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President
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Mr Sadyr Japarov
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Cc: Ms Rysgul Babaeva, Acting President,
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PERC/AL/pw

Brussels, 12 November 2020

Draft Law on Trade Unions

Dear President/Prime Minister Japarov,

I write to you on behalf of the International Trade Union Confederation, which represents 200 million workers in 163 countries and territories and has 332 national affiliates, concerning the draft law on trade unions which, in our strong belief, blatantly violates freedom of association. We had raised our concerns on several occasions, communicating both to the Parliament and the government of Kyrgyzstan, but despite clear international condemnation of the draft text, it is being read in the Parliament and will be submitted to you for signature. We firmly believe that this draft law must be rejected by you.

The current draft law has been prepared by a group of Members of the Parliament. Several proposed provisions raise serious concerns as to their compliance with ILO standards, including the ILO Freedom of Association and Protection of the Right to Organize Convention No. 87 and the Right to Organize and Collective Bargaining Convention No. 98, both ratified by Kyrgyzstan in 1992. We are, in particular, concerned about a single trade union system sanctioned by law, limitations on the freedom of choice of the organization's structure, interference in the composition of trade union bodies, the election procedure, eligibility criteria, inadequate definition of trade union tasks, broad criteria for dissolution of trade union organizations and incomplete protection against anti-union discrimination.

The law sets up a single trade union system by expressly mentioning the national trade union federation – the Federation of Trade Unions of Kyrgyzstan (TUFKR). According to both CEACR and CFA, trade union unity voluntarily achieved should not be prohibited and should be

respected by the public authorities.¹ However, unity within the trade union movement should not be imposed by the State through legislation.² Such provision would be contrary to the principles of freedom of association, since it might constitute an obstacle to the creation of another confederation if the workers so wished.³ By including the words “organizations of their own choosing” in Convention No. 87, the International Labour Conference recognizes that workers should have the right to choose between workers’ organizations for occupational, denominational or political reasons. The government should adopt the necessary measures to delete the reference in the legislation to a specific trade union organization.

The fundamental idea of Article 3 of Convention No. 87 is that workers and employers may decide for themselves the rules which should govern the administration of their organizations, their structure and elections that are held therein. Several provisions of the draft law do not comply with this principle. The free exercise of the right to establish and join unions implies the free determination of the structure and composition and organization of unions. These are matters that should be left for trade unions to determine in their own by-laws.⁴ Legislative provisions that go beyond formal requirements may hinder the establishment and development of organizations and therefore constitute interference contrary to Article 3 para 2 of Convention No. 87.⁵ The structure of the national federation and its regional offices as well as its sectoral and grassroots affiliates has to be decided by trade union statutes and not by the law.

Numerous provisions of the law regulate, in detail, relations between TUFKR and its affiliates – sectoral and territorial unions. These provisions interfere with the right of trade unions to draw up their constitutions and rules. According to the CFA, the subjection of trade union organizations to the control of organizations at a higher level and the approval of their establishment or their constitutions by the latter constitute major constraints on the right of the unions to establish their own constitutions, organize their activities and formulate their programmes.⁶ These relations have to be decided by trade union statutes and not by the law.

The law regulates in detail the organizational structure of TUFKR governance bodies (the Congress, the Council, the Praesidium of the Council), their functions, composition, election procedure, terms of office, eligibility criteria or criteria for removal from the office as well as relations between the bodies. This regulation is overly detailed, restrictive and goes beyond the objective of protecting the interests of members and guaranteeing the democratic functioning of organizations. As such, it undermines the rights of workers as defined by the principles of freedom of association. The matters related to the structure of the governance bodies of the national federation, their functions, composition, election procedure, terms of

¹ ILO Freedom of association compilation of decisions of the Committee on Freedom of Association (2018 Digest) para 498. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_632659.pdf

² 2018 Digest paras 486-487.

³ 2018 Digest para 493. See also: 230th CFA Report, Case No. 1198, para. 724.

⁴ 2018 Digest paras 502-503.

⁵ 2018 Digest para 566.

⁶ 2018 Digest paras 583-584.

office, eligibility criteria or criteria for removal from the office, as well as relations between the bodies, have to be regulated by trade union statutes and not by law.

