

UnFAIR LABOUR Practices, anti-union Discrimination, and workplace violence

Module 6: International Cases Studies & Practical Examples



Structure of this module:

- Protection against acts of Unfair Labour Practices & Anti-Union Discrimination.
 - Evidence from the IRLex database.
 - How have regulatory frameworks in different countries sought to protect workers from anti-union discrimination?
 - Rapid and effective protection
 - Fast-track procedures
 - Suspension of dismissals
 - Reversal of the burden of proof
 - Sufficiently dissuasive sanctions
 - Country examples and legislative provisions.
- CFA - FOA Compilation of Decisions
 - Relationship between ILO conventions, Forms of Interference, and Anti-Union Tactics.

Protection against acts of Unfair Labour Practices & Anti-Union Discrimination



What measures have been put in place to ensure the effective enforcement of provisions protecting against anti-union discrimination?

Workers' Representatives Recommendation, 1971 (No. 143) states that trade union and workers' representatives at the level of the undertaking **"should enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities"** and further clarifies that **"where there are not sufficient relevant protective measures applicable to workers in general, specific measures should be taken to ensure effective protection"**.

The Recommendation then goes as far as outlining what some of these “**specific measures**” contributing to such effective protection could be, listing:

- a) detailed and precise definition of the **reasons justifying termination of employment** of workers' representatives;
- b) a requirement of **consultation** with, an advisory opinion from, or agreement of an **independent body, public or private, or a joint body**, before the dismissal of a workers' representative becomes final;

The Recommendation then goes as far as outlining what some of these “**specific measures**” contributing to such effective protection could be, listing:

- c) a **special recourse procedure** open to workers’ representatives who consider that their employment has been unjustifiably terminated, or that they have been subjected to an unfavourable change in their conditions of employment or to unfair treatment;
- d) in respect of the unjustified termination of employment of workers’ representatives, provision for an **effective remedy** which, unless this is contrary to basic principles of the law of the country concerned, should include the **reinstatement** of such representatives in their job, with **payment of unpaid wages** and with maintenance of their acquired rights;

The Recommendation then goes as far as outlining what some of these “**specific measures**” contributing to such effective protection could be, listing:

- e) provision for laying upon the employer, in the case of any alleged discriminatory dismissal or unfavourable change in the conditions of employment of a workers' representative, the **burden of proving** that such action was justified;
- f) recognition of a **priority** to be given to workers' representatives with regard to their retention in employment in case of reduction of the workforce.

As stated in **Article 3** of the **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**, “machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring” effective protection against acts of anti-union discrimination.

The respect of such principles should be granted regardless of the general and specific criteria adopted by the different national legal frameworks to regulate protection against anti-union discrimination.

Protection against acts of Unfair Labour Practices & Anti-Union Discrimination

Evidence from the IRLex database.

Country examples and legislative provisions.

IRLEX Legal Database on Industrial Relations

Home

Legal Database on Industrial Relations

The **ILO Legal Database on Industrial Relations (IRLex)** provides accessible summaries and legal texts on industrial relations across ILO member States.

It covers seven thematic areas:

1. Regulatory framework
2. Organisations and their administration
3. Legislative protection of workers' and employers' organizations, their members and representatives
4. Tripartite social dialogue
5. Information and consultation at the workplace
6. Collective bargaining
7. Labour disputes and their resolution

IRLex provides users with:

- Access to detailed information on regulatory frameworks covering industrial relations and collective bargaining in countries with different legal systems.
- The ability to view full country profiles with all information available for the selected country.
- The possibility of generating comparative information between countries on specific topics through the 'Compare countries' function.
- The possibility to do a keyword search for information in specific country profiles.
- The database is available in English. It provides users with translated legislative provisions, and access to legislation in its original language and / or other ILO working languages.
- Links to the latest comments of the Committee of Experts on the Application of Conventions and Recommendations.

Using the IRLex Database:

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- Links to the latest comments of the Committee of Experts on the Application of Conventions and Recommendations.

