

EXPLANATORY NOTE

on the seminar document prepared for the Tripartite Sub-regional Seminar on Settlement of Labour Disputes through Mediation, Conciliation, Arbitration and Labour Courts in the Countries of Central Asia and Caucasus (October 2007, Larnaca, Cyprus)

The labour legislation of countries participating in the seminar to varying degrees allows the use of the following mechanisms in the settlement of labour disputes:

- Consultations
- Negotiations
- Mediation
- Arbitration
- Courts of general jurisdiction

There is no provision for establishing special labour courts.

The legislation of certain countries provides for the settlement of labour disputes by higher-level trade union or administrative bodies.

The seminar document consists of tables and texts of labour laws, and comprises three parts:

Part 1. Table 1 - synopsis of means for settling collective labour disputes in the countries participating in the seminar; table 2 - synopsis of means of settling individual labour disputes in those countries.

Part 2. Table 3: mechanisms and agencies used in the settlement of labour disputes in each State participating in the seminar; summary of replies to the ILO questionnaire.

Part 3. Texts of the codes of labour laws / labour codes of the States participating in the seminar.

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Part 1

Table 1. Synopsis of procedures for settling **collective** labour disputes

	REPUBLIC OF AZERBAIJAN	REPUBLIC OF ARMENIA	GEORGIA	TURKMENISTAN	REPUBLIC OF KYRGYZSTAN	REPUBLIC OF UZBEKISTAN	REPUBLIC OF KAZAKHSTAN	REPUBLIC OF TADZHIKISTAN
Consultations	Sections 262, 265	Section 26		Section 230				
Conciliation commission	Section 266	Sections 67, 68	Sections 47, 48		Section 432	Section 281, specific law	Section 292	
Mediator	Section 265	Section 71.			Section 433		Section 291(2), section 294	Section 208
Arbitration	Section 268						Section 293	Section 209
Compulsory arbitration	Section 281							
Court	Section 316, implementation of relevant law.	Section 67(2). Dispute regarding implementation of collective agreement, section 72, if settlement not achieved by conciliation commission.	Sections 50, 51. Suspension of strike, lockout; illegal strikes and lockouts.		Section 440, illegality of strike action.	Section 281, regional court.	Section 303, illegality of strike action.	Section 210. Implementation of relevant law; illegality of strike action.
Illegal strikes and lockouts			Section 51(3)					
Referral to higher-level trade union or administrative body				Section 231				

**Seminar on Settlement of Labour Disputes through Mediation, Conciliation, Arbitration and Labour Courts in the Countries of Central Asia and Caucasus
(October 2007, Larnaca, Cyprus)**

Part 1

Table 2. Synopsis of procedures for settling **individual** labour disputes

	REPUBLIC OF AZERBAIJAN	REPUBLIC OF ARMENIA	GEORGIA	TURKMENISTAN	REPUBLIC OF KYRGYZSTAN	REPUBLIC OF UZBEKISTAN	REPUBLIC OF KAZAKHSTAN	REPUBLIC OF TAJIKISTAN
Consultations, individual negotiations	Section 295(1)		Sections 47, 48 – conciliation procedure	Section 210	Section 411	Section 263	Section 173	
Panel for examination of individual labour disputes before going to court; labour disputes commission	Section 294(2)		Sections 47, 48. Representatives of the parties may participate.	Section 211	Sections 415 -420	Sections 262-266	Sections 171, 173 -176	Sections 191, 193, 194
Trade union committee				Section 215				
Court	Section 294(1)	Section 264	Section 48(5)	Sections 214, 216, 219, appeal against decisions of the labour disputes commission or trade union committee.	Section 421, appeal against decision of the labour disputes commission	Sections 267- 269	Section 170(3)	Section 192
Individual strike	Section 295							
Employer and trade union committee (or other workers' representative body)						Section 280(1)		
Higher-level economic and trade union bodies				Sections 228, 228(1), 230 Dismissal, transfer, disciplinary sanctions against supervisory workers appointed by higher-level state bodies				

SEMINAR

on settlement of Labour Disputes through Mediation, Conciliation, Arbitration and Labour Courts in the countries of Central Asia and Caucasus (October 2007, Larnaca, Cyprus)

Material prepared on the basis of the Codes of Labour Law / Labour Codes of Azerbaijan, Armenia, Georgia, Kazakhstan, Kyrgyzstan, Tadzhikistan, Turkmenistan and Uzbekistan.

REPUBLIC OF AZERBAIJAN

LABOUR CODE OF THE REPUBLIC OF AZERBAIJAN

Approved by the Law “concerning the adoption and entry into force of the Labour Code of the Republic of Azerbaijan and related legal issues” of 1 February 1999 No. 618-IG

(in the version valid as at 19 December 2006)

Collective labour disputes

Methods of settling a collective labour dispute (section 265)					
Consultations	Section 266 Conciliation commission	Mediator	Labour arbitration	Compulsory arbitration	Court
Section 262. Putting forward collective demands. Workers may put forward collective demands and designate their authorized representatives to participate on their behalf in talks with the employer, or entrust a trade	Set up within three working days. Established in accordance with the instructions of the employer and a decision of the workers. Period allowed for	Appointed by mutual agreement between the parties. Period for examination of disputes – five working days. Mandate: 1) Examine relevant	Section 268. Labour arbitration is a temporary institution. Established – by joint decision within five working days. Composition – at least three members.	Section 281. Sectors in which strikes are prohibited are required to use compulsory arbitration. <u>Set up</u> by the appropriate executive au-	Section 316(1). Individual and collective labour disputes arising between workers and employers during the period in which the current Labour