The law contains a long list of obligations of trade unions. Among its provisions, there is a requirement to “take measures to prevent social and labour conflicts”; to ensure members’ adherence to laws regulating strikes, rallies, pickets and demonstrations; and to “promote observance by workers of internal rules of work and labour discipline”. This regulation limits the right of trade union organizations freely to organize their activities and to formulate their programs, contrary to the principles of freedom of association.⁷ The mission of unions should be to defend and promote the interests of their constituents and not to reinforce laws, internal rules of work or labour discipline. A mandatory list of functions and aims that associations must have that is excessively extensive and detailed may in practice hinder the establishment and development of organizations.⁸ Also, unions are required by the law to “represent the interests of unorganized workers on the same conditions as trade union members”. It is up to trade union organizations to decide the principles based on which they represent the interests of their members and non-members. Any provision which gives the authorities, for example, the right to restrict the activities and objects pursued by trade unions for the furtherance and defence of the interests of their members would be incompatible with the principles of freedom of association.⁹

The law does not adequately protect workers from anti-union discrimination. The provision only protects workers from discrimination because of trade union membership in relation to recruitment, promotion and dismissal, leaving out discrimination based on trade union activities. Protection against acts of anti-union discrimination should cover not only hiring and dismissal but also any discriminatory measures during employment, for example, transfers, downgrading, suspension and other acts that are prejudicial to the worker.¹⁰ Protection against anti-union discrimination should apply equally to trade union members and former trade union officials as to current trade union leaders.¹¹ No person should be prejudiced in his or her employment by reason of membership of a trade union, even if that trade union is not recognized by the employer as representing the majority of workers concerned.¹²

The right of workers to establish and join organizations of their own choosing and the right of trade union organizations to draw up their constitutions and rules, to elect their representatives, to organize their administration, to freely organize their activities and to formulate their programs are among indispensable conditions for them to be able to act in full freedom and to promote the interests of their members effectively. For these rights to be fully acknowledged, it is essential that the public authorities refrain from any intervention which might impair the exercise of these rights, whether it be in establishing a single trade union system, determining the union structure, relations between trade union organizations, functions, tasks, conditions of eligibility of leaders or the conduct of the elections themselves.

⁷ 2018 Digest para 733.

⁸ 2018 Digest para 574.

⁹ 2018 Digest para 718.

¹⁰ 2018 Digest paras 1087-1088.

¹¹ 2018 Digest para 1080.

¹² 2018 Digest para 1081.

Accordingly, the national law should contain complete prohibition of anti-union discrimination and protection of the elected trade union leaders.

According to the law, trade union organizations at all levels (grassroots, sectoral, territorial or national) have to reorganize their structures and re-register within a period of up to six months. Having failed to achieve that, unions will face dissolution, with their assets being transferred to the TUF RK. Dissolution is a disproportional sanction for failure to register. In view of the serious consequences which dissolution of a union involves for the occupational representation of workers, dissolution should be taken only as the last resort, and after exhausting other possibilities with less serious effects for the organization as a whole¹³. Furthermore, when a union ceases to exist, its assets could be handed over to the association that succeeds it or distributed in accordance with its own rules; where there is no specific rule, the assets should be at the disposal of the workers concerned¹⁴.

The ITUC calls on you to make sure this draft is rejected and that the legislation of Kyrgyzstan is in full compliance with international obligations, in particular with ILO Conventions 87 and 98. We urge the government of Kyrgyzstan to avail itself of ILO technical assistance in preparation of the trade union legislation meeting international standards.

The passage of the draft trade union bill that violates international labour standards and the constitution of Kyrgyzstan will undermine the reputation of the country as a reliable international and trade partner. We have already submitted our concerns to the Committee of Experts of the International Labour Organization, expressed our support of the complaint by the Metallurgy and Mining Trade union of Kyrgyzstan and IndustryAll Global Union to the Committee on Freedom of Association, and we will not hesitate to undertake further steps to make sure that fundamental rights and freedoms of workers are respected in law and in practice in Kyrgyzstan.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'A. B.', written in a cursive style.

General Secretary

¹³ 2018 Digest para 981.

¹⁴ 2018 Digest para 1010.