countries, as well as in Ukraine, EOs are especially characterized as non-commercial (non-profit) organizations.

A peculiarity of the Ukrainian law on EOs is a provision that the full name of an EO «must contain the word “employer” or its derivatives». Only EOs meeting this condition can be registered under the law and thus qualify to participate in social dialogue and collective bargaining. The Federation of Employers of Ukraine, which initiated this text, felt that this provision was necessary in order to clarify the profile of EOs as actors in the labour and social field, as opposed to organizations of entrepreneurs chiefly pursuing economic policy objectives. In practice, this provision has led to certain frictions. For instance, the Union of Leaseholders and Entrepreneurs of Ukraine,<sup>12</sup> an active participant in collective bargaining for many years, cannot be registered under the law on EOs. This organization does not wish to change its name and therefore submitted a complaint to the ILO Committee of Experts on the Application of Conventions and Recommendations (hereafter “ILO Committee of Experts”), which requested the opinion of the Ukrainian Government in connection with the implementation of ILO Convention No. 87, ratified by Ukraine. It is expected that the new version of the law, which is presently under preparation, will repeal this controversial provision.

The differences between the above legal definitions of employers and EOs, which are sometimes too detailed or unclear, reflect the continued search for an exact understanding of this new kind of actor/institution, which did not exist in the Soviet system. This terminology is not yet part of the common vocabulary in the countries and is not clearly understood by the general public. Sometimes it seems that the notion of “employer” is not always properly understood by the employers themselves.

A case in point was reported by the Association of Business Women of Uzbekistan. In a sociological survey conducted by the Association, a positive answer was given to the question “Are you an entrepreneur?” by all participants. However, the majority did not see themselves as employers although they did employ workers. At present, EOs are often rather associations of producers and entrepreneurs (the word “employer” is sometimes added to the name in brackets).

### ***Typology of employers’ organizations***

A general feature of the laws regarding EOs for the majority of the countries surveyed is the differentiation between regional, branch and regional-branch type organizations. Details of the laws vary, usually reflecting the geographical peculiarities of each country. The law on EOs in the Russian Federation contains a particularly detailed and complex typology of EOs (see Box 1).

---

<sup>12</sup> This EO edits the magazine “Robotodavets” (“Employer”), which regularly publishes interviews with representatives of other EOs in Ukraine.

<http://www.sopu.org/RobotodavetS/Robotodavets.html>

## Box 1. Typology of EOs in the Russian Federation

### **Typology of employers' organizations according to the law on EOs in the Russian Federation**

In accordance with the Russian Constitution of 1993, the Russian Federation counts 89 *subjects* (i.e. geographical administrative units). On this basis, the law defines the following types of EOs:

All-Russian associations of employers are created by gathering all-Russian, branch and regional EOs acting on the territory of more than half of the total number of Russian Federation *subjects* (All-Russian EO statutes may authorize membership of employers).

All-Russian branch (inter-branch) employers' associations are created by employers of a branch or branches acting on the majority of the Russian Federation *subjects* and (or) employing at least half of the workers of this branch or branches.

Inter-regional (branch, inter-branch) employers' associations gather employers and their regional and territorial organizations acting on the territory of at least two *subjects* of the Russian Federation.

Regional employers' associations gather employers and (or) their regional branch and territorial organizations acting on the territory of one *subject* of the Russian Federation.

Regional branch employers' associations gather employers of the branch acting on the territory of one *subject* of the Russian Federation.

Territorial associations of employers gather employers and/or their territorial branch organizations acting in one municipal unit.

Territorial branch associations of employers gather employers of the branch acting in one municipal unit.

The laws on EOs of Kyrgyzstan and Tajikistan as well as the draft laws of Azerbaijan and Belarus follow the Russian model. One particular detail in the Belarusian draft law is the Republic branch (inter-branch) employers' association, which «gathers employers employing at least 20 per cent of workers of one or more branches».

Another complicated typology of EOs is described in the Ukrainian law on EOs. «EOs are created following a territory or branch approach and have the status of local, regional, Autonomous Republic of Crimea and international associations». In turn, «federations of EOs are created following territory or branch features and have the status of local, regional, Autonomous Republic of Crimea and all-Ukrainian EO unions».<sup>13</sup>

---

<sup>13</sup> It is not clear why the two schemes do not fully correspond to each other. At the end of this provision, it is explained that both EOs and federations of EOs may be “international” if their activity covers Ukraine and, at least, the territory of one other State.

The organizational scheme of Moldovan *patronats* differs insofar as in this country EOs may be established in the form of employers' associations, federations and confederations:

- Employers' associations have to unite at least ten employers, who may be legal and/or physical persons;
- Employers' federations group two or more employers' associations in one field of activity. However, individual employers from the relevant field of activity may also be members of an employers' federation;
- Two or more employers' federations establish a confederation. Here again, individual employers and federations from the relevant field of activity may also be members of an employers' confederation;
- Employers, their associations, federations and confederations may together establish a representative national employers' confederation.

Considering the above detailed regulation, the question of why it was felt necessary may arise. To some extent, the desire to provide orientation regarding a so far unknown institution may have been a driving force. A simpler explanation can be given as regards the Russian law on EOs, whose provisions on the typology of EOs are a mirror copy of the law on trade unions. The objective obviously was to assure a perfect correspondence between the partners at each level of social dialogue.

It should be noted that Convention No. 87 provides that EOs have the right to establish and join federations and confederations, as well as to affiliate with international organizations, in order to coordinate their activities and to strengthen the efficacy of their action. The ILO Committee of Experts suggests that national legislators should take care to guarantee full freedom of association and should not create serious restrictions which may go as far as *de facto* prohibition.<sup>14</sup> In this regard, EO representatives in Ukraine report that the requirements of the current law are difficult to meet, especially for the creation of local branch EOs.

### ***Protection as independent institutions***

The importance of EO independence is stressed by particular provisions in the legislation on EOs. First of all, the principle of independence is defined to mean the free specification of organizational aims and activities. This is emphasized in the laws on EOs of Kyrgyzstan, the Russian Federation, Tajikistan, Ukraine and in the Belarusian draft law. Secondly, the laws guarantee protection against any interference from the State, local authorities, trade unions, political parties and other public associations in an EO's internal activity.<sup>15</sup>

---

<sup>14</sup> Freedom of Association and Collective Bargaining, General Survey of the Committee of Experts (Geneva, ILO, 1994), (hereafter "General Survey"), paras. 189-190.

<sup>15</sup> However, the Ukrainian law limits this provision by specifying - "except cases provided for in the laws". The Azeri draft law on EOs makes it inadmissible to insert in the charter of EOs provisions limiting State and municipality rights.



In order to achieve the twofold objective of Convention No. 87 – to fully guarantee freedom of association and to ensure that EO activities are carried out within the law – the public authorities should refrain from any interference which would unduly restrict EO activity. In all countries examined, the State is legally entitled to control the activities of public associations, even if it is explicitly forbidden for civil servants to interfere with the activity of EOs in a manner that is likely to limit their rights. Civil servants are liable for non-respect of legal provisions.

Under the terms of the draft law on EOs in Azerbaijan, representatives of the executive power structures and trade unions can be neither founders nor members of EOs.