<p>union organization with responsibility for conducting such talks.</p> <p>Section 265(2). The parties may agree to use one or all available means for the settlement of disputes, or to use any other means of achieving the most rapid possible settlement. The agreement reached must be formally documented.</p>	<p>examination of disputes – five working days. Decisions are formally documented.</p>	<p>documents.</p> <p>2) Draw up possible options for achieving conciliation between the parties.</p> <p>3) Parties required to discuss proposals with mediator.</p>	<p>May decide in advance that its decisions are to be binding. Time allowed for examination of the dispute – seven working days. Decision adopted by majority and formally documented.</p>	<p>authority; operates on the basis of rules approved by that authority. Membership approved by the parties to the dispute (odd number of members and at least five). Decisions are binding on the parties and must be implemented immediately.</p>	<p>Code and other laws and regulations are in force are resolved directly by the courts in accordance with procedures set out in this Code and the Code of Civil Procedure of the Azerbaijan Republic. Part 2, section 316. ... the rights of each party to apply to a court shall not be restricted.</p>
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Individual labour disputes

Division 44				
Sections 287-290 Concept, subject of dispute, parties to the dispute	Section 295(1) Consultations	Section 294(2) Agency for resolving individual labour dis- putes before referral to a court	Section 294(1) Court	Section 295 Individual strike
<p>Section 292(2). The means of defending individual labour rights are:</p> <ol style="list-style-type: none"> 1. A court 2. An agency that attempts to resolve the dispute before referral to a court. 3. Individual strike (section 295) 	<p>Provision for: negotiations between worker and employer; response by employer to workers' petitions made in writing.</p>	<p>The establishment and operation of such an agency are determined by collective agreement.</p> <p>The agency is set up within the trade union organization of the undertaking concerned.</p>	<p>All individual labour disputes are examined by the courts directly, except for cases provided for in the Section 294(2).</p> <p>Section 294(2) – agencies set up to examine individual labour disputes before referral to a court.</p>	<p>Without bringing the case before a court, and without terminating the employment contract, a worker may carry out an individual strike for not longer than <u>one month</u>. Means by which a worker can defend individual and collective demands.</p> <p>Grounds: Worker has not obtained satisfaction from negotiations with the employer or any response to written requests.</p>

REPUBLIC OF ARMENIA

LABOUR CODE OF THE REPUBLIC OF ARMENIA
of 14 December 2004 NHO]-124
adopted on 09.11.2004

Comment: What is this number? Why is it not in Cyrillic script?

Collective labour disputes

Procedure for examining collective labour disputes			
Section 26 Consultations	Sections 67 and 68 Conciliation Commission	Section 71 Mediator	Court
<p>The employer is obliged to consult workers' representatives when taking decisions affecting workers' legal position or rights.</p>	<p>Section 67, paragraph 1 (1). Examination of a collective labour dispute in the Conciliation Commission (including, and with the participation of, the mediator).</p> <p>Section 68. The parties shall agree on the number of members. The number of representatives on each side shall be no more than five.</p> <p>Period allowed for the examination of the dispute – seven days. The decision is formally documented.</p>	<p>Section 71. Dispute concerning the conclusion or amendment of a collective agreement. The parties call in the mediator:</p> <ul style="list-style-type: none"> • Independently; • By using the good offices of a State organ authorized to deal with labour matters. <p>The parties, together with the mediator, conclude an agreement:</p> <ul style="list-style-type: none"> • Designating the mediator; • Laying down the amount and terms of his/her fee, and • Setting out the modalities for examining the collective labour dispute. 	<p>Section 67 (2). Dispute regarding the fulfilment of a collective agreement.</p> <p>Section 72. Court inquiry into a collective labour dispute.</p> <p>A dispute is not settled in the Conciliation Commission - after the divergence of views is formally documented – 10 days for referral to court.</p>

Comment: I have called these articles rather than sections, as they are plainly not the sections referred to in Natlex .

		<p><u>Mandate</u> – study the substance of the case. Submit proposals to the parties on how to settle the dispute.</p> <p>Period allowed for the examination of the dispute – seven days.</p> <p>The decision is formally documented.</p>	
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Individual labour disputes

<p>Section 264 Court</p>	
<p>Labour disputes are justiciable.</p>	

GEORGIA

GEORGIAN LABOUR CODE
of 25 May 2006 No. 3132-Id

Comment: See query in first comment.

Collective labour disputes

Right to strike and lockouts (Section 49)	
Sections 47 and 48 Conciliation procedures	Sections 50 and 51 Court
<p>Conciliation procedure. At the beginning of conciliation procedures, one party sends the other party notification in writing of the reasons for the dispute in question and its demands. The second party considers the written notification and announces its decision in writing within 10 calendar days of receipt of the notification. <u>Dispute settlement:</u> the parties (their representatives) adopt a decision in writing which becomes part of the existing labour agreement.</p>	<p>Postponement or suspension of a strike or lockout for 30 days. Illegal strikes and lockouts. If one of the parties balks at participating in the conciliation procedures and organizes a strike or lockout, such strikes and lockouts are deemed illegal.</p>
<p>Repealed texts:</p> <p>Georgian Act on collective agreements and accords of 10.12.1997 Georgian Act on the procedure for settling collective labour disputes of 30.10.1998</p>	

Individual labour disputes

<p align="center">Section 47 Means of examination</p>	<p align="center">Section 48 Conciliation procedure</p>	<p align="center">Section 48 (5) Court or arbitration</p>
<ul style="list-style-type: none"> • Conciliation procedures; • Individual negotiations; • Court. 	<p>At the beginning of conciliation procedures, one party sends the other written notification of the reasons for the dispute in question and its demands.</p> <p>The second party considers the written notification and announces its decision in writing within 10 calendar days of receipt of the notification.</p> <p><u>Dispute settlement</u>: the parties (their representatives) adopt a decision in writing which becomes part of the existing labour agreement.</p>	<ul style="list-style-type: none"> • No agreement reached – within 14 calendar days referral to court; • Refusal by one party to participate in conciliation procedures.

