Chapter 4. The State of Industrial Relations in Ukraine

The present chapter provides a brief overview of the economic, political and social developments in Ukraine since its independence in 1991. It is followed by a review of the institutional rearrangement of IR, including the re-regulation of union activities. Finally, general union developments are outlined in the concluding section.

4.1. The Political and Socio-Economic Situation

Ukraine declared its independence in 1991. During the first years of independence, the Ukrainian government was pre-occupied with nation-building.[27] During this period, little thought was devoted to economic reforms. The presidency of the first Ukrainian president Leonid Kravchuk (formerly the Second Secretary of the Communist Party) ended swiftly due to a steep economic decline accompanied by a devastating rate of hyperinflation, reaching more than 10,000% in 1993 (Aslund 2003). Under the pressure of the 1994 miners' strikes, early presidential elections were organised that same year.

The newly-elected President Leonid Kuchma undertook substantial economic reforms, which liberalised the Ukrainian economy. The anticipated reforms included a standard program of IMF and World Bank reforms such as marketisation, liberalisation, stabilisation and fast-paced privatisation (e.g. Aslund 2002, van der Hoeven 1994, Stiglitz 2002). During Kuchma's presidency, newly emerging political and economic elites, formed prevalently from former nomenklatura members, started to emerge. Through lobbying and the direct representation of economic interests in Parliament (Pleines 2006, Zimmer 2004) these same elites soon acquired strong positions in both economic and political areas. Operating in non-transparent ownership structures and relationships, these business elites came to be identified as oligarchs[28] and financial-industrial groups[29] (Kowall and Zimmer 2002, Zimmer 2004). Oligarchic groups have their representatives in each of the political parties present in Parliament (Zimmer

[27] Although the new constitution of Ukraine was finally adopted in 1996, the adoption of that constitution has not brought the Ukrainian nation-building project to an end. Constitutional debates about the continuous circulation of authority between president and prime minister and the rules governing elections are still on-going in Ukraine today, leading to political instability in the country.

[28] The term "oligarchs" refers to different economic actors who obtained economic and political power and gained political decision-making influence under Yel'tsyn in Russia (Kowall and Zimmer 2002) and under the presidencies of Kravchuk and Kuchma in Ukraine throughout the 1990s.

[29] These groups initially accumulated significant volumes of financial capital from the gas trade. This money was further channelled into other branches, such as metal processing, coal mining, energy, banks, food processing and media. Financial industrial groups develop vertically integrated structures along these value chains (Zimmer 2004).

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2004).[30] This tight overlapping of economic and political interests and elites led to blocking of the planned economic reforms (e.g. Pleines 2006, 2008). Instead, reforms which served the profit- and power-oriented needs of the elite members were actively promoted, meaning that many decrees were adopted that granted the oligarchs tax exemptions, subsidies and trade privileges. These reforms exacerbated the economic problems of Ukraine. Indeed, "Ukraine is the only transition country to have known nine consecutive years of economic decline" since 1991 (van Zon 2002).

The first signs of economic growth appeared in 2000 (Merkel 2008) when the Ukrainian economy was further de-regulated and the preferential treatment of oligarchs was reduced under the government of Yushenko and Tymoshenko (Aslund 2003). Despite this government being displaced by 2001 by the 'oligarchs' and further economic reforms coming to a halt, Ukraine still boasted the highest performance in Europe in 2003 and 2004, with growth of 15.8% and 12.5% respectively (Chernyshev 2006). However, by the time growth arrived, unemployment had skyrocketed. Alongside an employment level drop of 40% in industry and agriculture, official employment levels declined by one-third before 1999 (ibid).

Corrupt and rent-driven policy-making was interrupted by the mass protest of 2004 known as the 'Orange Revolution'. Provoked by fraudulent election practices during the 2004 presidential elections, these protests resulted in the election of Yushenko as the President of Ukraine. The election of Yushenko marked a significant shift in power. Whereas Yushenko's presidency allowed for more freedoms of expression, his term in office has been consistently criticised for his inability to overcome intra-governmental cleavages[31] and stabilise the socio-economic development of Ukraine (e.g. Bertelsmann Stiftung 2012). The slight economic growth of recent years was deflated by the global financial crisis of 2009, when the Ukrainian economy declined again.