The delicate issue of the protection of EO independence against State interference is not only a matter for the law, but also a matter of practice. During a period of political changes such as the Rose Revolution in Georgia in 2003 or the Orange Revolution in Ukraine in 2004, it was hardly possible for the employers to stand apart. As a result of EO support for reform, some prominent representatives of EOs became – at the same time – members of government. While this may be not against the law in the respective countries, the independence of EOs nevertheless seems to be threatened in such cases.

On the other hand, State support, which does not question the independence of EOs, is important and should be provided. The Kyrgyz, Russian, Tajik and Ukrainian laws on EOs, as well as the Belarusian draft law, all emphasize the role of the State in promoting the employers' freedom of association. This is necessary in order to further develop social partnership and employers' participation in the preparation and implementation of policies in the field of social, labour and economic relations.

## **CREATING AND JOINING AN EMPLOYERS' ORGANIZATION**

Although the general procedures for the creation of EOs are quite similar in all the countries surveyed, there are also differences worthy of mention.

### ***Preconditions for creation and membership***

Whereas the principle of free creation is important for EOs, some preconditions, especially regarding minimum membership, are usually required by the laws. Other limitations may concern the status – legal or physical – of potential members. Table 3 summarizes information on preconditions and membership requirements in the region under review.

## ***Type of membership***

Both physical and legal persons can be members of EOs in Azerbaijan, Georgia, Moldova, the Russian Federation, Turkmenistan and Ukraine,<sup>16</sup> as opposed to Armenia where the law on public associations excludes the membership of legal persons.<sup>17</sup>

Otherwise, in Belarus, in 2005, an amendment to the Civil Code came into force, authorizing the membership of both physical and legal persons within the same organization. Before this date, some EOs were registered as organizations of legal persons under the provisions of the Civil Code, while EOs representing physical persons had to register under the law on public associations. The adoption of the law on EOs, also planned for 2005, is expected to harmonize further the membership status of employers in Belarus.

## ***Minimum membership requirements***

In Belarus, Kyrgyzstan, the Russian Federation and Tajikistan, an EO may be created by a minimum of two employers or two EOs. A *patronat* in Moldova has to gather at least ten employers, legal and (or) physical persons, but two members are enough to create a federation or a confederation. The Azeri draft law on EOs does not mention any requirements for minimum membership.

In Ukraine, the law on EOs describes a complex scheme for minimum membership, which varies (either two or ten) depending on organizational level and status. For instance, “EOs with a local status conduct their activities within an administrative territorial unit and unite at the time of the State registration at least ten employers of this administrative territorial unit or two or more employers from the industry within this administrative territorial unit”. EO representatives in Ukraine consider that the legal requirements make the creation of EOs complicated, especially at regional and branch levels.

While it may be justified to stipulate the minimum legal requirements for membership, the figures should be realistically attainable so as to facilitate the creation of EOs. The ILO Committee on Freedom of Association found that a minimum membership requirement of ten employers in the same or related field of activity might be excessively high.<sup>18</sup> Following ILO legal advice, the minimum figure in the Belarusian draft law on EOs, which originally stood at ten employers, was reduced to two. It might therefore be advisable to fix the minimum membership requirements for EOs at a reasonable level in order to facilitate their creation, in compliance with Convention No. 87.

---

<sup>16</sup> In Ukraine, this rule concerns employers’ organizations which are registered under the law on EOs. By contrast, only employers, proprietors of business in their capacity as physical persons, may join EOs registered under the law on public associations.

<sup>17</sup> This may be an additional argument in favour of a special law on EOs in Armenia to make it possible for legal persons to be members of employers’ organizations.

<sup>18</sup> Freedom of Association, Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO, Fourth (revised) edition, (Geneva, ILO, 1996), (hereafter “Digest”), para. 258.

Table 3: Requirements regarding EO membership

Country	Minimum membership required for EOs	Simultaneous membership of physical and legal persons is possible	Relevant legal texts
Armenia	3	No (only physical persons)	Civil Code, law on public associations
Azerbaijan	-	Yes	Draft law on EOs
Belarus	2	Yes	Draft law on EOs, Civil Code
Georgia	5	Yes	Civil Code, law on public associations
Kazakhstan	10	Yes	Civil Code, law on public associations
Kyrgyzstan	2	Yes	Law on EOs
Moldova	2 or 10 (depending on status)	Yes	Law on EOs
Russian Federation	2	Yes	Law on EOs
Tajikistan	2	Yes	Law on EOs
Turkmenistan	5 (500 for national public associations)	Yes	Law on public associations
Ukraine	2 or 10 (depending on status)	Yes	Law on EOs
Uzbekistan	-	Yes	Law on non-State non-commercial organizations

### **Statutory document**

In all the countries surveyed, the laws on public associations require EOs to have a statutory document. The special laws on EOs detail the compulsory and non-compulsory content of this document. Only the Azeri draft law does not contain any instructions regarding the statute. According to the existing laws on EOs, the statute must contain the following information:

- name;
- aims and mission;
- address;
- conditions and order of entrance and withdrawal of members;
- rights and duties of members;
- financial sources and property;
- rules for creation, structure and mandate for governing bodies;
- rules on mandating representatives for collective bargaining with a view to preparing, concluding and modifying agreements, as well as rules on participating in arbitration procedures during collective labour disputes;

- procedures for ceasing activity and resolving property questions in connection with liquidation.

Over and above this, EO statutes in Moldova have to specify the organization of internal control of the organization's activities. Moreover, the laws in Belarus, Kyrgyzstan, the Russian Federation and Tajikistan specify that "the content of the statutes of EOs can be completed by adding provisions on members' liability for non-respect of the statutes and decisions of governing bodies".

Finally, according to the laws, statutes may contain any further provisions provided they do not undermine the existing legislation. In all the countries surveyed, the legislation stipulates that an EO statute may only be amended by decision of its governing body.

In this context, it is worth pointing out that Convention No. 87 gives EOs the "right to draw up their constitutions and rules".<sup>19</sup> National legislation may nevertheless list particular points of a formal kind, which must appear in the constitutions and rules of EOs in order to protect members' rights by ensuring a sound administration.<sup>20</sup>

### ***State registration***

State registration is required by the general and special EO legislation in all the countries examined as a precondition for an EO's capacity to act as a legal person. In Azerbaijan, Belarus, Kyrgyzstan, the Russian Federation, Tajikistan and Ukraine, EOs have to follow the general procedure laid down by the relevant act concerning State registration of legal persons, which also applies to EOs. The Belarusian draft law and the Moldovan law on EOs both list the documents required by the Ministry of Justice for State registration.

As a rule, the existing laws on public associations state that documents for application should be submitted to the Ministry of Justice within one or two months after the constituent congress. The Ministry of Justice should then, within 30-60 days after submission of the application, take a decision on registration.

An application for registration may be dismissed for the following reasons: inaccurate information, violation of provisions of the legislation in force, other EOs previously registered under the same name. The legislation in all the countries examined stipulates that a refusal of registration, or delay in a decision on registration, may be appealed in a court. A repeat application may be made after correction of the factors that gave rise to the refusal of registration. However, in Moldova, for instance, the registration fees are payable a second time unless a court of law has found that the refusal was not justified.

---

<sup>19</sup> See Article 3, para. 1.

<sup>20</sup> General Survey, paras.108, 110.