TURKMENISTAN

CODE OF LABOUR LAWS OF TURKMENISTAN

Approved by the law of Turkmenistan of 28 June 1972
(version as at 16 September 2002)

Collective labour disputes

Examination of disputes between workers and management (Section 230)	
Subject of the dispute	Examination procedure
It concerns the establishment of new, or the alteration of existing, working conditions which are not regulated by legislation or by other instruments setting labour standards.	1st stage – management in agreement with the trade-union committee of the undertaking. No agreement reached. 2nd stage – their higher organs with the participation of the parties.
Examination of <u>differences of opinion</u> between the trade-union committee of an undertaking and the management (Section 231)	
Subject of the difference of opinion: the establishment or alteration of working conditions in the undertaking.	<u>Examination procedure</u> : conducted by higher management and trade-union organs with the participation of representatives of the management, the work force and the trade-union committee.

Individual labour disputes

Procedure for examining a labour dispute					
Bodies competent to examine labour disputes	Section 210 Negotiations	Section 211 Labour Disputes Commission	Section 215 Trade-union committee of the undertaking	Sections 214, 216 and 219 Court	Sections 228, 228 (1) and 230 Higher organs
1. Labour Disputes Commission 2. Trade-union committee of the undertaking (subdivision) 3. Court 4. Higher organs (Art. 228)	Settlement of differences of opinion through direct negotiations with the management of the undertaking and the worker or with the participation of the trade-union committee.	General meeting of the work force: 1. Elects the Labour Disputes Commission. 2. Determines the electoral procedure, the number of members, the composition of the Commission, its term of office. The Commission must be the first body to consider labour disputes.	It examines the Labour Disputes Commission's decision within 10 days of delivery of a copy of the decision either to the trade-union committee or to the court. Period allowed for examination of the application - 10 days.	It hears appeals against the decisions of the Labour Disputes Commission or trade-union committee. It must present its findings within 10 days of receiving a copy of the decision of the trade-union committee.	Subject of the dispute and categories of workers. Dismissal or transfer of and disciplinary penalties imposed on workers' leaders appointed by higher government organs. Period allowed for the examination of the labour dispute – one month as from the date of receiving the application. The dispute is settled in the presence of the worker.

REPUBLIC OF KYRKYZSTAN

LABOUR CODE OF THE REPUBLIC OF KYRGYZSTAN

(In the version of the laws of the Republic of Kyrgyzstan Nos. 181 of 8 October 2004 and 85 of 30 June 2005)
Adopted by the Legislative Assembly of the Jogorku Kenesh (Parliament) of the Republic of Kyrgyzstan on 25 May 2004

Section 2. The basic principles governing the legal regulation of labour relations and relations directly connected therewith shall guarantee the right to the settlement of individual and collective labour disputes by the process established by the this Code and by other legislative instruments.

Chapter 43. Collective labour disputes

Section 431 Conciliation procedures	Section 432 Conciliation Commission	Section 433 Mediator	Section 435 Dispute settlement	Section 440 Court
<p>1. Conciliation Commission</p> <p>2. With the participation of the mediator</p>	<p>Must be set up within three working days of the beginning of the collective labour dispute on the instruction of the employer or by a decision of the workers' representative.</p> <p><u>Composition:</u> consists of the parties' representatives who possess equal rights.</p> <p>Period allowed for the examination of the dispute - five working days.</p> <p>Decision: parties' agreement (formally recorded).</p> <p>Failure to reach agreement: three working days for calling in the mediator.</p>	<p>The parties to the dispute, together with the mediator, sign an agreement:</p> <ul style="list-style-type: none"> • Designating the mediator; • Laying down the modalities for examining the collective labour dispute. <p>Period allowed for the examination of the dispute – seven working days.</p> <p>Agreement or failure to reach an agreement is formally recorded in writing.</p>	<p>Any agreement reached by the parties in the course of the dispute settlement procedure is recorded in writing and is binding on the parties.</p>	<p>Judicial decision regarding an illegal strike.</p>

Chapter 42. Individual labour disputes

Bodies competent to examine individual labour disputes (Section 412)		
Section 411 Consultations	Sections 415-420 Labour Disputes Commission (LDC)	Section 421 Court
The worker and employer must take steps to settle a dispute on their own. The consultative procedure is not specified.	At least 10 workers must be included in its machinery. The Commission monitors provisions approved by the general meeting. Period for the examination of an application – 10 days in the presence of the worker. Decision: secret vote, simple majority of votes of those present at the Commission meeting.	Grounds: 1) If the dispute is not investigated by the Labour Disputes Commission within 10 working days. 2) Appeal against the Commission's decision within 10 days of receiving a copy of that decision.

REPUBLIC OF UZBEKISTAN

LABOUR CODE OF THE REPUBLIC OF UZBEKISTAN

Entered into force on 1.04.1996

(In the version of the laws of the Republic of Uzbekistan of 27.12.1996, 01.05.1998, 29.08.1998, 25.12.1998, 14.04.1999, 15.04.1999, 20.08.1999, 12.05.2001, 30.08.2001, 07.12.2001, 30.08.2002 and 23.09.2005 IZRU-8)

Comment: Not sure whether this is meant to be NZPY or IZRU.

Collective labour disputes

Procedure for examining collective labour disputes (Section 281)	
Dispute concerning the establishment of new or the alteration of existing working conditions	All other instances of collective labour disputes
Established by law.	Regional (municipal) court.