As a result of these developments, Ukraine has developed politically as something between a democracy and an autocracy (Franzen, Haarland and Niessen 2005) and economically as an 'oligarchy', dominated by power- and profit-driven interests (Kowall

[30] The words of the then Head of the Tax Administration (cited in Zimmer 2006: 290) are demonstrative of these developments. In April 2002, 364 out of 450 deputies in the Ukrainian Parliament were directly or indirectly "connected with commercial structures. 202 deputies were simultaneously leading executives of enterprises, and 473 enterprises had been established by deputies". About two-thirds of the deputies were US dollar-millionaires (Aslund 2005: 49 in Zimmer 2006: 290, Verednykova 2005).

[31] Since 2005, most Ukrainian governments have suffered from internal disunity and constant competition for power. As a result of these conflicts, Parliamentary elections were held yearly. After the elections in 2006, Parliament was dissolved by presidential decree in 2007. But, the parliament did not accept the dissolution and continued its work until the situation deteriorated after two months of confrontation and the law enforcement bodies became involved. The newly elected 2007 Parliament was dissolved again in 2008, although the elections had to be postponed due to the financial crisis (see Bertelsmann Stiftung 2012).

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and Zimmer 2002). Until Yushenko's presidency, serious civil rights violations occurred frequently in Ukraine including murders, attacks and the intimidation of journalists, members of the political opposition and independent trade unions. After the Orange Revolution the harassment and civil rights violations became less pronounced. With the 2010 election of Viktor Yanukovych (who had been Yushenko's rival candidate during the 2005 presidential elections) as President of Ukraine, authoritarian traditions started to re-appear in Ukraine (Tkachuk 2011), including the prosecution and criminal investigations of members of the political opposition, journalists and independent trade unions.

Privatisation in Ukraine

Starting in 1992, privatisation commenced before the legal preconditions for it had been put in place. In 1994 the first stage of privatisation was conceptualised as a voucher privatisation (1994-1997) and 'mass privatisation' programmes (1998). Shares of enterprises were distributed among workers, so that highly dispersed employee ownership structures emerged. Basically, while formal ownership was altered, actual ownership remained largely undisturbed. A high degree of ownership dispersion left workers with no influence over enterprise affairs in spite of their official ownership status. In addition, workers lacked any understanding of shareholding practices. The only way to have any influence would be to organise. Trade unions did not initially mobilise workers around the issues of ownership. In overseeing the privatisation of enterprises, managers sought to buy out workers' shares, sometimes using coercive practices. Managers were thus able to consolidate their personal ownership of enterprises.

Since the beginning of the year 2000 privatisation included the ad hoc actions of ownership changes, which resembled 'the processes of assets redistribution that were outside the control of the society' (Dubrovsky, Paskhaver, Verkhovodova et al. 2007). The most attractive assets were privatised, often outside the legally set procedures, bought for artificially low prices by business and financial-industrial groups that were close to political authorities (ibid, Bertelsmann Stiftung 2012).[32] Even though three-fourths of the economy was claimed to be private in 2001, these estimates included enterprises in which the state had retained its share (Franzen, Haarland and Niessen 2005). As of 2005, 78.3% of all units were claimed to be private, employing 73.8% of the total workforce (Annual Statistics of Ukraine 2005, cited in Dubrovsky, Paskhaver,

[32] The sale of Kryvorizhstal, a huge steel mill, which provides a significant share of Ukraine's exports, for one-sixth of its real value is the most famous example of this. As an act of political will, Kryvorizhstal was re-privatised in 2005 and sold to a foreign investor (MittalSteel), but such cases of re-privatisation were not an everyday political practice (e.g. Kyiv Post, 17 February 2005, 24 August 2006).

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Verkhovodova et al. 2007). However, the state and communal authorities still retained 54.8% of all assets (ibid), mostly comprised of huge strategic enterprises.