Using the “Compare countries” function in the IRLex database, an overview of how specific measures have been adopted in practice in different labour law systems may be rapidly obtained.

IRLEX Legal Database on Industrial Relations

- About IRLEX
- How to use IRLEX
- Methodology
- Browse by country
- Compare countries
- Search

[Home](#) > [Compare countries](#)

Compare countries

*Important: select the countries **AND** a theme (no result is displayed if no information is available).
Data is often available only for lower theme levels. In these cases, it is important to explicitly select those levels.*

Compare

Countries

- + Africa
- + Americas
- + Arab States
- + Asia
- + Europe

Themes

- + Regulatory framework
- + Organizations and their administration
- + Legislative protection of workers' and employers' organizations, their members and representatives
- + Tripartite social dialogue
- + Information and consultation at the workplace
- + Collective bargaining
- + Labour disputes and their resolution

Protection against acts of Unfair Labour Practices & Anti-Union Discrimination

- ☐ **Legislative protection of workers' and employers' organizations, their members and representatives**
 - ☒ Acts of anti-union discrimination
 - ☐ Safeguards to protect workers against acts of anti-union discrimination
 - ☐ Forms of discrimination
 - ☐ Discrimination in relation to hiring
 - ☐ Discrimination during employment
 - ☐ Discriminatory termination
 - ☐ Protection granted to workers in a given period (setting up a trade union / during its existence / after its dissolution)
 - ☐ Type of activities carried out by workers by reason of their trade union involvement
 - ☐ Competent body to hear allegations of discrimination
 - ☐ Procedural safeguards recognized in the legislation
 - ☐ Remedies and sanctions foreseen in the legislation as compensatory measures for having suffered acts of anti-union discrimination
 - ☐ Compensation
 - ☐ Reinstatement
 - ☐ Other
 - ☐ Enforcement mechanisms to ensure effective protection
 - ☒ Acts of interference
 - ☐ Safeguards to protect workers' and employers' organisations against acts of interference
 - ☐ Safeguards to protect workers' organisations against acts of interference
 - ☐ Safeguards to protect employers' organisations against acts of interference
 - ☐ Acts covered by the legislative protection
 - ☐ Remedies and sanctions foreseen against acts of interference
 - ☐ Procedural safeguards recognized in the legislation
 - ☒ Legal arrangements for workers' and trade union representatives
 - ☐ Time off from work to carry out their functions in the undertakings
 - ☐ Protection against loss of pay or social and fringe benefits for taking time off to carry out their functions
 - ☐ Time off from work to attend trade union meetings, training courses, seminars, congresses and conferences
 - ☐ Access to all workplaces in the undertaking to carry out their functions
 - ☐ Access to the management in the undertaking and to management representatives empowered to take decisions
 - ☐ Regular collection of trade union dues on the premises of the undertaking
 - ☐ Posting of trade union notices
 - ☐ Distribution of trade union news sheets, pamphlets, publications among workers of the undertakings
 - ☐ Access to material facilities and information where necessary for the exercise of their functions
 - ☐ Access to the undertaking for trade union representatives not employed in the undertaking
 - ☐ Confidentiality provisions

About IRLEX

How to use IRLEX

Methodology

Browse by country

Compare countries

Search

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Compare countries

*Important: select the countries **AND** a theme (no result is displayed if no information is available).*

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Compare

Countries

+ Africa

+ Americas

+ Arab States

- Asia

☐ Asia (all)

☐ Australia

☒ Bangladesh

☐ Cambodia

☐ China

☒ India

☐ Indonesia

☐ Japan

☐ Korea, Republic of

☐ Malaysia

☒ Myanmar

☐ Philippines

☐ Singapore

☒ Sri Lanka

☒ Thailand

☒ Viet Nam

+ Europe

Themes

+ Regulatory framework

+ Organizations and their administration

- ☐ Legislative protection of workers' and employers' organizations, their members and representatives

☒ Acts of anti-union discrimination

☐ Safeguards to protect workers against acts of anti-union discrimination

☐ Forms of discrimination

☐ Discrimination in relation to hiring

Evidence from the IRLex database.