Chapter XV. Individual labour disputes

<p align="center">Section 260 Bodies competent to examine individual labour disputes</p>	<p align="center">Section 263 Negotiations</p>	<p align="center">Sections 262-266 Labour Disputes Com- mission</p>	<p align="center">Sections 267-269 Court</p>	<p align="center">Section 280 (1) Employer and trade-union com- mittee (other body representing work- ers)</p>	<p align="center">Section 280 (2) If the worker so chooses, referral of disputes to the court or Labour Disputes Commis- sion</p>
<p>1. Labour Disputes Commission 2. Regional (municipal) court 3. Employer and relevant trade-union body or other workers' representative body (art. 280).</p>	<p>Until the dispute is referred to the Labour Disputes Commission, the worker acting either independently or together with the trade-union committee (or another body) must hold negotiations with the employer.</p>	<p>Bases:</p> <ul style="list-style-type: none"> • Drawing up of a collective agreement; • In the absence of a collective agreement, establishment of an agreement between the employer and the trade-union committee or another body representing workers • Composition – on the basis of parity (equal representation). <p>The number of members and their term of office are determined by collective agreement or by agreement of the parties. Period allowed for the examination of the dispute - 10 days as from the date of the submission of the application.</p>	<p>1. If the Labour Disputes Commission does not consider the application or does not settle the dispute within 10 days. 2. Appeal against the Commission's decision – 10 days for the submission of the complaint.</p>	<p>Labour disputes concerning the establishment of new, or the alteration of the existing working conditions of a worker.</p>	<p>Application of labour legislation or fulfilment of obligations under an employment contract.</p>

REPUBLIC OF KAZAKHSTAN

LABOUR CODE OF THE REPUBLIC OF KAZAKHSTAN

of 15 May 2007, No. 251-III ZRK

Section 1 of the Labour Code of the Republic of Kazakhstan of 15 May 2007, No. 251-III ERK contains the basic concepts used in the Labour Code and lists terms pertaining to the settlement of labour disputes

Comment: In the title this is given as ZRK. We need to check with author which is correct.

1. Conciliation Commission – a body set up with the agreement of employers and workers (their representatives) in order to settle collective labour disputes by means of reconciling the parties;
2. Conciliation procedures – Successive review of a collective labour dispute first in a Conciliation Commission and, in the event that no agreement is reached there, in a labour arbitration body;
3. Mediator – natural or legal person whose services are enlisted by the parties in labour relations in order to resolve a labour dispute;
4. Labour dispute – differences of opinion between workers and employers regarding the application of the labour legislation of the Republic of Kazakhstan, the fulfilment or amendment of the terms of agreements, employment contracts, collective agreements or employers' decisions;
5. Labour arbitration body – temporary body set up by the parties to a collective labour dispute whose members are enlisted and authorized to settle a labour dispute when no agreement has been reached in the Conciliation Commission;
6. Strike – full or partial stoppage of work with a view to obtaining satisfaction of social, economic and trade-union demands in a collective labour dispute with employers.

Workers' right to the settlement of individual and collective labour disputes, including the right to strike, is provided for in Section 22, paragraph 1 (25) of the Labour Code.

Chapter 32. Collective labour disputes

One form of social partnership is the participation of the parties' representatives in the out-of-court settlement of labour disputes. (Section 261)

Means of settling collective labour disputes

Section 292 Conciliation Commission	Section 293 Labour arbitration body	Sections 291 (2) and 294 Mediator	Section 303 Court
<p>Consists of representatives of the parties sitting on the basis of parity. The Commission is set up by a formally recorded decision of the employer and of workers' representatives. The modalities for the Commission's work are determined by agreement of the parties and are formally documented. The Conciliation Commission consults the workers (their representatives), the employer, the employers' association (their representatives), state bodies and any other persons concerned.</p> <p>Period allowed for the examination of the dispute - seven calendar days.</p> <p>Its decision, which rests on the agreement of the parties, is recorded in the minutes which are</p>	<p>If no agreement is reached in the Conciliation Commission. The labour arbitration body is set up by the parties to the Labour Disputes Commission with the participation of members of the national, sectorial or regional commission for the regulation of social and labour relations</p> <p>Composition – not less than five persons.</p> <p>By agreement of the parties.</p> <p>The composition of the labour arbitration body includes:</p> <ul style="list-style-type: none"> • Representatives of public associations; • The State Inspector of Labour; • Specialists; • Experts and other persons. <p>The chairman of the labour arbitration body is elected by the</p>	<p>The parties may have recourse to a mediator at any stage in the examination of a collective labour dispute. The mediation procedure is independent of the conciliation procedure in the Conciliation Commission or labour arbitration body and may take place at the same time.</p> <p>Examination of the dispute by the Labour Disputes Committee with the participation of the mediator.</p> <p>The modalities for examining the dispute are determined by agreement of the parties to the Labour Disputes Commission</p> <p>The parties must appoint <u>independent</u> organizations or persons to act as mediators. The national, sectorial or regional commissions for the regulation of social and labour relations</p>	<p>Judicial decision regarding an illegal strike upon the application of an employer or procurator.</p>

Comment: Is this what the author means?