The procedures for State registration do not seem to present any practical complications for EOs in Azerbaijan, Kyrgyzstan, Moldova, the Russian Federation, Turkmenistan or Uzbekistan. By contrast, the employers in Georgia find the process complex and bureaucratic. EOs in Belarus also find that the application for registration is very demanding in terms of work and time. In addition, under the Civil Code and various Presidential Decrees, State registration is different for organizations of legal persons and those of physical persons; the process is also carried out by different institutions – local executive bodies and the Ministry of Justice – respectively. Ministry decisions are taken on the advice of a State collegial body, the Republican Commission on Registration of Public Associations, whose members are nominated by the President of Belarus.

The EOs in Ukraine also find the preparation and registration procedures very complex, expensive and long. The Ukrainian law on EOs provides that the constitutive congress adopts the statutes of the EO and elects the governing body. For the purposes of State registration, the protocol of the founding conference must be signed by the president and the secretary of the congress and a special register, as an integral part of the protocol, must contain detailed information about all participants. Preparation for State registration of the two main All-Ukrainian EOs took 18 months and two years. Another problem is the fact that the application must be processed within two months for public associations compared to five days for commercial legal persons. The bodies responsible for registration have the right to control the content of statutes and can refuse registration on the basis of ambiguous legal provisions. Some EOs in Ukraine consider that the fact of obtaining a legal personality only after State registration unduly limits their right to appeal to a court.

It may be pointed out here that Convention No. 87 does not prevent member States from setting legal formalities for EO registration, provided that these formalities are not equivalent to a requirement for previous authorization; they must not constitute obstacles that amount in practice to a prohibition.<sup>21</sup> In this regard, the ILO Committee of Experts considers that a long and complicated registration procedure could amount in practice to a denial of the freedom of association.<sup>22</sup> The possibility of appeal to independent courts against unlawful or ill-founded decisions by the registration authorities is deemed a very important safeguard of the freedom of association.<sup>23</sup>

## **INTERNAL ORGANIZATION**

### ***Right to free internal governance***

While the right to free internal governance for EOs seems to be recognized in principle in the countries studied, legislation often lists particular points to be inserted into the EO statutes in order to ensure sound administration. For instance, the laws on EOs in Kyrgyzstan, the Russian Federation and Ukraine stipulate that the structure, the rules for creation and the mandates of the governing bodies of

---

<sup>21</sup> General Survey, paras. 68-69.

<sup>22</sup> General Survey, paras. 74-75.

<sup>23</sup> General Survey, para. 77.

an EO, as well as the decision-making processes, have to be established in its statutes.

Nevertheless, sometimes the impression arises that the laws unnecessarily limit the autonomy of EOs to design their own governance rules. This is true of the Azeri draft law on EOs, which stipulates that only “the members of the EO can elect and be elected to the governing body of the organization”. Moreover, the laws on EOs in Kyrgyzstan, the Russian Federation and Tajikistan, as well as the Belarusian draft law all contain a provision under which “EOs are obliged to... provide their members with methodical help on application of labour legislation, preparation of house rules, conclusion of collective contracts and settlement of individual and collective labour disputes”. Another illustration of this concern is a provision in the Ukrainian law on EOs about the liability of EO governing bodies for breach of statutes. The law states: “If the governing body of an EO pursues activities conflicting with Ukrainian legislation or the EO’s statutes, members of this EO can apply to a law court in defence of their violated rights and interests. The law court can oblige the governing body of such an organization to adjust its activities according to the statutes or to set a date for the election of a new governing body.” Such matters relating to internal governance should be left to the EO statutes, and not be defined by State legislation.

Legislative provisions which regulate in detail the internal functioning of EOs pose a serious risk of interference by the public authorities. Any restrictions should therefore have the sole objective of protecting the interests of members and guaranteeing the democratic functioning of EOs.<sup>24</sup>

### ***Rights and duties of members***

The rights and duties of EO members are described in detail in the special laws of Kyrgyzstan, the Russian Federation and Tajikistan and in the draft law of Belarus. One of the main rights is freedom to join or to leave the organization: this is mentioned in the laws of all the countries in the present survey. The other most frequently cited prerogatives of EO members are the following:

- to participate in forming EO governing bodies in accordance with the statute;
- to make proposals to the governing bodies about the activities of EOs, to take part in their examination and relevant decisions;
- to make proposals concerning the structure and content of social, labour and economic agreements concluded by EOs;
- to obtain information on the activities of the EO and the agreements signed by it;
- to receive EO assistance in the application of legislation, the preparation of internal company rules and the conclusion of collective agreements, as well as in the resolution of individual and collective labour disputes.

---

<sup>24</sup> General Survey, para. 135.

Usually the laws on EOs explicitly state that the statutes of the EOs may include additional rights for their members.<sup>25</sup>

Equality between EO members is compulsory and is stressed in all the legislations. Equality may require a weighting of the voting strength in the member assembly, depending on the economic importance or the number of workers employed by a member company/association. It is for each EO to establish its own rules, taking into account the structure of its membership.

The duties of EO members are treated in a similar manner in the special legislation of Azerbaijan, Belarus, Kyrgyzstan, the Russian Federation and Tajikistan. The laws on EOs mention only two duties for EO members - to respect the statutes and to meet the commitments contained in collective agreements concluded by the EO.

Finally, it is to discuss how far it is necessary for the legislation to deal in detail with these issues of internal governance. The regulation of members' rights and duties by the statutes of EOs themselves would appear to be more appropriate.

### ***Fiscal deductibility of membership fees***

Another important precondition for the success of EOs is a favourable tax regime regarding membership fees. If membership fees are not tax deductible, employers may decide not to join EOs, which could make it unnecessarily difficult for such organizations to develop.

A resolution adopted at the ILO Warsaw Regional Conference in 1995, and reiterated at the Sixth and Seventh ILO Regional Meetings in 2000 and 2005, reminded governments of the Central and Eastern European countries that "they should facilitate by all means (including tax deductions) policies that stimulate the expansion of membership of free and independent employers'... organizations... Appropriate measures should be considered within fiscal regulations to allow employers to account for their subscriptions to their respective organizations as cost items".

Table 4 below shows that in all the countries of the region, except Tajikistan and Turkmenistan, members of EOs have to pay membership fees out of their (taxed) profit. However, in the present economic situation, very few enterprises are profitable, which explains the huge financial constraints of EOs.

In Belarus and Uzbekistan, business associations and EOs have suggested that membership fees be included in the enterprise budget and thus be made tax-deductible, but the government has not accepted this. In Azerbaijan and Kyrgyzstan, the EOs intend to raise this matter with their governments. On a question to this effect, representatives of the Belarus and Kazakh governments declared themselves ready to examine this question in collaboration with their

---

<sup>25</sup> In this regard, one may wonder if the statutes also may exclude particular rights mentioned in the laws.

Ministry of Finance, provided that a financially and legally justified request was formulated by EOs.

Likewise, in Moldova, the members of EOs have to pay membership fees from their taxed profits. The Moldovan employers consider that in the absence of profits, which is frequently the case in the present difficult economic situation, they are deprived of their right to organize and their freedom of association. By contrast, workers' organizations have fiscal privileges under the law on trade unions. After several unsuccessful requests to the government to provide them with tax relief similar to that granted to trade unions, the National Confederation of Moldovan Employers made a complaint to the ILO Committee on Freedom of Association. The complaint is currently being examined.