Social Security

The living conditions of the Ukrainian population have deteriorated enormously. In spite of hyperinflation[33] the indexation of wages ceased between 1992 and 1997,[34] leading to a significant fall in workers' real wages. In harsh economic conditions enterprises were legally allowed to cease the payment of wages, so that workers' earnings ended up becoming wage arrears. Even after the wage freeze was abolished, both insolvent and economically active enterprises continued to accumulate wage debts. Wage increases driven by improved economic performance still left one fourth of the population below the poverty line in 2004 (Chernyshev 2006).

Even though the government regulated wages through a legally set minimum wage, this minimum wage has continuingly remained below the legally set subsistence minimum.[35] Only in October 2009 was the minimum wage set higher than the subsistence minimum. However, this was only due to deflation, which led to a reduction of the real value of the subsistence minimum, while minimum wages remained below the official poverty line (FPU 2009, interview with Kondratyuk, FPU Vice-President). As of July 2011, the statutory minimum wage amounted to UAH 960 (the equivalent of approximately 85 Euros) (Verkhovna Rada of Ukraine 2011).

The social security system literally dissolved. According to the People's Security Survey of the International Labour Organisation and the State Statistics Committee of Ukraine, in 2003 the per capita monthly income amounted to less than $100, 40% of wage earners suffered from unpaid wages, over two-thirds were dissatisfied with their wages and about 85% of adults could not cover their healthcare needs. Social and welfare policies were needed to cushion the decline in Ukrainian living standards. Yet, as a result of the economic decline, social spending was reduced drastically (Mandel 2004).

[33] A devastating rate of hyperinflation which reached more than 10,000% in 1993 (Aslund 2003).
[34] According to the law on the temporary halt of income indexation 7-92, dated of 9 December 1992.
[35] 'Subsistence minimum' is calculated by the governments of countries, based on the price calculated to purchase a certain set basket of goods necessary for each member of the population to insure his/her subsistence. Depending on the subsistence minimum, the poverty rate is then calculated annually as a percentage of the population living below an officially established subsistence level.

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4.2. Institutional Structure of IR in Ukraine

As Soviet laws and regulations were liberalised though the introduction of freedoms of association, bargaining and the right to strike, many of them continued to serve as the basis for IR regulation in the post-socialist Ukraine. Yet, some newly installed laws and institutions partially replaced the previously existing regulations. Additionally, the economic reform programmes of the IMF and World Bank pushed for more de-regulation of IR. As a result of this rearrangement, the institutional infrastructure constitutes a mixture of the institutional structures that have developed historically as well as those that were installed as exogenous.

The Legacy of the Socialist Institutional Structure of IR

Socialist states were claimed to be 'workers' states' and socialist systems of IR were founded on the unity of the interests of workers, enterprise administrations and the Communist Party. This has had significant implications for the present institutional context.

Firstly, in the 'workers' state', worker representation was the unilateral responsibility of the state (e.g. Brown 1966, Ruble 1981). Soviet IR systems were subject to the most detailed legal and administrative regulations covering working hours, working conditions, workers' benefits and basic guarantees. These legal measures were, however, not designed first and foremost for the purposes of granting independent worker representation, as workers were meant to be represented through the party governing the Soviet states. Instead, in practice, these same legal measures aimed to increase workers' productivity and, in part, to strengthen labour discipline (Ashwin and Clarke 2003).

Under the new institutional structure of IR this perception of the state as a guarantor for worker representation made enforcing workers' rights through their own militant activity and offensive demands problematic. Workers became accustomed to addressing their problems directly to the president or other authorities, and continue to do so today. Less than ten per cent of workers would go to unions in cases of labour rights violations (UCEPS 2001). Consequently, workers do not actively demand improvements in their living and working standards by exercising their rights. Instead, workers wait for the state to provide such improvements.