<p>signed by the parties' representatives and it is binding on the parties.</p>	<p>parties from among the members of the body. Section 293 (7). In agencies where strikes are forbidden or restricted by law the establishment of a labour arbitration body is obligatory.</p>	<p>may, with the agreement of the parties to the Labour Disputes Commission, call on the services of the leaders and workers of central and local executive bodies, associations and other public associations, employers and independent experts. At all events the choice of mediators must receive their written assent.</p>	
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Chapter 15. Individual labour disputes

<p align="center">Section 170 Bodies competent to examine individual labour disputes</p>	<p align="center">Section 173 Negotiations</p>	<p align="center">Sections 171 and 173-176 Conciliation Commission</p>	<p align="center">Section 170 (3) Court</p>
<p>1. Conciliation Commission and (or) 2. Court</p>	<p>Until the dispute is referred to the Conciliation Commission, the worker acting either independently or together with his/her representative must conduct negotiations with the employer.</p>	<p>It comprises representatives of the parties sitting on the basis of parity. The general meeting (conference) of workers and employers approves by its decisions:</p> <ul style="list-style-type: none"> • The members of the Conciliation Commission; • The number of the members of the Conciliation Commission, its working methods and term of office. <p>Period allowed for the examination of the dispute - seven days. Quorum consists of at least half of the members of the Conciliation Commission. Decisions are taken by the simple majority of votes of the members of the Commission present at the meeting. A <u>secret</u> vote may be held at the request of the applicant or one of the Commission members.</p>	<p>The parties to a labour dispute may elect to have an individual labour dispute settled directly in court.</p>

REPUBLIC OF TAJIKISTAN

LABOUR CODE OF THE REPUBLIC OF TAJIKISTAN

(In the version of the laws of the Republic of Tajikistan Nos. 718 of 13 November 1998, 756 of 14 May 1999, 10 of 3 May 2002 26 of 17 May 2004. 158 of 3 March 2006 and 182 of 29 April 2006)

Collective labour disputes

Section 205. The procedure for settling collective labour disputes is governed by the Labour Code, legislation, accords and collective agreements.

Section 206. On submitting their demands for a workers' meeting (conference), workers appoint representatives authorized to take part in the settlement of a collective labour dispute.

Means of settling collective labour disputes

Section 208 Mediation	Section 209 Labour arbitration body	Section 210 Judicial review of collective labour disputes
<p>The mediator is appointed with the agreement of the parties. He/she helps to conduct negotiations and achieve agreement. The procedure is determined by the parties with the agreement of the mediator. The mediator's recommendations are binding on the parties:</p> <ul style="list-style-type: none">• If none of the parties rejects the mediator's proposal within 10 days;	<p>It is established by the parties to the collective labour dispute with the participation of the regional or municipal government. The number and exact composition of the labour arbitration body is determined by the parties on the occasion of each dispute. The chairperson is elected from among the members of the labour arbitration body in question by agreement of the parties.</p> <p>Composition of the labour arbitration body:</p> <ul style="list-style-type: none">• People's deputies;• Representatives of trade-union bodies;• Labour and employment bodies;• Specialists, experts and other persons. <p>Representatives of the parties must take part in the examination of the dispute. Period allowed for the examination of the dispute - 10 days.</p>	<ol style="list-style-type: none">1. A judicial review of the non-fulfilment or breach of labour legislation or of other standard-setting instruments concerning labour is initiated upon the application of the representative of one of the parties.2. Establishes whether or not a strike is lawful.

<ul style="list-style-type: none"> If beforehand they concluded an agreement on the implementation of the recommendations. 	<p>Implementation of the decision is obligatory if the parties have concluded a prior agreement to this effect.</p> <p>If the mediator and labour arbitration body fail to settle the dispute they must notify the work force or trade union of the reasons for this in writing. Strikes are permissible.</p>	
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Chapter 15. Individual labour disputes

<p>Section 190 Bodies competent to examine individual labour disputes</p>	<p>Sections 191, 193 and 194 Labour Disputes Commission of the undertaking (procedure prior to referral to a court)</p>	<p>Section 192 Court</p>
<p>1. Labour Disputes Commission. 2. Court.</p>	<p>Basis of its establishment: Collective agreement, accord.</p> <p>Principles and procedure for its establishment: It comprises, on the basis of parity, the employer, workers' bodies or the work force meeting (conference) or other bodies. The workers' representatives are elected by the general meeting (conference) of the undertaking.</p> <p>The employers' representatives are nominated by order of the management of the undertaking.</p> <p>The rules regarding the Commission are approved by the presidium of Majlisi Oli (parliament) of the Republic of Tajikistan.</p> <p>It adopts its decision by agreement between the representatives of the employer and the</p>	<p>Individual labour disputes:</p> <ul style="list-style-type: none"> On application of the worker; Appeal against the Labour Dispute Commission's decision on application of the parties to the labour dispute.

Comment: www.tajik-gateway.org

	<p>trade-union committee (or other body representing workers). Its decision is binding. Any appeal against the Commission's decision must be lodged with the court within 10 days.</p>	
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Summary of replies to the ILO questionnaire

Azerbaijan

Employer's observations

4. Legislation has to some extent been improved. The Constitution provides guarantees in relation to the settlement of collective and individual labour disputes, including the right to strike. The Labour Code provides for methods and rules for settling [collective] and individual labour disputes (conciliation, arbitration, labour court).

Collective labour disputes

Established procedures for settling collective labour disputes are not always successful.

Reasons: lack of legal expertise in the area of labour relations, inaccurate assessment of the causes and conditions giving rise to collective labour disputes, lack of competence, being poorly informed on the object of the dispute, inappropriate efforts to reconcile the interests of the parties. These factors are not conducive to an objective agreement being reached in the process of settling the collective labour dispute and do not adequately serve the interests of the parties involved.

Individual labour disputes

The range of available methods and conditions for settling individual labour disputes is limited.

The system of settling labour disputes through methods based on conciliation in the Republic of Azerbaijan cannot be considered satisfactory. The legal framework for applying such methods in settling individual labour disputes is weak.

Neither employers nor workers have any incentive to settle collective (*sic*) disputes through the conciliation methods provided for by law, and prefer instead to apply to higher-level state authorities and courts. The reasons for this: the parties are poorly informed, there is a lack of specific mechanisms for implementing decisions adopted through conciliation, and an absence of clearly defined responsibility for failure to implement such decisions.

5. It is essential to monitor the dispute settlement system and assess its overall consistency with the relevant ILO Recommendations and requirements and with other international and national standards. Serious efforts of research and analysis are required in this area.