To summarize, the present fiscal regimes in the countries surveyed constitute serious obstacles for EOs. They make it difficult for them to recruit new members, to develop their activities and to promote their public image. Follow-up by governments of the recommendations of the ILO European Regional Meetings would not only improve the situation of EOs, but also contribute to the development of social partnership in these countries.

### ***Assets and property***

Financial autonomy is an essential element of the EO right to organize its own administration and activities. This particularly concerns the acquisition, use and disposal of assets and property.

It can be noted that in six countries, the legislation includes special provisions related to the assets and property of EOs. According to the Belarusian draft law and the Moldovan law, EOs are entitled to own all the assets necessary to pursue their statutory objectives. In Belarus there is a unique exception concerning certain types of assets which may be owned by the State exclusively. The laws in Kyrgyzstan, the Russian Federation, Tajikistan and Ukraine provide that EOs may own movables, real estate, tangible and intangible assets. Furthermore, Ukrainian EOs may hold property outside Ukraine.

While EO assets may generally come from any source not forbidden by the law, the legislation in Moldova and Ukraine explicitly mentions the following sources of assets and finance:

- enrolment and membership fees;
- voluntary donations received from physical and legal persons;
- income from enterprises created by EOs or with their participation.

Employers' organizations in Moldova may earn income from vocational training seminars, as well as from conducting negotiations on collective agreements. In all the countries surveyed, the general procedures for the acquisition and use of assets and property, and for fixing the enrolment and membership fees have to be laid down in the statutes.



Under the terms of the Moldovan law, EO assets have to be used exclusively for the attainment of their statutory objectives and must not be distributed among the *patronat* members. The financial and material assets of EOs must not be used to support political parties and individual candidates in electoral campaigns.

In Belarus, a Presidential Decree regulates foreign financial support for public associations. According to this Decree, any such financial support has to be registered by the Department of Humanitarian Activities to the Administration of the President of Belarus. The Decree does not specify any particular registration period and this process can take two to three weeks in practice. The representatives of the Belarusian employers consider that this can hinder the organization of projects financed by foreign donors. The ILO Committee of Experts has expressed the view that problems of compatibility with Convention No. 87 may arise when the law requires certain financial operations, such as the receipt of funds from abroad, to be approved by the public authorities.<sup>26</sup>

The laws in Belarus, Kyrgyzstan, the Russian Federation and Tajikistan directly prescribe that the EO members do not keep their rights to any property transmitted to the EO or to membership fees, unless otherwise provided for by the statutes. Furthermore, in Kyrgyzstan, the Russian Federation and Tajikistan, the laws state that the EOs are not liable for members' debts.

The right to property is guaranteed in the laws on public associations of all the countries covered by the survey. Over and above this, the Ukrainian law gives EOs the right to compensation for any material damage caused by illegal decisions, actions or omissions on the part of the State or local government authorities. Expropriation of EO assets by the State is possible only in the cases defined by Ukrainian legislation. Otherwise, the Ukrainian law on EOs adds that the Ukrainian State bears no responsibility for the debts of EOs, whereas EOs are not liable for the State, "except in the circumstances directly specified by the law".<sup>27</sup>

It may be pointed out here that autonomy, financial independence and protection of their assets and property are important elements in the right of EOs to organize their administration without interference by the public authorities.<sup>28</sup>

### ***Economic activity***

The laws on public associations generally stipulate that public organizations are entitled to conduct an economic activity only on a non-profit basis and to use the income from this activity only for statutory purposes. All enterprises created by public associations have to pay taxes foreseen by the legislation in force. As

---

<sup>26</sup> General Survey, para. 126.

<sup>27</sup> The practical implications of this provision are not clear: in which cases may EOs be liable for the State? If, in addition, a subsequent law may introduce this kind of responsibility, this legal provision may be dangerous for EOs.

<sup>28</sup> General Survey, para. 124.

shown in Table 4, there are no fiscal exemptions for EO economic activity in the region under study.

According to the Ukrainian law, EOs have the right to conduct appropriate economic and financial activities by creating enterprises or organizations with the status of a legal person, but cannot use them to make profits. Following the same law, all decisions on economic activities, remuneration of EO staff and the use of financial and material resources, must take into account the prescribed legal and statute rulings.

In Uzbekistan, non-State non-commercial organizations which engage in economic activity are taxed like any enterprise, without exemption. The Association of Business Women of Uzbekistan, which was involved in drafting the relevant law, had proposed to allow the use of profits for statutory purposes, but this provision was not retained in the final text. The regulation in its present form seems to make it extremely difficult for Uzbek EOs to develop and to provide services to their members.

In a similar way, the Civil Code of Belarus does not permit EOs whose members are legal persons to carry out directly, without creating a separate enterprise, economic activities for statutory purposes. This complicates the provision of services to members. On the other hand, the draft law on EOs contains a provision giving EOs the right to engage in economic activity for statutory purposes.

In addition, the financial and economic activities of EOs are under the control of State financial and tax authorities, in compliance with national law. For instance, EOs have to submit annual declarations of income and expenditure, even if reporting schemes are simplified for non-profit organizations. The ILO Committee of Experts considers that there is no infringement of the right of EOs to organize their administration, if supervision is limited to the obligation of submitting periodic financial reports.<sup>29</sup>

In conclusion, it appears that, in all the countries of the region, economic activity undertaken by EOs for their statutory purposes could be significantly facilitated by more appropriate fiscal regulation.

Table 4: Fiscal status of EOs

Country	Fiscal deductibility of membership fees	Fiscal privileges for economic activity	Comments
Armenia	-	no	Membership of physical persons only
Azerbaijan	no	no	
Belarus	no	no	
Georgia	no	no	
Kazakhstan	no	no	
Kyrgyzstan	no	no	
Moldova	no	no	

<sup>29</sup> General Survey, para. 125.

Russian Federation	no	no	
Tajikistan	yes	no	
Turkmenistan	yes	no	
Ukraine	no	no	
Uzbekistan	no	no	

## EXTERNAL ACTIVITIES

Providing member services, such as lobbying and participation in bi- and tripartite social dialogue bodies, are among the most important external activities of EOs.

### *Lobbying*

Since the downfall of communism, the countries of Central and Eastern Europe have been facing waves of reform in the social and economic fields. The ongoing adjustment of labour legislation to a changing environment has been an important element of these reforms. For these reasons, in all the countries under review, lobbying vis-à-vis policy-makers and decisions-takers is recognized as a fundamental aspect of EOs' external activities and a prime element in the defence of their interests. In the existing legislation on social partnership, the following missions of EOs are most frequently mentioned:

- coordination of employers' actions aimed at the effective resolution of economic and social questions;
- participation in determining State social and economic policies and their implementation;
- participation in the preparation and discussion of draft legislation.

Provisions concerning the lobbying rights of EOs are particularly detailed in the special laws on EOs. They have the right to:

- form consolidated positions of members on social and economic matters;
- defend the legal interests and rights of members vis-à-vis trade unions, State and local authorities;
- participate in the discussion and adoption of laws and other legal acts of relevance to employers in the social and economic fields.

Practice shows that EOs, especially the peak federations, in all the countries surveyed make active use of these legal provisions by taking part in the discussion and adoption of social legislation, such as Labour Codes, and economic legislation, such as Fiscal Codes. In Armenia and Moldova, consultation with EOs on draft legislation is compulsory. In other countries, such as Turkmenistan and Uzbekistan, there is no legal obligation to consult EOs, but draft laws are published in the mass media for national discussion. Generally, in all the countries surveyed, draft labour legislation is often the subject of high public interest and extensive media coverage. On the other hand, some EOs consider

that the consultation is sometimes too formal and that governments do not always give due consideration to their opinions.