Secondly, the system of socialist IR was organised around 'labour collectives': the aggregate of all enterprise personnel, including managerial, technical and administrative

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staff (Teague 1986). The Council of the Labour Collective (STK) envisaged worker input into the way production was forged and management controlled, but not into the co-determination of their working conditions and pay. From the perspective of independent worker representation, the power of work collectives was consultative and advisory in nature, as the law did not include any workers' rights enforcement mechanisms (ibid). As a consequence, STK remained subservient to managers and fulfilled the same distributive functions as trade unions did: "Whereas trade unions used to distribute bananas and cigarettes, STK distributed cars" (Tretyakov, the president of the Independent Miners' Union of Sukha Balka, interview III). Furthermore, in 1990 decision-making power was taken away from the labour collective (Krüger 1990),[36] the institution of labour collectives as such remained and its purpose and meaning continued to be supported in the present institutional practice.[37] For instance, employers' paternalistic, social functions, which were common under the socialist system of IR, continue to be envisaged by law (e.g. employers have to provide funds to unions for workers' recreation, sports and cultural activities). As a consequence, within labour collectives workers saw their enterprise management as the representative of their interests and did not try to develop such independent representation by exercising their extensive rights, as provided for by law (Ashwin 1999a, b).

Thirdly, trade unions were a part of the state governing apparatus, when they merged with the Soviet Labour Ministry in the 1930s (interview I with Ditkovsky, ITU President at the Kyiv Metro; Vyshnevs'ky, Mishenko, Pivnyev et al. 1997). Under the socialist system of IR trade unions were given the role of developing productivity and overseeing labour discipline. As extensive veto powers, such as the approval for worker dismissal and lay-offs and the right to sanction management, were allocated to trade unions, the institutional framework of IR in Ukraine has historically been generously supportive of workers and trade unions (see section 4.2.1.). However, the comprehensive regulation of every aspect of work implicitly excluded the voluntary regulation of work through trade unions and their negotiations with employers (Ashwin and Clarke 2003). Additionally, Soviet labour law did not contain any provisions for collective action and independent collective organisation of workers. Instead, it limited the articulation of conflicts to individual conflicts only and to bureaucratic arbitration.

[36] According to the Decree of the Cabinet of Ministers of Ukraine Nr. 8-92, dated 15 December 1992, workers' rights to control and elect management were curtailed and labour collectives' rights to set managers' employment conditions abolished.

[37] For example, votes of the labour collective meeting are required in order to delegate the authority to negotiate the collective agreements to a trade union. Collective agreements and negotiations are to be conducted by labour collective representatives in those enterprises, which do not have established trade unions.

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The Impact of the External Factors on the Present Institutional Structure of IR

The regulation of IR in Ukraine was weakened (see section 4.2.1.) when labour markets started to be de-regulated under the pressure of the International Financial Institutions. As a part of this de-regulation, the labour market of Ukraine faced a diversification of employment forms and relationships. In contrast to the full-time employment of indefinite duration common across the FSU, in Ukraine, for example, self-employment, employment by small entrepreneurs and informal employment has appeared (e.g. Cazes and Nesporova 2003). Previously and presently, the scope of labour legislation has been restricted to labour employed on a contract basis (van den Berg 1992) to be enacted through workers' membership in trade unions. Hence, the traditional labour law does not capture the newly emerging forms of work; their regulation remains either under civic law, which provides no worker protection, or is left to the employers' discretion. Also, these new forms of work have found little relevance with trade unions (e.g. Webster, Bischoff, Xhafa et al. 2008).

Further external factors impacting the formation of the institutional framework of IR include the installation of the tripartite framework of social partnership as well as of collective bargaining and conflict resolution infrastructure, based on the labour standards of the ILO (e.g. Casale 1997b, 1999, Hethy 1994b).[38] Both sets of institutions replaced the previously existing regulations (see sections 4.2.2. and 4.2.3.). Trade unions received extensive rights going far beyond their historic veto rights. First, trade unions could now voluntarily regulate some aspects of IR through their negotiations with employers. Secondly, an infrastructure for the articulation of the conflicts of interests was installed, so that it became possible for trade unions to raise workers' issues and negotiate over them, which could potentially be in conflict with those of enterprise management.

The following table (Table 3) gives a general overview of the most significant legal and institutional developments that have taken place in Ukraine since the early 1990s.