How have regulatory frameworks in different countries sought to protect workers from anti-union discrimination?

Country examples and legislative provisions.

IRLEX Legal Database on Industrial Relations

Legislation included in IRLex suggests that the protection of workers from anti-union discrimination is achieved in **two ways**:

- workers may be granted a **right not to be subject to discrimination**, or
- employers may be placed under a **duty not to discriminate** against workers.

Two further variations may be distinguished in each of these cases.

Where the law takes the form of **workers' right not to be subject to discrimination**, the law may include trade union membership and activities in a wider category of unlawful grounds for discriminatory treatment that also includes discrimination on the grounds of sex, ethnic origin and so on.

Alternatively, workers may be **protected from discrimination** as part of **their exercise or attempt to exercise rights to freedom of association** granted under a relevant act.

Where the law takes the form of the **duty of employers not to discriminate**, the breach of this duty may be defined with reference to a category of **prohibited reasons** for making decisions about recruitment, remuneration, promotion, disciplinary measures and dismissal.

Alternatively, the law may define a category of **prohibited practices** (sometimes called “**unfair labour practices**”) that include the different types of acts of **anti-union discrimination** in which employers may engage.

The law in some countries adopts more than one of these approaches.

Table 1 (in the next slide) sets out these distinctions and includes some examples drawn from IRLex.

Protection against acts of Unfair Labour Practices & Anti-Union Discrimination

► Table 1: The basic form of the law on anti-union discrimination

General criteria	Specific criteria	Country examples ¹⁸	Legal texts from IRLex
Workers' right not to be subject to anti-union discrimination	Trade union membership and/or activities included in a wider category of prohibited grounds of discrimination	Albania, Bulgaria, Chile, Honduras, Morocco, Poland, Slovakia	Any discrimination against employees on grounds of race, colour, gender, disability, marital status, religion, political opinion, trade union membership, national descent or social origin, which has the effect of violating or impairing the principle of equality of opportunity or equal treatment in employment or occupational matters, is prohibited. Morocco, Art. 9(2) Labour Code In exercising labour rights and duties, no direct or indirect discrimination shall be allowed on grounds of nationality, origin, sex, sexual orientation, race, skin colour, age, political and religious convictions, affiliation to trade union and other public organizations and movements, family and financial status, presence of mental or physical disabilities. Bulgaria, Art, 8(3) Labour Code
	Guarantee of no discrimination on the grounds of the exercise of rights under freedom of association provisions in labour regulation	Kenya, Malaysia, Namibia	No person shall discriminate against an employee or any person seeking employment for exercising any right conferred in this Act. Kenya, Art. 5(1) Labour Relations Act 2007

Protection against acts of Unfair Labour Practices & Anti-Union Discrimination

► Table 1: The basic form of the law on anti-union discrimination

General criteria	Specific criteria	Country examples ¹⁸	Legal texts from IRLex
Employers' duty not to engage in anti-union discrimination	Trade union membership and activities included in a category of prohibited reasons for decisions on recruitment, remuneration, advancement, disciplinary action and dismissal	Botswana , Cambodia , Ethiopia , Peru , Senegal , Tunisia , Uganda , United States	No employer shall prohibit an employee from being or becoming a member of any registered trade union or other organization such as is referred to in subsection (1) or of a particular registered trade union or other such organization or subject him to any penalty by reason of his membership or participation in the activities of a registered trade union or other such organization. Botswana, Section 56, Trade Union and Employers' Organizations Act Employers are forbidden to take into consideration union affiliation or participation in union activities when making decisions concerning recruitment, management and assignment of work, promotion, remuneration and granting of benefits, disciplinary measures and dismissal. Cambodia, Art.279 Labour Law No employer may take membership of a trade union or the exercise of trade union activity into consideration when making decisions concerning, inter alia, hiring, the performance and distribution of work, vocational training, promotion, remuneration and the granting of benefits, disciplinary measures or dismissal. Senegal, Art. L29 Labour Code

