

**BEFORE THE UNITED STATES TRADE REPRESENTATIVE**

**PETITION OF THE AFL-CIO  
TO REMOVE**

**GEORGIA**

**FROM THE LIST OF ELIGIBLE BENEFICIARY DEVELOPING COUNTRIES  
PURSUANT TO 19 USC 2462(d) OF THE  
GENERALIZED SYSTEM OF PREFERENCES (GSP)**

**filed by**

**THE AMERICAN FEDERATION OF LABOR &  
CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)**

**SEPTEMBER 10, 2010**

## Introduction

Following the “Rose Revolution” of 2003, the Georgian government made a concerted effort to establish a more representative and accountable government. At the same time, the Georgian Trade Union Amalgamation, the only trade union federation in Georgia, also underwent dramatic changes. A new, young cadre of trade union activists was elected to the leadership of both the newly renamed Georgian Trade Union Confederation (GTUC), as well as its single largest union, the Educators and Scientists Free Trade Union of Georgia (ESFTUG).

704 However, without consulting the trade unions, the Georgian government quickly passed a new and draconian (anti-union) anti-worker labor code. The law includes severe limitations on freedom of association and collective bargaining and even promotes the use in certain circumstances of forced labor.

This petition first reviews how the 2006 labor code falls far short of internationally recognized worker rights. Second, the petition discusses how the Georgian government is using extra-legal methods to attack the GTUC and its largest affiliate, the ESFTUG, with the intent of destroying the legitimate federation and replacing it with what we believe to be a state-controlled “yellow union.” Finally, the petition contains several additional cases that illustrate the failure to afford internationally recognized workers’ rights in practice.

### A. Georgian Labor Law Does Not Afford Workers Internationally Recognized Worker Rights

The nation’s labor laws contain numerous provisions that are inconsistent with internationally recognized worker rights as well as, in other areas, fail to provide sufficient regulation to guarantee the full exercise of those rights. This section does not address each and every problem with the labor laws but rather those of greatest concern to Georgian and U.S. trade unions.

#### I. Freedom of Association

1. The Organic Law of Georgia on the Suspension and Prohibition of the Activities of Voluntary Associations define the grounds and procedures for the suspension of a trade union. Article 4 of the law provides that a court can suspend the activity of a trade union if it, among other things, “stirs up social conflict.” This provision could be misapplied to suspend legitimate trade union activity.<sup>1</sup>

#### II. Collective Bargaining

1. As stated by the ILO CEACR, Article 11(6) of the Law on Trade Unions and Article 2(3) of the Labor Code prohibit anti-union discrimination only in

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<sup>1</sup> ITUC Annual Survey of Violations of Trade Union Rights, Georgia, 2010

general terms and do not provide sufficient protection at the time of recruitment and at the time of termination. Article 5(8) of the Labor Code makes workers more vulnerable to discrimination in hiring because the “employer [is] not required to substantiate his/her decision for not recruiting [an] applicant.” The ILO stated that, “the application of this section in practice might result in placing on a worker an insurmountable obstacle when proving that he/she was not recruited because of his/her trade union activities.”<sup>2</sup>

2. Articles 37(d) and 38(3) of the Labor Code provide that the employer has the right to terminate a contract at his/her initiative with his/her employee for any reason and with no prior notice provided that the worker is given one month’s pay. The ILO CEACR held that “legislation which allows the employer in practice to terminate the employment of a worker on condition that he/she pay the compensation provided for by law in all cases of unjustified dismissal, without any specific protection aimed at preventing anti-union discrimination, is insufficient.”<sup>3</sup>
3. Articles 41-43 of the Labor Code appear to put collective agreements on equal footing with individual agreements and allow an employer to negotiate individual agreements when a collective agreement already exists. The ILO CEACR opined that “Considering that direct negotiation between the undertaking and its employees, bypassing representative organizations where these exist, runs counter to the principle that negotiation between employers and organizations of workers should be encouraged and promoted, the Committee requests the Government to take the necessary measures in order to amend its legislation so as to ensure that the position of trade unions is not undermined by the existence of other employees’ representatives or discriminatory situations in favor of the non-unionized staff.”<sup>4</sup>
4. Article 5 of the Law on Trade Unions provides generally that a trade union shall be independent from the employer. However, the CEACR noted that there are “no express provisions for rapid appeal procedures, coupled with effective and dissuasive sanctions against acts of interference.” The CEACR requests that the GoG “take the necessary measures in order to adopt specific legislative provisions in this respect.”<sup>5</sup>
5. The Labor Code currently contains a total of three articles on the collective bargaining agreements and the bargaining process. The ILO CEACR opined that the Labor Code is insufficient to protect the right to collective bargaining