[38] Throughout the 1990s and particularly since the beginning of the 2000s the ILO has assisted the Ukrainian government in preparing drafts of the Labour Code and Social Dialogue Law and in establishing an institutional framework for social dialogue (see projects "Promoting fundamental principles and rights at work" and "Consolidating the legal and institutional foundations of social dialogue in Ukraine" funded by the German Government (United Nations 2009).

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Table 3. Legal and institutional developments in the area of IR in Ukraine

Nr.	Year	Law	Major points	Remarks & Amendments
1	1991	Law On Employment	Sets a tripartite coordinating Committee on Employment Promotion.	
2	1991	Law on Indexation of Money Incomes of the Population	Grants trade unions the right to control the indexation of money incomes.	
3	1992	Law on Work Safety	Grants trade unions the rights to control health and safety issues in the workplace.	
4	1993	Presidential Decree on the Establishment of the National Council of Social Partnership	Sets the tripartite bodies on the national, sectoral and regional levels. Defines the Council's functions: negotiation, conflict prevention.	
5	1993	Law on Collective Agreements and Contracts	Regulates the coverage of collective agreements, parties and their responsibilities, negotiations, disagreements, procedure of signing collective agreements, etc.	A part of the international Conventions of the ILO were integrated into Ukrainian legislation.
6	1995	Law on Work Remuneration	Specifies union rights in the area of work remuneration, procedure of establishment and review of minimum wages.	
7	1996	Constitution of Ukraine	Establishes the right to join trade unions, recognised the principles of interest pluralism. Recognised trade unions as public organisations.	
8	1998	Law on Collective Disputes and Conflicts	Establishes long-term bureaucratic solution procedures. Strikes outside of mediation procedures were made illegal.	A part of the international Conventions of the ILO were integrated into Ukrainian legislation.
9	1999	Law on Trade Unions, their Rights and Guarantees of their Activities	Sets pluralist principles as the fundamentals for the development of the union movement. Defines trade unions as organisations representing and protecting	2000 – some provisions of the law were recognised by the Constitutional Court as illegal as they discriminated against all

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			workers. Recognises that trade unions are not state structures and are in opposition to employers and the state (de-statisation of trade unions). Replaces the union centralised governance structure with a federal one. Determines the scope of functions, forms and methods of union work. Sets the principles of social partnership to regulate the interactions between trade unions, employers and the state.	newly established trade unions.
10	2001	Law on Employers' Organisations	Defines the functions of employers' organisations.	
11	2003	Draft of the Labour Code submitted to the Parliament	De-regulates IR (section 4.2.1.) Diminishes the role of trade unions in the IR.	ILO's assistance in drafting the Code. ILO's negative expertise due to the non-compliance of the Labour Code provisions with International Labour Standards.
	2008	Adopted during its first reading in the Ukrainian Parliament		
	2009	Adopted during its second reading		
12	2009	President's Decree on the Establishment of the National Tripartite Socio-Economic Council	Reforms the existing Council of Social Partnership into the National Tripartite Socio-Economic Council.	
13	2010	The Law on Social Dialogue in Ukraine	Defines the representation criteria for participation in social dialogue and collective bargaining for trade unions at different levels.	Violates ILO Conventions ratified in Ukraine. Excludes newly established trade unions from social dialogue and collective bargaining. Restricts union pluralism (ITUC 2011).

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4.2.1. Labour Code

The most central piece of Ukrainian labour legislation has been the Soviet Labour Code adopted in 1971. According to this code, workers' representation is realised through a number of specific veto rights (e.g. approval of dismissals, the use of overtime) granted to enterprise trade union committees (van den Berg 1992). Initial amendments to the Labour Code in the early 1990s did not go beyond formal and superficial changes. A more intensive, deeper revision process has been ongoing since 2003 and was summarised in the new draft submitted to Parliament by the former president of the successor FPU. Mr. Vasyl' Khara, the former president of FPU, Mr. Olexandr Stoyan, and a Member of Parliament, Mr. Sukhyi (Horbach 2008). This draft passed its first and second readings in 2008 and 2009. However, as a result of opposition by some trade unions (being themselves represented in the parliament), this code was not adopted by Parliament right away.