### ***Social dialogue***

Social dialogue is another important way for EOs to promote the interests and views of their members. Over the past decade, there have been spectacular changes in the political and economic climate in most countries of the region. As a result, legislation on interaction between EOs, trade unions, State and local authorities in the social and economic fields has been expanding.

In the field of social dialogue, the existing laws grant EOs the right to:

- representation and protection of the legal interests of employers in their relationship with the State and local authorities, trade unions and other organizations of workers;
- participation in the permanent bodies of social partnership;
- participation in collective bargaining and conclusion of collective agreements at all levels;
- control of respect, by EO members, of collective agreements;
- control of fulfilment, by other social partners, of commitments accepted in the process of collective bargaining;
- assistance in the resolution of collective labour disputes and thus avoidance of strikes.

All Labour Codes in the region deal with collective labour relations and social partnership. In particular, the legislation on collective agreements in most of the countries surveyed describes the procedures for collective negotiations, as well as the role of EOs in the negotiations. Nevertheless, collective bargaining is not yet a widespread phenomenon in practice, especially in Central Asia and the Caucasus. Very often, collective agreements are too formal and general, or are simply carbon copies of labour legislation. Moreover, small and medium-sized private enterprises rarely sign collective agreements with their employees, partly because of the absence of trade unions in this sector. In the eyes of workers, and especially of the younger generation, the trade unions are nothing but a relic from the communist era, unable to assist them in obtaining better working conditions and higher wages.

In the countries under review, EOs participate in the social dialogue institutions which are at different stages of development. National tripartite structures are still the main channels for social dialogue. The degree of commitment to tripartism through consensus appears stable, at least in principle and in national and international public arenas. The most important responsibilities of the tripartite national bodies are labour legislation, social and economic reforms. The reasons for creating such structures are to share political responsibility with other social actors and to make up for the absence or weakness of collective agreements. Most often, the social players participate in these tripartite institutions only in an advisory capacity, in the sense that most of their decisions are merely indicative and not binding.

Table 5 summarizes the assessments given by EO representatives on the activity of national tripartite social dialogue bodies: there are permanent national tripartite structures in Belarus, Moldova, the Russian Federation and Ukraine, as well as in Kazakhstan and Kyrgyzstan. In the remaining countries of Central Asia and the Caucasus, national commissions exist more on paper than in practice or are only now being established. Turkmenistan has no tripartite cooperation structures.

Table 5: National tripartite social dialogue bodies

Country	Permanent national tripartite body	National tripartite commissions (formal or irregular activity)	Absence of national tripartite structures
Armenia		+	
Azerbaijan		+	
Belarus	+		
Georgia		+	
Kazakhstan	+		
Kyrgyzstan	+		
Moldova	+		
Russian Federation	+		
Tajikistan		+	
Turkmenistan			+
Ukraine	+		
Uzbekistan		+	

For the moment, the legal basis for social dialogue seems more firmly established at the national level. However, appropriate legal frameworks at lower levels seem to be needed, as EOs in the countries of Eastern Europe and the Caucasus have now reached a level of maturity which allows them to expand their structures and their participation in social dialogue at regional and branch levels. For instance, the Azeri EOs consider that legal frameworks more adapted to these levels could help them assume their role in social dialogue and collective bargaining in practice throughout the national territory. Some Russian EO representatives also believe that the adoption of legal acts on social dialogue at regional level could help promote social partnership in the regions. By contrast, EOs in Moldova believe that the existing legal frameworks are adequate for their participation in social dialogue across the country. A common problem in all countries remains the shortage of resources and know-how necessary for effective social dialogue at decentralized levels. In addition, the EOs generally have weak regional and local structures or simply no organizations at all which could represent them in the tripartite bodies vis-à-vis State structures and trade unions.

### ***Collective bargaining***

Collective bargaining with trade unions is another field of external activity for EOs. In this regard, the ILO Committee on Freedom of Association has

emphasized that voluntary negotiation of collective agreements, and therefore the autonomy of bargaining partners, is a fundamental aspect of the freedom of association. Collective bargaining, if it is to be effective, must assume a voluntary character and not entail recourse to measures of compulsion, which would alter the voluntary nature of such bargaining.<sup>30</sup>

The voluntary nature of collective bargaining is a critical point which is frequently raised by EOs. In the countries examined, labour legislation often states that a social partner is not allowed to refuse the invitation of another party to enter into negotiations. For instance, the law on EOs in Ukraine states that “EOs are obliged to participate in collective bargaining with a view to preparing and concluding collective agreements”. The draft law on EOs of Belarus provides that an “EO is obliged to conduct collective bargaining with trade unions”. The laws on EOs of Kyrgyzstan, the Russian Federation and Tajikistan introduce more nuances in this respect: an “EO is obliged... to conduct collective negotiations, to conclude agreements with trade unions on accorded conditions”. Finally, the law on EOs in Kyrgyzstan adds that an “EO is liable for refusal to bargain... in accordance with the legislation of Kyrgyzstan”.

While the underlying motive for these legal obligations may be to promote collective bargaining, there is no legal obligation to conclude collective agreements. Several legal acts provide that in the absence of a consensus, the parties may conclude a collective agreement on accorded positions and enclose the minutes of disagreement on the points where they failed to reach a consensus. Nevertheless, as there is no legal obligation to conclude an agreement, one may question the value of an obligation to bargain. Moreover, the autonomy and independence of the social partners does not seem to be adequately recognized in this case insofar as the obligation to bargain is imposed upon them. So far no complaints have been reported by EOs on this issue. Nevertheless, with the further development of EOs, which definitely express an interest in collective bargaining, the need for legal obligations in this field should be reconsidered.

In connection with Convention No. 98, the ILO Committee of Experts has stated that legislation making it compulsory for collective bargaining to take place at a level higher than that of the enterprise (sector, branch of activity, etc.) raises problems of compatibility with the Convention. The choice should normally be made by the partners themselves, since they are in the best position to decide on the most appropriate bargaining level.<sup>31</sup>

Otherwise, in Ukraine, the participation of some employers' organizations in collective bargaining seems to be restricted by the fact that only organizations whose title contains the word “employer” are legally recognized as EOs. Nevertheless, in recognition of its long-lasting traditional engagement in collective bargaining, the Union of Leaseholders and Entrepreneurs of Ukraine has managed to retain its right to negotiate at all levels.

---

<sup>30</sup> Digest, paras. 844-845.

<sup>31</sup> General survey, paras. 248-249.

## ***Criteria of representativity***

Some Western European countries have legal procedures in place for determining and selecting the most representative actors for social dialogue. The ILO Committee of Experts has held that where procedures of this kind exist, they should be based on objective and pre-established criteria.<sup>32</sup> Although the quantitative criterion is the most frequently used in practice, legislation could also take into account qualitative criteria, such as the independence of EOs.