► Table 1: The basic form of the law on anti-union discrimination

General criteria	Specific criteria	Country examples ¹⁸	Legal texts from IRLex
	Range of different specific types of anti-union discrimination included in a category of prohibited employer practices	Albania, India, Japan, Jordan, Nigeria, Korea, Republic of, Panama, Poland, Zambia	[Unfair labour practices on the part of employers include:] To interfere with, restrain from, or coerce, workmen in the exercise of their right to organize, form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is to say: (a) threatening workmen with discharge or dismissal, if they join a trade union; (b) threatening a lock-out or closure, if a trade union is organized; (c) granting a wage increase to workmen at crucial periods of trade union organization, with a view to undermining the efforts of the trade union organization. India, Industrial Disputes Act 1947, fifth schedule, part I. [Unfair practices against trade unionism and workers' rights include:] (1) the formation of blacklists; (2) maltreatment of workers; (3) dismissals, sanctions, reprisals, transfers, deterioration or discrimination motivated by individual or collective complaints, by the fact of organizing or belonging to a union, or by having participated in a strike or signed a petition. Panama, Art. 388 Labour Code

Evidence from the IRLex database.

Rapid and effective protection

Country examples and legislative provisions.

IRLEX Legal Database on Industrial Relations

The effective enforcement and guarantee in practice of protection against acts of anti-union discrimination should be **rapid and effective**.

In many systems, this involves **procedural rules** that are different from those that apply in other areas of the law. This may include **dedicated rules of evidence** and **other specific measures** to ensure a **fair process** in the employment context, as well as **precautionary measures** such as suspending the implementation of contested employer decisions until a **court or tribunal decision** becomes final.

In **Zambia**, for example, the **Industrial Relations Court is not bound by the rules of evidence** that apply in civil and criminal proceedings. This means that it has more **flexibility** about the basis on which it can draw conclusions in a situation in which different actors may have very different perspectives on the events in question.

In terms of ensuring the rapid resolution of complaints, the information available in IRLex suggests that many jurisdictions place **strict limits on the time that investigation, adjudication and compensation or redress** can take.

Evidence from the IRLex database.

Fast-track procedures

Country examples and legislative provisions.

IRLEX Legal Database on Industrial Relations

In some legal frameworks, in order to ensure that the protection against acts of **anti-union discrimination** responds to the requirements for **rapidness and effectiveness**, the law establishes **special procedures** that differ from regular procedures (either civil or criminal, depending on the specific legal system).

And provide for a **shorter and/or simplified track** so as to ensure that workers who have been victims of anti-union discrimination may seek a **remedy** in a shorter amount of time and through a **less burdensome and more simplified procedure** than a regular trial.

Such is the case for example in **Argentina**, where the law extends to cases of **anti-union discrimination** – and **violations of freedom of association** more generally – the summary procedure established in **article 498 of the Code of Civil and Commercial Procedure** so as to allow, if appropriate, **the immediate cessation of anti-union behaviour.**

Evidence from the IRLex database.

Suspension of dismissals

Country examples and legislative provisions.

IRLEX Legal Database on Industrial Relations

In some cases, labour inspectors or other state offices have the **power to suspend the legal effect of a dismissal**, temporarily reinstating the worker **pending a court ruling** if there is a prima facie case that the dismissal was made for prohibited reasons.

This power may apply to the dismissal of **any worker**, as is the case for example in **Serbia**, or it may apply only to the dismissal of **workers' representatives**, as is the case in **Côte d'Ivoire**.

A stronger form of this protection may apply during a period in which **freedom of association** rights are particularly sensitive.

In **Panama**, workers are protected under the so-called “fuero sindical”, a form of protection recognized for **trade union members and leaders** that grants protection to members of unions in the process of formation; members of trade unions’ executive boards, federations and confederations or workers’ organizations; the substitutes of trade union representatives, even when they are not exercising their functions; and trade union representatives.