Once adopted, the new labour code will deregulate workers' rights and weaken the position of both workers and trade unions (Horbach 2008, Gudiy 2011, KVPU 2008, 2009a, b). Working days will be prolonged to 10 hours, compared to the current 8 hours. Trade unions' protective capacity in case of dismissals will be constrained: employers will only have to give two weeks dismissal notice as opposed to the current two months; they will no longer require union approval for dismissal; and they will be allowed to regulate enterprise-based IR by means of their own internal provisions. Claims against an employee will only be investigated by the employer (and no longer jointly with trade unions) and employers will no longer be obliged to sign collective agreements or report on their implementation. The code does not include any provisions, which define the enforcement mechanisms of collective bargaining and agreements. Disputes related to the implementation of collective agreements can no longer be taken to labour courts and will now be referred to the contractual parties instead. In a similar manner, employers will no longer be obliged to provide unions with offices and the check-off system of union membership dues will also be abolished.

4.2.2. Collective Bargaining

In the Soviet Union collective bargaining was addressed as "an economic-political measure to mobilise workers and officials around the successful fulfilment and over-fulfilment of the people's economic plan" (Council of Ministers of the USSR, 6 March 1966). Hence, collective bargaining was aimed at regulating production and

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productivity. In this form, collective agreements did not serve as IR regulating mechanisms in terms of wages and working conditions (Ashwin and Clarke 2003).

In 1993 the new Collective Agreements Law abolished this old mechanism of work regulation, when the law incorporated many ILO conventions and recommendations. In formal terms, the core principle of Soviet IR – the commonality of employers' and workers' interests – was abandoned. As a result, a mechanism for wage setting was established through the Law on Work Remuneration in 1995 opening up possibilities for voluntary regulation of work-related issues by trade unions and employers. Both laws envisage negotiation of skill-grade coefficients. Trade unions can negotiate wage increases through the introduction of sector- and enterprise-based scales and coefficients above those that are legally set. Furthermore, trade unions continued to regulate the issues of wages and worker conditions through union-government regulations by setting the wage scales in the General Agreement with the government (e.g. Borisov and Clarke 2006).

Importantly, the collective bargaining law has established new pre-conditions for union pluralism. The law states that all trade unions existing at a given enterprise have the right to collective bargaining. If more than one union exists at an enterprise, trade unions are supposed to establish a joint representation body, which then negotiates with the employer.

In spite of the growing number of collective agreements, the role of negotiation practices has remained quite minimal. Firstly, trade unions have displayed low degrees of responsibility for the negotiation and enforcement of collective agreements. The Ukrainian Federation of Trade Unions (FPU) alone unites around 120,000 primary organisations. As of 2007 the total number of signed collective agreements was only 95,781, with almost half of those collective agreements being in state administration (the highest number of agreements by sector), education, health and social assistance sectors (State Statistics Committee of Ukraine 2008). Collective agreements cover 82.4% of payroll workers, but hardly extend to the increasing number of workers, who are not on a payroll (ibid). Also, employers' additional expenses caused by collective agreements amounted in the same year to only Hr 283 per year (the equivalent of about 20 Euro) per worker. Upon closer examination, it appears that collective agreements mainly restate legal provisions, as in 70.8% of collective agreements the wage scales are the same as stipulated by law; indeed, in only 26.6% of agreements are wages higher (ibid). Incredibly, 2.6% of agreements set the tariff coefficient at a lower rate than stipulated by

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law and 5.6% of agreements envisage lower tariff coefficients than those of the Sectoral Agreement (ibid).

In addition, according to official estimates, compliance with collective agreements averages 94-96% (ibid). In stark contrast, according to the Chief State Labour Inspector, Ihor Sumovs'ky, whose job was to supervise the implementation of labour legislation, violations are detected in 90-95% of audited enterprises, prevalently in the area of pay (Sumovs'ky, State Chief Labour Inspector of Ukraine, interview). As this data demonstrates, collective bargaining has been ineffective in the bulk of cases.