For the moment, representativity does not seem to be an important issue in the region under study, partly because there is not yet a plurality of organizations at all levels, except at national level in some countries. In many countries, there are still no EOs at all at regional or branch level. Therefore, the need for legal rules on representativity may arise only with the further development of EOs. At present, the existing laws only contain branch and/or geographical criteria for determining the type of EOs which may participate in tripartite structures and collective bargaining. The legal acts establishing national tripartite bodies state that participants should be the most representative organizations. The distribution of seats on each side is usually decided through negotiations, for instance, in Moldova and in the Russian Federation. Criteria in the negotiations are mostly the number of direct members or the number of workers employed by members of EOs.<sup>33</sup>

In Belarus, the representation of the national EOs and trade unions in the National Council for Labour and Social Issues is proportionate to their membership within the established quota. Eleven representatives each from government, employers and workers are chosen through negotiations between the social partners. This quantitative criterion was established by a Decree of the President of Belarus. While this may be suitable for trade unions with direct individual membership, in the opinion of some EOs it is not satisfactory for associations with legal persons as members.<sup>34</sup> For this reason, an additional criterion, that is the number of workers employed by members of EOs, is proposed by representatives of Belarusian EOs.

In Ukraine, the most representative EOs also decide through negotiations on the attribution of seats to each organization represented in the National Council on Social Partnership. The Ukrainian law on collective contracts and agreements of 1993 does not treat the issue of representativity of trade unions and EOs. In the opinion of some Ukrainian EOs, there is at present no need for legal regulation. As the EOs cover only a small proportion of Ukrainian employers, some EOs feel that for the moment, even small employers' organizations should be allowed to take part in collective bargaining. On the other hand, the EOs working on the draft law on collective bargaining and on the draft law on EOs are discussing a proposal to

---

<sup>32</sup> General Survey, para. 240.

<sup>33</sup> In this respect, it should be mentioned that sometimes EOs hesitate to publish membership figures (as this issue is politically sensitive), and employers do the same on their staff (dependence on membership fees, unofficial employment).

<sup>34</sup> Until recently, under the Belarusian Civil Code it was not possible for an EO to have both legal and physical persons as members.

establish a special registration procedure for collective bargaining purposes. The aim is that EOs should provide State authorities with evidence of their representativity for the chosen level of participation in collective negotiations.

It may be recalled in this context that the Ukrainian law on EOs states that, in case of a plurality of EOs at the same level, the EOs have to create a representative body or else mandate one organization to represent them in collective bargaining. Such a condition does not contravene international standards. However this could be the case with provisions creating a monopoly for participation in social dialogue. For instance, as a transitional provision, the Ukrainian law on EOs explicitly foresees that the employers should be represented at national level by the Confederation of Employers of Ukraine pending the creation of EOs in accordance with this new law. This provision has provoked discontent among EOs, and it is expected that the new amended law will omit this provision. According to the ILO Committee of Experts, favourable treatment of particular occupational organizations vis-à-vis others may not be in line with freedom of association principles and legal provisions to this effect should be avoided.<sup>35</sup>

In Georgia and Uzbekistan, several organizations such as Chambers of Commerce and other business associations participate in collective bargaining. As there is no genuine EO in Uzbekistan, the participation of the Chamber of Commerce, *de facto* and by inertia, in social dialogue can hardly be challenged. The situation is different in Georgia. Here the existence of a genuine EO, the Georgian Employers' Association, challenges the legitimacy of the participation of the Chambers of Commerce and Industry, which are State organizations with compulsory membership.

One may wonder if legal means are the most suitable way of defining the criteria for representativity of the social partners. Representativity for collective bargaining should ideally be decided autonomously and mutually by the parties themselves, not by law.

### ***Equality between employers' organizations and trade unions***

According to ILO standards, social partners should be treated on the basis of equality. Convention No. 87 guarantees the free exercise of the right of association in the same way for both workers' organizations and EOs.<sup>36</sup>

It is interesting to note that, apart from Turkmenistan, particular laws on trade unions exist in all the countries under review. These laws – detailed and voluminous – were adopted prior to legislation on EOs. While representatives of EOs in Belarus, Kazakhstan, Kyrgyzstan and the Russian Federation, consider that their national legislation assures in practice equal conditions for trade unions

---

<sup>35</sup> General Survey, para. 104.

<sup>36</sup> General Survey, para. 225.



and EOs, employers' organizations in other countries see themselves at a disadvantage.

Employers' organizations in Moldova maintain that there is discrimination against EOs in the sense that the law on trade unions establishes fiscal privileges for trade unions, whereas the law on EOs does not. In addition, the Moldovan trade unions inherited the trade union infrastructure from the USSR period, which indirectly creates unequal positions in practice.

A similar situation has been observed in Uzbekistan. Following Soviet inertia, trade unions have enjoyed a privileged place in society, which has put EOs at a disadvantage. Furthermore, according to the law on trade unions, trade unions are voluntary public associations. But following a common by-law of the Ministry of Finance, the Ministry of Labour and Social Protection, the State Tax Committee and the Central Bank of the Republic of Uzbekistan, employers and employees are nevertheless obliged in practice to pay trade union dues, which are part of the social contributions. It is obvious that EOs are not satisfied with this situation.

In Tajikistan, representatives of EOs also complain about fiscal regulation according to which a certain percentage of the social contributions have to be paid by all legal persons to trade unions, which, in addition, have retained their real estate from the USSR period.

Likewise, some EOs in Ukraine consider that legislation for trade unions is more favourable than legislation for EOs. State registration is easier and shorter for trade unions than for EOs and the State authorities are not entitled to refuse registration of trade unions. In addition, workers' organizations gain legal personality from their constitutive assembly and adoption of their statutes.

In Azerbaijan, inequality arises from the fact that there is a special law for trade unions, but not for EOs. The representatives of EOs consider that this undermines their social status and public importance. Moreover, a special provision of the Labour Code of Azerbaijan provides that the parties to collective agreements at the national, branch and regional levels are, in the first place, relevant representatives of executive power and trade unions. Only the following paragraph adds that these may be tripartite agreements, with the participation of EOs. The reform of the Labour Code and especially the adoption of a law on EOs is expected to remove the existing inequality by facilitating the creation of EOs at the branch, regional and local levels; it will also promote their participation in relevant tripartite structures.

In this regard, it is worth mentioning that trade unions are in crisis in all the countries surveyed. Their main bastions remain big State enterprises, while workers in medium-sized businesses and, especially, in small ones are almost non-unionized. Lack of confidence in their usefulness does not incite workers to join trade unions. The shift in production structures – from large-scale heavy industry with union traditions towards smaller companies and the service sector – has also adversely affected the rate of unionization. Trade unions are facing

several challenges to keep their position and to strengthen their image as a social partner representing genuine workers' interests.

### ***Equality between employers' organizations and Chambers of Commerce and Industry***

The relationship between EOs and Chambers of Commerce and Industry (CCI) varies from one country to another. In Azerbaijan, Belarus and Moldova, there is a clear distinction between the role of EOs and the role of CCIs. The activities of the latter are normally focused on economic matters, and they do not take part in social dialogue. In other countries, the borderline between the role of EOs and CCIs is less clear. For instance, in the Russian Federation, the law on CCIs states that one of their functions is to represent employers' interests. In addition, the CCI of the Russian Federation is a member of the Coordinating Council of Employers' Unions of Russia. In Uzbekistan, by tradition and because of the weakness of EOs, CCIs play the role of social partner for trade unions and government.