Workers falling under the scope of this protection **may not be dismissed without prior authorization from the labour courts**, based on a just cause provided for in the law.

Evidence from the IRLex database.

Reversal of the burden of proof

Country examples and legislative provisions.

IRLEX Legal Database on Industrial Relations

Article 6(1) of Workers' Representatives Recommendation, 1971 (No. 143) outlines a series of specific measures that may be adopted by ILO Member States to grant effective protection to workers' representatives where there are not sufficient relevant protective measures applicable to workers in general, including the **reversal of the burden of proof**.

That provision of **Recommendation No. 143** was also recalled by the **CFA** in the analysis of specific cases when called to provide its decision on the need to ensure **effective protection against acts of anti-union discrimination**.

For instance, making a choice among different candidates for a job, allocating privileges and benefits differentially based on worker performance or behaviour and dismissing workers for economic or performance reasons are all **employer decisions** that may be made for legitimate reasons.

This means that it may be **difficult to show** that the **real reason** for any such action against a worker is **anti-union discrimination**. Generally, legal systems place **the burden of proof** on the complainant.

Nonetheless, in disputes relative to **discriminatory treatment**, given the complex – and at times impossible – challenge of **proving** that the motivation of a certain behaviour or decision of the employer is of a **discriminatory nature**, the law shifts **the burden of proof onto the employer**, who must demonstrate that allegedly discriminatory actions were taken for legitimate reasons. This is a common provision found in legal systems as diverse of those of **Burkina Faso, Chile, Belgium and Montenegro**.

In some other legal systems, the reversal of the burden of proof is not automatic but is triggered by a submission by a worker of **prima facie evidence**.

Evidence from the IRLex database.

Sufficiently dissuasive sanctions

Country examples and legislative provisions.

IRLEX Legal Database on Industrial Relations

An additional measure for securing effective protection is to legislate **sanctions** against breaking the law that are sufficiently dissuasive to provide a real **incentive to comply**.

A precise definition of “sufficiently dissuasive” is impossible to formulate, but IRLex allows us to appreciate the **range of legal strategies** that have been used in different systems to **ensure compliance**.

One option is to require **financial compensation for discrimination** in terms of multiples of a workers’ salary. This avoids the possibility that the value of fixed currency amounts will be eroded over time. Measures of this kind are in place, for example, in **Albania, Panama and Belgium**.

As noted, **Recommendation No. 143** outlines the importance of including in the measures to secure effective protection through the **reinstatement** of trade union representatives who have been victims of **discriminatory dismissal** by reason of their trade union activity.

In the analysis of specific cases, the **CFA** noted that “no one should be subjected to anti-union discrimination because of legitimate trade union activities and the remedy of **reinstatement** should be available to those who are victims of anti-union discrimination”, while emphasizing that reinstatement is “**an effective means of redress**”.

Some systems include **additional compensation for workers** who have been dismissed for discriminatory reasons **when it is not possible for them to be reinstated** in their posts. Examples include **Burkina Faso, Jordan and Italy**.

In addition, several systems, including those of **Argentina and Italy**, offer workers the option to **choose between reinstatement and additional compensation**.

► Table 2: Measures for effective enforcement of provisions protecting against anti-union discrimination

General principle regulating effective enforcement	Country examples ⁴¹	Legal texts from IRLex
Rapid and effective protection	Algeria , Chile , Italy , Zambia	The Court shall not be bound by the rules of evidence in civil or criminal proceedings, but the main object of the Court shall be to do substantial justice between the parties before it. <i>Zambia, ILRA, section 85(5)</i>. In case of acts of anti-union discrimination, the judge of the place where the behaviour has taken place summons the parties within the two days following the discriminatory behaviour and orders the employer, by reasoned and immediately enforceable decree, to end the unlawful conduct and remedy its effects. Any employer who fails to comply with the decree shall be punished in accordance with the Italian Criminal Code. <i>Italy, Workers' Statute, art. 28</i>. Any dismissal of a trade union representative occurring in violation of the provisions of the present law shall be null and void. The person concerned shall be reinstated in his/ her position and his/ her rights shall be reinstated at the request of the labour inspector as soon as the infringement is confirmed by the latter. In the event of the employer's manifest refusal to comply within a period of eight days, the labour inspector shall draw up a report and refer the matter to the competent court, which shall rule by an enforceable decision within a period not exceeding sixty days, notwithstanding opposition or appeal. <i>Algeria, Law on Trade Union Rights, art. 56 (order 96-12)</i>.