6. There is a serious need in the country to set up special disputes settlement bodies. The existing courts system lacks generalized practical experience in the area of industrial relations and dispute settlement.

The current judicial system needs a separate labour law section, which should comprise a network (system) of labour courts that would be responsible for the judicial enforcement of decisions.

Kazakhstan

Observations of the Ministry

4. The disputes settlement system in the Republic of Kazakhstan is satisfactory.

Issues relating to the settlement of collective and individual labour disputes in Kazakhstan are covered by the Labour Code (two separate sections). Examination of collective and individual labour disputes by the courts is governed by the Code of Civil Procedure.

5. There is no need at the moment to set up labour courts or separate labour law sections within the existing judicial system. As the State develops, it is likely that experience will be acquired in the application of law and applied in improving the existing dispute settlement system.

Observations of the trade union

5. The disputes settlement system in Kazakhstan is consistent with the requirements of the Constitution and the country's level of social and economic development.

Generally speaking, citizens apply to courts to defend their rights because judicial procedures provide a swift and sure way of resolving labour disputes. The advantage of this lies in the constitutional principles that underpin the organization and activities of the judicial bodies, the independence of the judiciary, and the fact that courts and judges have no connection with the parties in dispute or with others involved.

7. Within the Federation of Trade Unions of the Republic of Kazakhstan there are legal advisers and experts who can be consulted on legal matters.

Uzbekistan

Observations of the trade union

Collective disputes

There is no clearly defined mechanism.

Draft legislation has been drawn up but has not yet been examined by the legislature.

Individual disputes

Works labour disputes commissions, civil courts (the choice is left to the worker).

A legal representative may be invited to meetings of the labour disputes commissions. Decisions of these bodies are binding and must be implemented within the three days allowed for any appeal by the employer.

Workers are not required to assume the court costs incurred in connection with industrial relations cases (section 277 of the Labour Code).

Tadzhikistan

Collective disputes

Observations of the trade union

The system overall is satisfactory. There is no system of statistical accounting.

Arbitration courts need to be established.

Observations of the Ministry of Labour

Deficiencies: generally poor level of legal culture among the population. Lack of separate institutions to deal with labour disputes.

Labour law should be part of the curriculum in schools and in higher education establishments.

Separate labour law divisions should be established within the ordinary judicial system.

Individual disputes

Views of the trade union

The system overall is satisfactory. There is no system of statistical reporting on the labour disputes committees. The trade unions have legal departments and juridical labour inspection departments which provide assistance in the defence of workers' rights.

Kyrgyzstan

Collective disputes

Observations of the Ministry of Labour

The Ministry has labour inspection departments. These conduct more than 1,800 inspections and investigations a year, and examine more than 8,000 oral and written claims and appeals.

A dispute settlement system needs to be developed in the country's regions. It would also be useful to set up specialized courts.

Observations of the trade union

Courts of general jurisdiction often adopt decisions that are at variance with labour law and with the general circumstances of the case, for want of knowledge and experience.

A judicial college should be set up comprising a professional judge and representatives of employers and workers.

In Kyrgyzstan, arbitration is not used to settle labour disputes. There are no labour courts.

Special courts should be set up to deal with such disputes.

Georgia

Observations of the trade union

Question 4.

In Georgia, the system for settling labour disputes is not satisfactory.

- A new Labour Code, adopted on 25 May 2006, does not adequately protect workers' rights.

Collective labour disputes

Right of the employer to impose a lockout, duration of strikes limited to 90 days, no mediation procedure.

Individual disputes

Section 38 – employer's right to dismiss a worker without notice and without giving reasons.

- The laws “concerning procedures for settling collective labour disputes” and “concerning collective agreements” are no longer in force.

Question 5

- The Labour Code should be amended to rectify the above deficiencies.
- Legislation on the settlement of collective labour disputes should be adopted.
- The work of the labour disputes commissions should be re-established on a legal basis.

Question 6

Create a labour law section within the existing judicial system to examine labour disputes.

Question 7

The Georgian Trade Union Association has two legal experts and a legal advisory council consisting of legal experts from all the affiliated unions. They examine draft legislation on social and labour issues, consult union members and represent their interests in court.

Armenia

Observations of the employers

4. Legislation makes no provision for any extra-judicial procedure for settling individual labour disputes.
5. Provision should be made for extrajudicial procedures for the settlement of individual labour disputes.
6. A special labour court should be established.
7. The Confederation of Trade Unions of Armenia has a legal affairs department.

All branch unions should also have such departments.

An Association of Industrialists and Entrepreneurs (Employers) has been established.

On 27 February the law “concerning employers’ organizations” was adopted. Under this law, branch and regional organizations of employers will be established with their own legal affairs departments.

Observations of the Ministry – similar to those of the employers.

Conclusions

drawn from the replies to the ILO questionnaire

Most of the participating countries expressed the view that:

1. National labour legislation was at the development stage and requires further improvement with regard to the legislative framework defining the competent bodies and procedures for settling labour disputes.
2. General courts sometimes adopt incorrect decisions for want of specialized expertise.
3. There is no system of statistical accounting of labour disputes, in particular relating to collective labour disputes in their early stages.
4. There is little involvement of bipartite and tripartite commissions on labour issues in the dispute settlement systems.

Proposals

concerning the development of a labour disputes settlement system
(based on the replies to the questionnaire)

1. Almost all participants in the survey were in favour of establishing specialized labour dispute settlement bodies, either
 - in the form of labour law sections within the existing structures of the judicial system, or
 - in the form of special courts.
2. In a number of countries, there is a demand for legislation to reinforce existing mechanisms for implementing decisions adopted by individual or collective disputes settlement bodies.
3. In all countries, it would be helpful to have a system of statistical reporting on the causes of labour disputes (individual and collective) with a view to formulating proposals on developing the labour market and averting possible causes of frequent disputes.