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<sup>2</sup> ILO CEACR: Individual Observation concerning Right to Organize and Collective Bargaining Convention (No. 98) Georgia, 2010.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> ILO CEACR: Individual Observation concerning Right to Organize and Collective Bargaining Convention (No. 98) Georgia, 2008.

and urged the Georgian government to undertake reforms. As the CEACR explained, “with the Law on trade unions containing one general provision on the right of trade unions to collective bargaining, and the Law on collective contracts and agreements repealed, it is clear that collective bargaining is not sufficiently regulated (Article 41 even stipulates that collective agreements follow the same principles as individual agreements). The Committee notes that the Government recognizes the need to improve the legislation, as Georgia does not have a collective agreement tradition and there are not too many collective agreements concluded in practice. Considering that the provisions of the new Labor Code do not promote collective bargaining as called for by Article 4 of the Convention, the Committee requests the Government to take the necessary measures, either by amending the Labor Code or by adopting specific legislation on collective bargaining, so as to promote collective bargaining and to ensure the regulation by legislative means of the right of employers’ and workers’ organizations to bargain collectively in full conformity with Article 4 of the Convention”<sup>6</sup>

### III. Right to Strike

The right to strike is governed by a bizarre, complicated set of procedural requirements set forth in Articles 48 – 51. They do not appear to provide a coherent process for the settlement of disputes or the undertaking of strikes. Some of these provisions facially violate international law.

1. One oddity, Article 49(3) requires workers to conduct a “token” strike prior to conducting a strike. The workers are required to inform the other party of the issue under dispute before the token strike. The token strike is to last between 1-14 days. Prior to this, workers are unable to undertake a “real” strike.<sup>7</sup>
2. Under Article 48(5) of the Labor Code, if no agreement has been reached between the parties with regard to a labor conflict within 14 days after initiating amicable settlement procedures, the other party is entitled to go to court or arbitration. The ILO CEACR has held that Article 48(5), which permits either party to unilaterally submit the dispute for compulsory arbitration, “effectively undermines the right of workers to call a strike.”<sup>8</sup> The CEACR recommended that GoG amend Article 48(5) to ensure that arbitration is limited only to situations where the right to strike can be restricted or banned, namely in essential services in the strict sense of the term.
3. Article 49(8) of the Code limits the length of a strike to no more than 90 days. The CEACR opined that, “legislation limiting duration of the strike to 90 days seriously undermines one of the essential means through which workers and

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<sup>6</sup> Id.

<sup>7</sup> ITUC Annual Survey of Violations of Trade Union Rights, Georgia, 2010

<sup>8</sup> ILO CEACR Convention 87, 2010.

their organizations may promote and defend their economic and social interests.” The CEACR recommended that the Government “take the necessary measures to repeal this provision.”<sup>9</sup>

4. Article 51(2) of the Code prohibits strikes in sectors where “work is impossible to suspend due to the technological mode of work.” The CEACR urged the Georgian government to amend the law to establish a system of minimum services.<sup>10</sup>
5. Articles 51(4) and (5) prohibit strikes following the expiration of an employment agreement, or if an employment agreement is considered invalid. The CEACR held that these provisions do not allow workers to participate in sympathy or protest strikes and therefore they should be amended.<sup>11</sup> This provision also calls into question whether a strike for improved terms in an existing collective bargaining agreement, or simply for renewal, would become illegal upon the expiration of that agreement.
6. Georgia also has excessive civil and penal sanctions for workers and unions involved in non-authorized strike actions. A violation of the rules on strikes can result in two years of prison time for strike organizers.<sup>12</sup> Penal sanction for peaceful, albeit illegal, strikes runs afoul of international norms.

#### IV. Child Labor

*Child*  
The issue of child labor appears to be governed entirely by Article 4 of the Labor Code. That article provides that the minimum age for employment is generally 16 years of age. Article 4(2) provides that a child under the age of 16 may work with the consent of a legal guardian and that work does not interfere with their development and their ability to get an elementary education. Article 4(3) contemplates employment of children under 14 years of age for sports, arts and culture and, oddly, advertising services. Article 4(4), prohibits under age workers from work in gambling, nighttime entertainment, pornography and production, transit or sale of pharmaceuticals and toxics.