► Table 2: Measures for effective enforcement of provisions protecting against anti-union discrimination

General principle regulating effective enforcement	Country examples ⁴¹	Legal texts from IRLex
Existence of “fast-track procedures”	Albania , Algeria , Argentina , Australia , Burkina Faso , Chile , Colombia , Denmark , Italy , Montenegro , Norway , Panama , Serbia , United States , Zambia	The challenge of unfair practices will be processed as an abbreviated process and will be promoted by the Ministry of Labour and Social Security, or by a number of affiliates not less than 10 per cent of the total number of members of the organization, except in the case of exclusion of an affiliate or removal of a union officer or representative, who can only be promoted by the interested party. <i>Panama, Labour Code, art. 394.</i> Any worker or trade union association may seek the protection of the rights of freedom of association before the competent judicial tribunal, in accordance with the summary procedure established in article 498 of the Code of Civil and Commercial Procedures of the Nation or the equivalent in the provincial civil procedural codes, so that it provides, if appropriate, the immediate cessation of anti-union behaviour. <i>Argentina, Law No. 23551 on Trade Union Associations, art. 47.</i>

► Table 2: Measures for effective enforcement of provisions protecting against anti-union discrimination

General principle regulating effective enforcement	Country examples ⁴¹	Legal texts from IRLex
Suspending or limiting the application of a dismissal	Brazil , Burkina Faso , Côte d'Ivoire , Denmark , Honduras , Paraguay	It is forbidden to dismiss a unionized employee from the moment of the registration of the candidacy to a position of union direction or representation and, if elected, even if as a substitute, until one year after the end of the term, unless the worker commits a serious misconduct under the law. <i>Brazil, Constitution, art. 8 (VIII)</i>. The labour inspector's opinion must be sought concerning any dismissal of a titular or alternate workers' representative that is envisaged by the employer or his/her representative. If authorization is not granted, the workers' representative shall be reinstated with payment of wages relating to the period of suspension. <i>Burkina Faso, Labour Code, arts 314 (1) and (3)</i>. During proceedings, the Court can decide that the dismissal is not given legal effect before the claim has been settled by the court. The court can decide in its ruling that any appeal does not have suspensive effects. <i>Denmark, Act on Freedom of Association, section 4</i>. Once the provisions of article 517 of the Labour Code have been completed by the workers, the General Directorate of Labour must establish an email address to receive a copy of notifications from the workers of their intention to organize a union in a business. When workers notify in accordance with the aforementioned article, a copy must be sent to said electronic address to the Directorate ... The Directorate must indicate that the signatory workers are under the special protection of the State, from the moment they notified the employer. Consequently, from the date of notification until receipt of proof of legal status, none of these workers can be fired, transferred, or subject to a deterioration in their working conditions without just cause, previously qualified by the respective authority. <i>Honduras, Labour Inspection Law, art.72</i>.

► Table 2: Measures for effective enforcement of provisions protecting against anti-union discrimination

General principle regulating effective enforcement	Country examples ⁴¹	Legal texts from IRLex
Reversal of burden of proof	Australia , Belgium , Burkina Faso , Chile , Montenegro	The reason for action is to be presumed unless proved otherwise, if: (a) in an application in relation to a contravention of this part, it is alleged that a person took, or is taking, action for a particular reason or with a particular intent; and (b) taking that action for that reason or with that intent would constitute a contravention of this part; It is presumed that the action was, or is being, taken for that reason or with that intent, unless the person proves otherwise. <i>Australia, Fair Work Act, section 361.</i> A reversal of the burden of proof is foreseen whenever a person has been a victim of an alleged discriminatory act. A complaint explaining the facts shall be presented before the court of competent jurisdiction by the Centre for Equal Opportunities and the Fight against Racism or one of the interest groups. <i>Belgium, Law 10 of May 2007, art. 28(1).</i> In the event of a dispute over the grounds for dismissal, the employer is required to provide proof of the legitimacy of the alleged justification for the termination, before the competent court. <i>Burkina Faso, Labour Code, arts 70 (1) and 102 (3).</i>