Analysis of the information on the basis of the answers of the conference participants on ILO's sent questionnaire

Ministries of labour

On the basis of the information received from the Ministries of labour of Kyrgyz Republic, Republic of Kazakhstan, Republic of Armenia, Republic of Tajikistan and Georgia there are conclusions concerning the application of settlement procedures of collective and individual labour disputes.

Labour legislation of seminar participant countries provides the application of the following procedures:

- mediation
- conciliation
- arbitration
- (labour) court

Collective labour disputes

Legal basis, regulation and methods of collective labour dispute settlement and realization of the right on strike are regulated by the Labour Codes of the afore-named countries.

In labour legislation of Kirgizia, Kazakhstan, Tajikistan and Armenia all the standards of collective labour dispute settlement are fully reflected.

When labour dispute arises conciliation commission is set up on parity basis. The decision of the commission is taken on the base of agreement of the parties and has the obligatory force for them. A mediator could be enlisted in the case of disagreement. The order of discussion of the collective labour disputes with the participation of mediator is determined with the agreement of the parties and mediator. If the agreement is not reached labor arbitration is established to settle labour dispute (Kazakhstan and Tajikistan) or the parties may apply to the court (Armenia). The final decision is binding on the parties to the dispute.

In Georgia there is no separate normative act on collective labour dispute settlement. There are no labour arbitration and labour court. The order of conducting strikes and lockouts is mentioned in the articles of the Labour Code.

Individual labour disputes

Legal basis, regulation and methods of individual labour dispute settlement are regulated by the Labour Codes of the countries. Individual labour disputes are considered by the commissions of labour disputes and if there is no such commission - by courts.

Labour dispute commissions are formed on the parity basis from the workers' and employers' representatives. The decision of the commission may be appealed both by the worker and the employer to the court.

So in the point of view of the Ministry of labour of Kyrgyz Republic the work of the state labour inspection is effective enough and has positive results. At the same time there is a necessity to develop existing system of labour dispute settlement, to raise awareness of the population and create specialized labour courts.

In point of view of the Ministry of labour and social protection of Kazakhstan Republic the system of labour dispute settlement is satisfactory and there is no need to create labour courts and labour law sections. Further there might be a necessity of existing labour dispute settlement system correction.

On the base information given by the Ministry of labour of Georgia the applicable system of labour dispute settlement should be improved. It is necessary to adopt special legislative norms and create separate labour law sections, which would consider labour disputes only. At the same time in most trade unions and employer organizations there are juridical departments or separate lawyers who make an analysis of law projects and consult members of trade union on law issues.

According to the information of the Armenian Ministry of labour out-of-court labour dispute settlement is not provided. It is necessary to develop out-of-court mechanisms of labour dispute settlement and establish specialized courts. Speaking on the trade unions' contribution to a developed legal state by establishing legal departments, the Confederation of trade unions of Armenia has a juridical

department. There is a need to create such departments at lower levels of the organizations. According to the Armenian taking Law “About the employer’s associations” republican, branch and regional associations will be created (at republican level juridical department will be set up).

Proceeded from the information of the Ministry of labour of the Republic of Tajikistan there are some defects in labour dispute settlement (low level of population legal awareness; absence of separate structures which consider labour disputes). There is a necessity to develop labour dispute regulation through education, to create specialized labour law sections in ordinary judicial system and organize juridical departments in trade unions and employer’ associations.

Employers

Collective labour disputes

According to employers' information under Labour Codes of Azerbaijan, Armenia and Kyrgyzia conciliation commission is set up when collective disputes arise (with participation of mediator). The commission is created on parity basis from the workers' and employers' representatives. (In Azerbaijan this commission is called Coordination commission).

In the case of failure, discussion of collective labour dispute in court (Armenia) or in labour arbitration (Azerbaijan) is the next stage. Azerbaijan law does not consider collective labour dispute settlement in the way of labour courts and in legal order. Also there is no special legal body considering labour disputes. In Kyrgyzia neither arbitration nor labour court do not considered. Labour dispute settlement is held in general order.

In Turkmenistan and Uzbekistan collective labour disputes are mostly considered on applying by one of the parties. More rarely collective labour disputes could be settled through conciliation and mediation.

Individual labor disputes

In theory individual labour disputes are considered by labour dispute commissions and courts. In practice more often individual labour disputes are settled directly in court (Azerbaijan, Armenia). However in some countries there are labour disputes commissions (Uzbekistan, Kyrgyzia). In Kyrgyzia in particular there is a procedure of mediation and conciliation but arbitration and labour courts are not provided. Cases are considered in general legal order. In Turkmenistan individual labour disputes are also settled in the way of conciliation or in courts.

So in point of view of Kyrgyzian employers' procedures and period of consideration in ordinary judicial system do not satisfy market demands. It is necessary to train and apply practice labour dispute settlements for employers, publish special reports on labour disputes and work out new labour relationships between individual and physical persons. Besides it is important to set up separate labour courts and labour law sections in the structure of ordinary judicial system. At the same time Confederation of Employers of Kyrgyz Republic cannot contribute to development of labour dispute settlement system. Only large companies have lawyers, but small and middle business is almost unprotected and have no system of representing interests on labour disputes.

According to the opinion of Turkmen employers labour dispute settlement system has some defects, as there is no separate labour court. Introduction of new norms into labour law in accordance with economic development, creation of separate courts and labour law sections in ordinary judicial system is important. Trade unions and employers organizations can contribute to a developed legal state by establishing legal departments at all levels of their organizations taking as an example creation of judicial commercial agencies.