These provisions do not guarantee sufficient protection of minors in employment. For example, Article 4 does not appear to actually establish a minimum age for employment. Article 2 of Convention 138 establishes a minimum age for regular work at 15 years of age. Article 4 also does not limit the work of 13-15 year olds to *light* work. The law also fails to place restrictions on working hours for child workers other than those generally applicable and a specific prohibition on night work under Article 18. Article 4(4) appears to try to give effect to Article 3(1) of Convention 138 and Convention 182. However,

<sup>9</sup> ILO CEACR Convention 87, 2010.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> ITUC Annual Survey on Violations of Trade Union Rights, Georgia, 2009

“under age” appears to refer to 16, when the conventions provide that such activities should not be performed by anyone under 18 years of age.<sup>13</sup>

The abolition of the Labor Inspectorate under the new Labor Code has resulted in a lack of public authority over child labor. There is currently no public authority available to observe the implementation of child labor standards.

## **V. Acceptable Conditions of Work**

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

## **B. Violations of the Law in Practice**

### **1. Sustained and Systematic Government Interference in Trade Union Activities**

The ESFTUG, founded through a merger of two education unions on November 19, 2005, is a 100,000-member union affiliated to the GTUC, as well as the Global Union Federation Education International (EI). In January 2008, a new organization, the Professional Syndicate of Education (PSE), was founded and registered with tax authorities as a non-governmental, non-commercial entity, but not as a trade union. Since its founding, PSE has attempted to force ESFTUG members to quit the union and join PSE. School directors across Georgia have used their authority and influence to force teachers to join PSE.

For example, one of the most active supporters of PSE is Shorena Gabrichidze, head of the Ministry of Education and Science’s (MOES) regional resource center in Bolnisi. On February 5, 2008, all school directors in the Bolnisi region attended a meeting with PSE founders Taras Shavshishvili and Lali Raminashvili. The school directors were asked to encourage teachers to quit the ESFTUG and join the PSE, with the inducement of a 50 percent rebate on fees for teacher certification training courses. This training is not compulsory, but is strongly recommended by the MOES and its resource centers. This is the only service that PSE offers to members; PSE does not have a program to advocate for member interests or protect worker rights. One of the organizations that offers teacher certification training, the so-called “Education Institute,” was co-founded by Shavshishvili – also a co-founder of PSE.

On February 15, 2008, the Ministry of Education and Science of the Autonomous Republic of Adjara announced that PSE would offer free training for its members. The Ministry website also included a downloadable PSE membership application form. The

<sup>13</sup> See, ILO CEACR: Individual Observation concerning Minimum Age Convention (No. 138) Georgia, 2009 (citing these concerns and others).

Deputy Minister of Education and Science of the Autonomous Republic of Adjara, Shorena Makhatchadze, also sent a letter to all resource centers in the region requesting that they introduce the PSE to all teachers.

Nursery school employees in Senaki were members of the ESFTUG, but due to administrative pressure, in March 2008, they quit the ESFTUG en masse and joined the PSE. In April 2008, most of the employees signed a written statement requesting to return as members of the ESFTUG and requesting the head of the local resource center, Murman Archilia, to transfer trade union dues from their salaries to the ESFTUG. The workers wrote three formal letters (in April, May, and June 2008) to the resource center, but Archilia continued to deduct PSE membership dues and transfer these funds to the PSE in defiance of the wishes of the workers.

At Zugdidi Technical College in the western part of Georgia, a misinformation campaign perpetrated by the PSE misled ESFTUG members to believe that ESFTUG dues had increased significantly - to five lari (\$2.75). As a result, large numbers of ESFTUG members terminated their membership in the ESFTUG. The union in Zugdidi Technical College is no longer active.

A group of 11 members of the ESFTUG in the eastern city of Dedoplistskaro, among them the leader of the regional ESFTUG organization, were dismissed on the basis of membership in the ESFTUG. No official reason was provided for their dismissal, as allowed by Article 37d of the Labor Code. Maia Lapiashvili, a school director in the city, demanded that ESFTUG members quit the union and instead join PSE. Some teachers responded to the threat by joining PSE, while others chose to remain members of the free trade union. Lapiashvili then fired the teachers who had refused to join PSE.

These actions are blatant violations of Article 2 of ILO Convention 87, which guarantees workers the right to establish and join organizations of their own choosing, as well as Article 3, which prohibits public authorities from any interference which would restrict or impede workers from exercising this right. Furthermore, Article 1 of ILO Convention 98 guarantees workers protection from anti-union discrimination, including making employment subject to the condition that one not join a union or shall relinquish trade union membership. Article 2 of Convention 98 also states that workers' organizations shall enjoy adequate protection against acts that are designed to promote the establishment of workers' organizations under the domination of employers. The systematic government interference at both the local and national levels in the activities of the ESFTUG was the subject of a formal complaint the GTUC submitted to the ILO in November 2008.