4.2.3. Collective Labour Disputes and Settlement Procedures

Institutions that deal with the settlement of collective disputes have only existed in Ukraine since 1998. The Law on the Settlement of Collective Labour Disputes sets the procedures for conciliation between employer and trade union. It advocates an attempt at conciliation amongst themselves as the first step of the settlement procedure. If this fails, the disputes then go through labour arbitration and mediation processes, the last resort being seeking assistance from the National Service of Mediation and Reconciliation (NSMR). The latter is responsible for the registration of disputes and dispute mediation and it issues non-binding recommendations on how to solve disputes.

Only when the dispute's parties have completed all mediation and conciliation procedures at all stages can strikes and protests be legally declared. The time necessary for all procedures to be fulfilled before a strike is considered legal can take up to several months. The decision to strike should be supported by the majority of workers, or by two-thirds of the labour collective conference. If these steps are not followed, strikes are treated as illegal. Thus, the legislative regulation of labour disputes can contain them through long drawn-out judicial procedures rather than through collective organisation and mobilization. In terms of union formation, it deprives unions of the possibilities to develop their organisational strength from the capacity to mobilise members.

This kind of regulation refers back to the framework of social partnership in Ukraine, as advocated by the ILO. In this specific context it should be noted that policy processes that are based exclusively on consensus making certainly facilitate stable policymaking. However, in specific settings common in Ukraine and the FSU (the lack of the rule of law and the corrupt and non-functioning arbitration system) strong emphasis on consensus-making, as reflected in the institutional and regulatory framework for collective actions, creates significant obstacles to the development of workers' and unions' capacity for

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collective action. These types of processes ensure that collective action is less probable (e.g. Ponomarchuk, the Vice-President of the Donetsk Oblast Council of CBMI, interview), particularly at a time, when militant action has the greatest chance of being effective. In particular, these conciliation and arbitration procedures present obstacles for the activities of independent trade unions (Akimochkin, KVPU's and NPGU's vice-president, interview). Many independent unions emerge during escalating conflicts at the enterprise level. In this sense, the only way to solve a conflict in favour of workers is to mobilise them. However, this is precisely the strategy that the above-mentioned law structurally limits.

4.2.4. The Regulation of Union Activities

The institutional preconditions for union pluralism and union activities in Ukraine were not fully formed until 1999, when the Law on Trade Unions, Their Rights and Guarantees of Their Activities was adopted. This law then recognised trade unions as voluntary workers' associations established to protect their labour and socio-economic rights. Unlike the previous law, which had regulated the activities of only one existing trade union, the law of 1999 enshrined in it the principles of pluralism of trade union representation.

In spite of the fact that the trade union law is new, i.e. not based on socialist laws, Ukrainian law still enshrined the traditional union role of social agent. According to the law of 1999, employers must provide at least 0.3% of wage funds to unions for the organisation of cultural and sports activities for workers. Some unions have focused on increasing this amount to 1% through collective bargaining (Krychkevych, the DBK-4 RUC president, interview). The provision of this money to unions has a benefit to employers in the form of a tax deduction (Konstantinov, Stal'konstruktsiya RUC vice-president, interview). This legal provision thus raises important questions about trade union autonomy and independence. Lacking an active base, union organisations find themselves in a difficult situation, whereby a share of their resources is legally provided by those they may oppose, namely, by the employers. Action against employers is less likely in such cases, as employers are able to threaten to withhold union resources.