Representatives of EOs in the Russian Federation consider that the existing legislation assures equality between EOs and CCIs. In Ukraine, representatives of EOs find that the existing legal framework does not provide equal rights for EOs and CCIs in the sense that EOs are prevented by law from providing paid services to their members. In Belarus, pending the new law on EOs, only public associations of physical persons and CCIs are entitled to engage in economic activity for statutory purposes. Associations of legal persons, like some EOs, are not authorized to do so.

In Kyrgyzstan, the CCI has the monopoly on certification of goods, which is laid down in the law on CCIs. The Confederation of Employers is thus deprived of the right to engage in such activities. The same criticism has been made by the EOs of Georgia and Tajikistan, who point out that certification activities generate substantial income and are an additional opportunity to provide members with valuable services. By contrast, the representatives of EOs in Armenia consider that certification should not be the responsibility EOs in view of their specific mission, but at the same time EOs may cooperate with the CCIs in order to promote more rapid and less expensive services to enterprises.

In Uzbekistan, legislation seems to assure equal treatment. In practice, however, only one non-State non-commercial organization, the CCI, has indirect State financial support, such as orders from the Government. Moreover, the Government appoints the top management and controls its activity. Concerning social dialogue, the previous legislation declared the CCI to be the only representative of employers while the new law on the CCI no longer mentions the social partner function. Nevertheless, following historical tradition rather than legal rules, the CCI continues to sign collective agreements with trade unions and the Ministry of Labour. Also in Moldova, the State provides CCIs with orders, which is considered an indirect form of support.

In conclusion, it must be stated that the continuing participation of CCIs, often para-State organizations with obligatory membership, in collective bargaining and tripartite social dialogue is problematic. It is therefore gratifying to note that, in some countries of the region, the recognition of the role of EOs, with voluntary membership, in social matters seems to be gradually improving. Further development of social dialogue in practice and the adoption of clear (legal) rules on EO representativity and competence should also help establish a balanced division of missions between EOs and CCIs.

## **REORGANIZATION AND LIQUIDATION**

### ***Suspension and dissolution***

Article 4 of Convention No. 87 completes the guarantees relating to the establishment and functioning of EOs and workers' organizations by affording them protection against arbitrary dissolution or suspension by administrative authority. However, this does not grant them immunity with regard to the ordinary law; the organizations and their members are bound to respect the law of the land.<sup>37</sup>

Under the laws on EOs of Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, and the draft law in Belarus, special provisions deal with EO reorganization and liquidation. The procedures are carried out in accordance with national legislation and organizational statute.

A full chapter with four detailed articles is dedicated to dissolution and suspension in the law on EOs of Moldova. This law, in particular, prohibits the transformation of an EO into a commercial organization or a political party. Moreover, failure over two years by the Moldovan *patronats* to file an annual report on their activities to the Ministry of Justice will result in the removal of the EO concerned from the State register on the basis of a court decision at the request of the Ministry of Justice. Another provision deals with the procedure for removing a liquidated EO from the State register of the Ministry of Justice. The body which decides that an EO is to be liquidated has to set up a liquidation commission and establish the procedure and time frame. Under the same Moldovan legislation, the assets of a liquidated employers' organization cannot be transferred to commercial organizations, political parties or physical persons.

The Ukrainian law on EOs stipulates that once the activities of an EO cease, the assets which have been made available to it are returned to the owners, whereas the proper assets of the EO are distributed amongst its members, according to the rules provided for by the statutes.

Legislation on public associations in all the countries provides that the decision to reorganize and to liquidate an association may be taken by its governing body or the State judicial authorities in cases provided for by national law. Public associations are legally protected against any arbitrary decision of the

---

<sup>37</sup> General Survey, para. 181.

State administration. The possibility to appeal to a court seems to be adequately guaranteed in all the countries covered by the survey.

### ***Transitional provisions***

According to the rules in the countries under review, laws on EOs come into effect on the date of their official publication. Special time schedules have been established for EOs which have been created before the adoption of the new legislation, so that they may reorganize their statutory documents.

In the Russian Federation, these EOs have to align their statutory documents within three years, whilst in Kyrgyzstan the period for alignment is one year. Failure to comply with these demands may result in liquidation of the EO by a court decision at the request of the body in charge of State registration.

According to the draft law on EOs in Belarus, the duration of the transitional period is two years. EOs which have not aligned their statutes to the new legislation will not be considered as EOs and will not be entitled to act as parties in social dialogue.

In Moldova, the transitional period for re-registration of existing *patronats* is one year. Failure to respect this time limit means that the “EOs will be considered dissolved on their own initiative”. In addition, they will be removed from the State register on the basis of a decision of the Ministry of Justice.

Even if some of these sanctions may be considered too severe or disproportionate, so far no problems have been observed with re-registration under the new special laws, except in Ukraine.<sup>38</sup> Given the recent entry into force of the laws on EOs, it is too soon to know whether EOs will have any difficulties in this respect. In any case, non-admission to social dialogue and collective bargaining, as proposed in Belarus, appears to be a more appropriate sanction than a simple liquidation of EOs. Otherwise, the right to legal recourse against any administrative decision is guaranteed by general legislation. Maybe a particular provision on legal recourse should be inserted directly into the laws on EOs in order to be more visible for officials in charge of State re-registration.

---

<sup>38</sup> The Union of Leaseholders and Entrepreneurs of Ukraine has been refusing the clause of re-registration in the new draft law on EOs given the complexity and length of State registration in this country. In the opinion of this EO, the new law cannot be retroactive and worsen the situation by preventing this EO, an active social partner for many years, from participating in social dialogue and collective bargaining at several levels.

## MAIN FINDINGS AND CONCLUSIONS

### ***Development of the legal environment for employers' organizations***

As a result of the analytical review above, it can be said that the main elements of the legal framework for EOs have now been created in Eastern European countries. In most countries of the Caucasus and Central Asia the process has been initiated.

A particular feature of the legislation in the region, unknown in most Western countries, is special laws on EOs. The development of these special laws has been actively supported by the EOs themselves, which feel that such laws strengthen their legal status and recognition, as well as clarifying the relationship between the State and EOs. What is striking is the level of detail in these laws. This points to the educational function these laws also seem to have in clarifying the identity and the interests of employers and their organizations. As the laws also deal with internal EO issues, for instance internal EO governance, the question arises as to the extent that this kind of regulation should be left to the EOs and their statutes. In some cases, the laws are oriented to the (previously adopted and usually complex) laws on trade unions.

Generally, the requirements for the creation of employers' organizations under the laws on EOs seem reasonable; in particular, in most countries the laws allow both legal and physical persons to become members of EOs. Nevertheless, in certain countries, the procedures and requirements for registration of EOs are seen as too complex and burdensome.

Moreover, the present fiscal regulations on EO membership fees and economic activity appear to constitute serious obstacles for the recruitment of new members, the development of EO activities and the promotion of their public image.

At the same time, EOs seem to be protected by law against any arbitrary decision of the State administration through the possibility to appeal to a court. This is adequately guaranteed in all the countries covered by the survey.

In most countries under examination, legislation on the interaction between EOs, trade unions, State and local authorities in the social and economic fields has been expanding. The legal basis for social dialogue seems, however, more firmly established at national level, whereas appropriate legal frameworks at lower levels still need to be developed. Moreover, the existing legal obligations to bargain collectively do not seem to adequately recognize the autonomy and independence of the social partners.

Clear rules are also still missing on the thorny issue of EO representativity for participation in social dialogue, as well as on the distinction of roles and the

division of missions between EOs and CCIs. Usually, EOs, not CCIs, are competent for social dialogue and workplace issues.