The pattern of interference in trade union activities took on a new and more sophisticated character in 2010 with an illegal, concerted effort to destroy the ESFTUG's source of funding. On June 8, 2010, with the ESFTUG President Manana Gurchumelidze out of the country on trade union business, the Minister of Education of Georgia, Dimitri Shashkin, held a meeting with regional resource center heads. The ESFTUG learned that the Minister had issued verbal orders to the resource center heads to order all school

principals not to deduct trade union membership dues from teacher salaries and not to transfer dues to ESFTUG bank accounts beginning in June 2010. This practice of dues deduction and transfer had been ongoing since 1998, when the predecessor union to the ESFTUG signed an agreement with the MOES.

The Minister also reportedly said during the meeting that the transfer of dues to ESFTUG bank accounts could occur only if signed individual requests from each union member were on file in school offices and if the ESFTUG school president and school principal also signed an agreement. The Minister claimed the deduction and transfer membership dues without these two documents would be a criminal offense. At the same time, the Minister threatened both resource center heads and school principals with termination if principals signed agreements with the ESFTUG. These actions represent direct pressure on resource heads and school principals as well as direct interference in ESFTUG activities at the highest level of the Georgian government.

As a result, the ESFTUG drafted a new agreement concerning the deduction and transfer of membership dues for distribution to ESFTUG school presidents, who would ask school principals to sign it. School principals refused to sign the agreements, based on orders from resource center heads not to sign any agreements with the ESFTUG.

The ESFTUG derives all of its income from individual monthly membership dues. Therefore, the ESFTUG asked school presidents to inform members of the situation and begin to collect membership dues by hand from each member until the deduction and transfer mechanism was restored. The ESFTUG local presidents thus began to hand collect trade union dues. When the Minister learned that the ESFTUG had started to collect dues by hand, he stated on national television that any school principal who allowed hand collection of dues would be held legally responsible. This was a signal to all principals to prevent ESFTUG presidents in their schools from collecting dues by hand. His statement also implied that paying trade union dues was in itself illegal. In locations where ESFTUG presidents had already collected dues, school principals, afraid of being fired, requested that the presidents return the funds to the members. The ESFTUG determined that this situation would leave the ESFTUG bankrupt by the end of the summer. The ESFTUG has not received any dues income since the end of May 2010. Union leaders have taken 30% pay cuts, union staff have been forced to take unpaid leaves of absence, and the ESFTUG is barely surviving due to extremely limited short-term solidarity funding from international organizations.

As a result of this concerted and sustained program of interference, the financial sustainability of the ESFTUG, and the very survival of the trade union, is in doubt. As the ESFTUG is the largest union in the GTUC, this also constitutes a direct assault on the GTUC itself. Moreover, the Georgian government has adopted this model in other sectors. In early August 2010, the management of the Georgian State Railway, a state-owned company, unilaterally decreed that the collective agreement between the railway and the trade union would be terminated. The collective agreement, one of only a handful in force in the country, guaranteed the right to the automatic deduction and transfer of trade union dues. The trade union immediately appealed this decree in city court in



Tbilisi. Railway management responded to the court filing by offering to negotiate and proposing five representatives to a joint commission. On August 10, 2010, the union agreed to negotiate and nominated five union representatives to the joint commission. However, as of September 10, 2010, management has refused to even establish a date to begin negotiations.

## 2. **Illegal Dismissal of Nine Union Stewards and Activists at Poti Sea Port**

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Poti Sea Port is a large, modern port on Georgia's western Black Sea coast that employs approximately 1,200 workers. Until April 2008, the primary shareholder of LTD Poti Sea Port was the Georgian government, under the authority of the Ministry of Economic Development. The company is now majority owned by the RAK Investment Authority (RAKIA) of the government of Ras Al Khaimah. Workers at the port organized a trade union in 2000, affiliated to the Dockers' and Seafarers' Union and to the GTUC. On October 15, 2007, the union organized a 45 minute protest action during the lunch break to demand that management engage in collective bargaining with the union on the issues of working conditions and the proposed privatization of the port. On October 19, 2007, on orders from Poti Sea Port General Director Lasha Akhaladze, port management sealed the union office. On October 22, 2007, trade union leaders attempted to enter their office but were blocked by security guards. On October 23, 2007, on orders from the general director, nine trade unionists were dismissed, including five elected union leaders and four trade union activists. These workers were clearly fired on the basis of trade union activity.