On the base of Uzbek employers' information labour dispute settlement system is satisfactory. For improvement of existing system it is useful to learn circumstances resulting in labour disputes in details and take measures. Also it is necessary to establish separate sections in ordinary judicial system. At the same time lots of organizations have legal departments, which consult on legal questions as well as represent interests in the court.

Be guided by Armenian employers there is a conclusion that out-of-court individual labour dispute settlement is not provided in by law. It is desirable to establish separate court for consideration of labour disputes. Confederation of Trade Unions of Armenia represents and defends the interests of workers. In structure of Confederation's staff there is a juridical department coordinating legal work of trade unions. It is necessary to set up such juridical departments at all structures of trade unions.

Be based on Azerbaijan employers' information, labour dispute settlement system is not satisfactory as legal base of applying of conciliation methods in labour dispute settlement is weak. It is necessary to monitor labour dispute settlement and evaluate conformity of this system with corresponding recommendations and conventions of ILO. There is a strong necessity in establishing authorized bodies on labour dispute settlement.

Trade unions

Collective labour disputes

Federations of trade unions of Tajikistan, Kazakhstan, Azerbaijan and Armenia describe the procedure of collective labour dispute settlement using the following steps:

- conciliation procedures
- (labour) court

Workers through their representatives (trade unions or their associations) put in their claims and send it to an employer. If it is found impossible to satisfy their claims conciliation commission (with participation of mediator) may be set up. The commission is created on parity basis from the workers' and employers' representatives. In case of failure arbitration may be created in conciliation commission or parties may apply to the court. The decision of labour arbitration or court is obligatory for the implementation. If conciliation commission, labour arbitration or court cannot settle the dispute, the reason of failure is brought to trade union's notice. In case of disagreement with the results of procedure workers may use other legal ways of defending their rights up to strike.

In Kyrgyzia there is no practice of labour dispute settlement through arbitration (also there is no labour courts and separate section in ordinary jurisdiction courts) that is why collective labour dispute settlement is provided in consecutive order:

- putting in workers' claims to an employer in writing
- conciliation procedures with the participation of mediator
- strike (in case of failure of conciliation procedures)

In Georgia there is no separate normative act on collective labour dispute settlement (also there is no labour arbitration and labour court), although in new Labour code it is said that labour dispute settlement must be conducted through conciliation procedures and in case of failure a party may apply to the court or arbitration. Thus mediation is not provided in labour dispute settlement procedures.

In Uzbekistan there is no Law regulating the order of collective labor dispute settlement.

Individual labour disputes

According to information of trade unions of Azerbaijan, Kazakhstan, Tajikistan, Kyrgyzia and Uzbekistan the following order of individual labour disputes is determined:

- labour dispute commission established in organizations
- court

Individual labour dispute commissions are formed on the parity basis from the workers' and employers' representatives. Its decision is binding. Labour dispute parties may apply directly to the court or appeal against the decision of labour dispute commission.

In Georgia and Armenia all individual labour disputes are considered in courts.

In point of view of Armenian trade unions labour dispute settlement system do not always prove itself, as it does not have enough legal base. Out-of-court order of individual labour dispute settlement is not considered, there are no labour courts. It is necessary to establish separate courts, particularly labour courts, and set up labour dispute commissions in places. It is expediently to create legal inspection in the system of Confederation of Trade Unions of Armenia. At the same time the Confederation has legal service which participate in labour dispute settlement for protection of rights and interests of trade union members, advise on labour law and participate in working out of law projects.

According to the information of Georgian trade unions applying system of labour dispute settlement is unsatisfactory. It is important to renew the Law "About the order of collective labour dispute settlement" and improve Labour code. Besides it is necessary to resume the functioning of labour dispute commission on legal base, give back to trade unions its function in labour dispute settlement procedures, establish labour dispute sections in ordinary judicial system. At the same time in most of trade unions and employers' organizations there are legal departments, which analyze law projects connected with social and labour questions, advise trade union members on breaking of law questions and presenting their interests in court.

On the base of the information of trade unions of Kazakhstan citizens apply to the courts more often as considering cases in court guaranties fast and correct labour dispute settlement providing restoration of breaking rights and interests of workers. Besides in the structure of the Federation of Trade Unions of Kazakh Republic there are legal advisers and specialists on legal issues that advice on advice-

explanative work. Thus the system of labour dispute regulation conforms to Constitution norms and level of social-economic development in the Republic.

In point of view of Uzbek trade unions nowadays there is no exact mechanism of labour dispute settlement, i.e. there is no Law regulating the order of collective labour dispute settlement. The question of law project introduction is considering.

Be based on information of Kyrgyz trade unions there is no practice of collective and individual labour dispute settlement in arbitration. Also there are no labour courts and separate sections in ordinary judicial system. Without having the knowledge in labour law sphere and without practice judges sometimes make decisions, which are not conform to labour law. It is important to establish labour courts, which would specialize in labour dispute settlement. Judge board has to be consisted of professional judges and workers' and employers' representatives.

In Republic of Tajikistan the system of labour dispute settlement is satisfactory. But there is no system of accounts about labour dispute commission work and thus there is no possibility to make full and deep analysis of functioning of this structure. In trade unions structure legal departments are established and they work in the interests of trade union's members. For improvement of this system it is necessary to set up courts of arbitration.

Be guided by trade union of Azerbaijan the country has enough legal base for legitimate and lawful labour dispute settlement. In practice workers have less rights than employers. There is a necessity in workers education; in expansion of trade unions' rights and its financing; making answer employers for breaking of labour agreement, collective bargaining, labour protection and social insurance; establishing bodies considering only labour disputes, etc. Besides legal department's services are not used in trade unions and corresponding staff in not considered for this services.

So labour law of the countries is on the stage of improvement. Further development is needed.