Neither is equal treatment of EOs and trade unions guaranteed by the national legislation in some countries. Only on the basis of equal treatment by the State will the social partners be in a position to develop a balanced and harmonious relationship between themselves.

As regards legislation already adopted, much remains to be implemented in daily practice. Partly because the laws on EOs are very recent, their application is not always to the letter. Apart from that, EOs have to gain experience in order to appreciate any possible gaps and imperfections in the legal provisions.

At a time when changes are still under way and the overall picture remains blurred, it is too early to assess the practicability and sustainability of legal frameworks. For the time being, most EOs in the region play the dual role of commercial and employers' organizations, with the former role widely prevailing in practice. While EOs have started to become active in a variety of fields, namely political lobbying, their authority and their institutional and economic situation has remained weak. To some extent these difficulties can be corrected through legislative intervention and the challenge for EOs is to identify and propose appropriate measures.

### ***Possible ILO technical cooperation***

The ILO is in a position to assist EOs and governments in the countries under review to adapt and to develop further the legal framework for EOs. In particular, the ILO Bureau for Employers' Activities (hereafter - ACT/EMP) and the Social Dialogue, Labour Law and Labour Administration Department (hereafter – DIALOGUE) have a role to play in this regard. Possible activities range from commenting on new draft legislation to organizing training programmes, including case studies, training materials and seminars, for EO lawyers and government experts on EO regulation.

The topics raised in the present publication could be the starting point for such training programmes. Another useful tool could be the "Labour Legislation Guidelines"<sup>39</sup> elaborated by DIALOGUE. Apart from general legal guidance, these guidelines provide practical examples of the promotion of the fundamental principles and rights at work. In particular there are chapters of special interest to EOs, such as on *Freedom of association*, *Effective recognition of the right to collective bargaining* and *Settlement of collective labour disputes*. Finally, the *Participatory Labour Legislation Drafting Training Pack*, prepared by DIALOGUE in order to help ILO tripartite constituents in the legislative process could serve as a basis for seminar discussions.

The ILO may also offer assistance in the setting up of a network of labour law experts from EOs in the countries covered by the survey. Cooperation and

---

<sup>39</sup> <http://www.ilo.org/public/english/dialogue/ifpdial/llg/main.htm>

exchange of experience between EO labour law experts could be a very practical means of action given that the social and economic problems in the region are common to all, legal traditions are similar and there is a common language for communication (Russian).

## BIBLIOGRAPHY

Aro, P.O.; Grünewald, B.: "Who and what are employers in Central and Eastern European countries?", in *European Review of Labour and Research*, 1995, Vol. 1, No. 3, pp. 393-410.

Casale, G.: *Collective bargaining and the law in Central and Eastern Europe: Some comparative issues*, Report No. 20 (Budapest, ILO-CEET, 1997).

- - -: *Social dialogue in Central and Eastern Europe* (Budapest, ILO-CEET, 1999).

- - -: "Evolution and trends in industrial relations in Central and Eastern European countries", in *International Journal of Comparative Labour Law and Industrial Relations*, 2003, Vol. 19, No. 1, pp. 5-32.

Cox, T.; Mason, B.: "Trends and developments in East Central European industrial relations", in *Industrial Relations Journal*, 2000, Vol. 31, No. 2, pp. 97-114.

Dufour, C.: "Représentations patronales: Des organisations à responsabilités limitées", in *Chronique internationale de l'IRES*, 2001, No. 72, pp. 5-22.

ILO: *Freedom of association and collective bargaining: General survey of the Committee of Experts* (Geneva, ILO, 1994).

<http://www.ilo.org/ilolex/english/digestq.htm>

- - -: *Freedom of association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, 4th ed. (Geneva, ILO, 1996).

<http://www.ilo.org/ilolex/english/surveyq.htm>

Kilibayeva, U.: *Towards social partnership in Kazakhstan*, unpublished document (Geneva, ILO, 2002).

Komarovsky, V.: *Russian employers' involvement in social dialogue at national and regional level*, draft paper (Moscow, ILO, 2004).

Mailand, M.; Due, J.: "Social dialogue in Central and Eastern Europe: Present state and future development", in *European Journal of Industrial Relations*, 2004, Vol. 10, No. 2, pp. 179-197.

Oechslein, J.-J.: "The changes taking place in Central and Eastern Europe, as viewed by an employer", in *Labour and Society*, 1991, Vol. 16, No. 1.

Standaert, J.-M.: *Governance of employers' organizations: Practical guidelines* (Budapest, ILO-CEET, 2004).



- - -: *Collective bargaining by employers' organizations: Some key success factors* (Budapest, ILO-CEET, 2005).

Szirmai, P.; Gurszki, G.: *Report on the ILO-CEET survey on the fiscal deductibility of membership fees paid to employers' organizations in the CEE region* (Geneva, ILO, 1999).

Traxler, F.: "Employers and employer organizations in Europe: Membership strength, density and representativeness", in *Industrial Relations Journal*, 2000, Vol. 31, No. 4, pp. 308-316.

Vickerstaff, S.A. et al.: "Transformation of labour relations in Eastern Europe and Russia: A comparative assessment", in *International Journal of Comparative Labour Law and Industrial Relations*, 1994, winter, pp. 291-312.

Wisskirchen, A.; Hess, C.: *Employers' handbook on ILO standards-related activities* (Geneva, ILO, 2001).

Zimmermann, H.; Kissel, E.: *Social dialogue in Belarus: An employers' viewpoint*, unpublished document (Geneva, ILO, 2003).

## **WEB-sites (ILO subregional offices, legislation, research studies)**

Documentation Centre of the European Trade Union Institute (ETUI), Brussels

<http://www.labourline.org>

European Industrial Relations Observatory on-line

<http://www.eiro.eurofound.eu.int/2003/11/study/tn0311101s.html>

International Organization of Employers

<http://www.ioe-emp.org/>

“Labour Legislation Guidelines” (Social Dialogue, Labour Law and Labour Administration Department, ILO)

<http://www.ilo.org/public/english/dialogue/ifpdial/llg/main.htm> (English version);

[http://www.ilo.ru/llg\\_ru/main.html](http://www.ilo.ru/llg_ru/main.html) (Russian version).

Law Reform in Transition States - Free Legal Database "LexInfoSys"

<http://www.cis-legal-reform.org/index.html>

Network of Labour Law Experts from South Eastern European Employers' Organisations

<http://nll.hup.hr/homepage.htm>

Subregional Office for Central and Eastern Europe (ILO)

<http://www.ilo-ceet.hu/public/english/region/eurpro/budapest/index.htm>

Subregional Office for Eastern Europe and Central Asia (ILO)

<http://www.ilo.ru/index.htm>

## **WEB-sites of national EOs in Eastern European and Central Asian countries**

Belarusian Union of Employers and Entrepreneurs named after Prof. Kunyavsky

<http://bspn.nsys.by>

Confederation of Employers of Kazakhstan

<http://www.krrk.kz/>

Coordinating Council of Employers' Unions of Russia

<http://www.ksorr.ru/index.html>

National Confederation of Entrepreneurs (Employers') Organization of Azerbaijan

<http://www.ask.org.az/ilo.html>

Union of Leaseholders and Entrepreneurs of Ukraine

<http://www.sopu.org>