On November 13, 2007, the Dockers' and Seafarers Union filed suit in city court in Poti, requesting reinstatement of the fired trade union leaders and activists, restoration of access to the trade union office, and recognition of the union's statutory authority. On March 21, 2008, the court rejected the lawsuit on the grounds that the Labor Code does not require employers to disclose reasons for termination. With support from the GTUC, the union appealed to the Kutaisi Court of Appeal on the grounds that Article 2 of the Labor Code prohibits discrimination on the basis of union membership and that Article 23 of the Law on Trade Unions prohibits dismissals of elected trade union leaders or stewards without the consent of the union. The Kutaisi Court of Appeal refused to reinstate the fired trade union members on the grounds that Articles 37d and 38 of the Labor Code allow employers the unrestricted right to terminate employment at any time, without explanation.

At present, the dismissed workers remain unemployed. Although trade union members were able to force management to re-open the trade union office after a five day hunger strike, the trade union at Poti Sea Port remains significantly weakened. After exhausting all domestic avenues, the GTUC filed a formal complaint with the ILO on July 24, 2008.

## 3. **Illegal Dismissal of Nine Union Committee Members at BTM Textile**

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BTM Textile, located in Khelvachauri in the Autonomous Republic of Adjara, employs 500 workers, mostly women. On March 16, 2008, 250 workers established a trade union

and joined the Adjara branch of the GTUC. On the same date, nine women workers who had been employed since 2007 were elected as trade union committee members.

On April 10, 2008, representatives of the GTUC Adjara branch, including President Daredjan Mekvabishvili, met with BTM Textile General Director Gezmi Aksa Hill to inform the employer that the trade union had been formed. The GTUC Adjara branch provided a copy of the March 16 founding documents and sent an official copy by mail. The next day, management fired all nine members of the newly-formed trade union committee. The General Director refused to provide any explanation, citing Article 37d of the Labor Code. However, the timing of the firing strongly suggests that the nine committee members were discriminated against on the basis of trade union activity. Moreover, only the nine committee members were dismissed. These actions are a violation of international labor law with regard to freedom of association, as well as Labor Code, which prohibits discrimination on the basis of trade union membership.

In late April 2008, the dismissed workers met with the deputy chairman of the Khelvachauri municipal administration, Levan Abashidze. He refused to intervene on the grounds that BTM Textile's decision to terminate the workers on the basis of trade union activity was permissible. Also in late April 2008, the GTUC Adjara branch attempted to address the issue with the Adjara Ministry of Economic Reforms. In a meeting, Minister Vazha Bolkvadze admitted that the actions of BTM Textile management contradicted ILO conventions and that the Abashidze's statements were inappropriate. However, the Minister took no action to address the case of anti-union discrimination.

At present, the dismissed union activists remain unemployed. The management of BTM Textile has failed to recognize the trade union and other trade union members at BTM Textile are being intimidated and threatened with dismissal unless they discontinue their trade union activities. The GTUC included details of this case in a formal complaint to the ILO on July 24, 2008.

#### **4. Illegal Dismissal of Union Stewards**

(4) Dali Aduashvili began working at Georgian State Electrosystem, a state-owned electricity transmission company, in 1985 and became active in trade union activities in 2000. On November 27, 2007 she was elected as shop steward of the union at the company's Tbilisi service center. In early January 2008, she contacted company management with a request to discuss payment of wage arrears and future wage increases. On February 29, 2008, company management signed six-month employment contract extensions with all employees at the Tbilisi service center except Aduashvili, who was only granted a three-month contract extension. On March 6, 2008, Aduashvili was fired with no reason given. Her dismissal is clearly discrimination on the basis of trade union activity by an employer that appeared to have no desire to engage in collective bargaining or resolve the problems of wage arrears and low wages.

Paata Doborjginidze began working for the Tbilisi Metro in 2004 and in 2006 he became a member of the trade union and was elected as shop steward. In his capacity as shop

steward, Doborjginidze contacted the employer to discuss the effects of a planned reorganization on employment levels and working conditions. On July 27, 2006, the General Director fired Doborjginidze but gave no reason. Doborjginidze challenged his dismissal in court, but lost the case at all levels, including the Supreme Court. In its decision, the Supreme Court maintained that the Labor Code provides sufficient protections against employment discrimination. It also declared that Article 2(5) of the Labor Code allows employers the unrestricted right to dismiss workers and that such actions are not considered employment discrimination. Furthermore, the Supreme Court asserted that the protections afforded by the 1997 Law on Trade Unions, which remains in effect, would not be applied, and as a newer law, the provisions of the 2006 Labor Code should prevail. This Supreme Court decision has established a strong precedent that has been applied in subsequent cases.

### **Conclusion**

For the reasons above, the AFL-CIO urges USTR to remove Georgia from the list of beneficiary developing countries under the GSP.