► Table 2: Measures for effective enforcement of provisions protecting against anti-union discrimination

General principle regulating effective enforcement	Country examples ⁴¹	Legal texts from IRLex
Sufficiently dissuasive sanctions	Côte d'Ivoire , Denmark , Italy , Jordan	Where the liability lies with the employer, the amount of damages equivalent to one month's gross salary per year of service in the undertaking shall not be less than three months' salary nor exceed twenty months' gross salary. These damages shall not be confused with compensation for failure to observe the notice period or with severance pay. <i>Cote d'Ivoire, Labour Code, art 18.15.</i>

CFA - FOA Compilation of Decisions

Relationship between ILO conventions, Forms of Interference, and Anti-Union Tactics.

Compilation of decisions of the Committee on Freedom of Association:

As regard [to] allegations of **anti-union tactics** in the form of preventing the establishment of workers' organizations or **bribes** offered to union members to encourage their **withdrawal** from the union and the presentation of **statements of resignation** to the workers, as well as the alleged efforts made to create **puppet unions**, the Committee considers such acts to be contrary to **Article 2 of Convention No. 98**, which provides that workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents in their establishment, functioning or administration

Compilation of decisions of the Committee on Freedom of Association:

“With regard to the existence of **two executive committees within the trade union**, one of which is allegedly **manipulated by the employer**, the Committee recalled the need to lay down explicitly in legislation **remedies and penalties for acts of anti-union discrimination and acts of interference** by employers in workers’ organizations in order to ensure the effective application of **Article 2 of Convention No. 98.**”

Compilation of decisions of the Committee on Freedom of Association:

The Committee referred to the findings of the **General Survey of the Committee of Experts on the fundamental Conventions** on labour rights in the light of the ILO Declaration on Social Justice for a Fair Globalization, paragraph 935, in which it is indicated that: “the Committee observes that one of the main concerns expressed by trade union organizations is the **adverse impact of insecure forms of employment on trade union rights and the protection of workers’ rights**, especially in the case of repeatedly renewed short-term temporary contracts; outsourcing, which is used even by some governments in their own public services to perform legally mandated ongoing tasks; and the non-renewal of contracts for **anti-union reasons**. Some of these modalities often deprive workers of access to **freedom of association and collective bargaining**, especially when they conceal a genuine and ongoing labour relationship. Some forms of job insecurity can also deter workers from joining trade unions. The Committee wishes to emphasize the importance of **examining, within a tripartite framework**, the impact of these forms of employment on the exercise of trade union rights in all member States.”

Conclusion

Conclusion: Building Robust Protection Against Anti-Union Discrimination

- This module has highlighted the critical importance of comprehensive legal frameworks, aligned with ILO Conventions and Recommendations, to effectively protect workers from unfair labour practices and anti-union discrimination.
- Evidence from the IRLex database demonstrates the diverse approaches countries have adopted, emphasizing the need for both rights-based and duty-based legislation.
- Rapid and effective protection necessitates specific measures like fast-track procedures, potential suspension of dismissals, and the strategic reversal of the burden of proof.
- Ultimately, sufficiently dissuasive sanctions are essential to ensure compliance and create a deterrent against anti-union tactics and interference.

Where to find more information?

Where to find more information?

- ❑ **NORMLEX**, database on ILS and the ILO supervisory mechanism
- ❑ **IRLEX**, legal database on Industrial Relations

End of Module 4

See Activities 6.1 to 6.3