The Law on Trade Unions itself became an arena of contestation, to which the fundamental conflict over trade union pluralism was transferred. Firstly, according to that law, unions needed to be registered with the justice authorities, yet their application could be rejected, if the authorities so wished. The requirement to register

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offered reformed trade unions a mechanism to preserve their status quo, because the leaders of reformed trade unions could use their historic close contacts with ministry officials. By contrast, independent trade unions were often denied registration of their organisations (Stegura, KVPU lawyer, interview). In the second instance, the Ukrainian law stipulated that in order to be recognised as a sectoral union, trade unions had to organise the majority of employees in a certain sector. By demanding membership of over 50% of the sector's employees, such provisions excluded union pluralism within the same sector. This requirement favoured reformed unions, which had inherited the membership of Soviet trade unions and which traditionally represented more than half of the workforce in most cases. Thus, the Ukrainian law originally contained restrictions on the activities of newly established trade unions. Following the initiative of the Independent Miners' Union of Ukraine (NPGU) together with the International Federation of Chemical, Energy, Mine and General Workers' Unions (ICEM), the registration and membership threshold provisions were later declared unconstitutional by the Supreme Court (Supreme Court of Ukraine 2000).

The institutional restriction of union pluralism was taken further with submission of the Bill on Social Dialogue in March 2009. The bill was submitted by the successor FPU. Similar to the Trade Union Law, this law demands that trade unions register with the local authorities and sets restrictively high thresholds for enabling unions to participate in enterprise, sectoral or national bargaining and social dialogue. While these thresholds can easily be met by the successor trade unions, as they have inherited their membership, newly established unions, however, cannot meet these thresholds. The newly established KVPU has claimed that this law is an attempt by the FPU "to destroy KVPU and our member unions and establish […] a trade union monopoly" (KVPU 2009b; Volynets, KVPU President, interview); as a result, the law grants successor trade unions an exclusive right to represent workers, by excluding almost all newly established trade unions and worker organisations from IR arenas.

4.3. Trade Unionism in Ukraine

With the installation of the new institutional structure of IR in Ukraine, the formally anticipated role and functions of trade unions have changed significantly. Under socialism, trade unions acted not as interest groups, but as part of the broader system of party control in the form of "transmission belts" (e.g. Ashwin and Clarke 2003, Brown 1966, Clarke 2005, Kubicek 2004, Ruble 1981, Vyshnevs'ky, Mishenko, Pivnyev et al. 1997). Trade unions were structurally subordinated to the Communist Party. They

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'transmitted' the directives of the party to workers (Brown 1966, Lenin 1920, Ruble 1981). Also, their power and legitimacy were granted by the party and trade union membership was automatic. Socialist trade unions were assigned the functions of increasing productivity, ensuring labour discipline, protecting individual workers in cases of legal violations and distributing social and welfare benefits. Instead of receiving wage increases, workers received vouchers for discounted holidays, presents, scarce goods workers could not buy in stores and financial assistance. Essentially, these functions helped to bring unions closer to enterprise management. During the post-socialist transformation this "link between the management and unions has become much clearer" (Kubicek 2004: 25).

This legacy has had enduring implications for the emergence of conflict-based collective representation since socialism collapsed. Firstly, workers continued to contact trade unions, mainly for their social and welfare interests (e.g. UCEPS 2001). Secondly, by promoting exclusively consumption-like union-worker relationships, trade unions continued to act as entities external to workers in terms of collective identity, structure and action. This "alienated collectivism" has been common under the socialist system of IR (Ashwin 1996, 1999: 249):

> *"The collectivity of the labour collective can be defined as alienated, in the sense that workers related to the collective as something standing outside of and opposed to themselves: it was neither perceived, nor realised as the product of the collective organisation of individual workers […]".*

At the same time even rare attempts to establish collective organisation of individual workers were not permitted under socialism, as the Party believed that collective identity, structure and action were already organisationally represented through trade unions and labour collectives. Any attempts to create free or independent trade unions under socialism were thus short-lived (e.g. Grancelli 1988). Workers initiating any such activities were immediately subjected to harsh repressions.[39] All attempts to establish collective organisation of individual workers, therefore, took place outside the structures of existing official trade unions.

When increasing signs of worker activity appeared in the late 1980s, miners' strikes took place in Ukraine in a spontaneous, unorganised and unauthorised manner. The organisations that arose out of these strikes were initially identified as strike committees, because no law on trade union pluralism and strikes existed at that point. The committees later developed into independent trade unions (e.g. Ledin 2009a, b,

[39] For example, in 1968, workers' protests demanding a freeze on meat prices were put down by order of the government. After the well-known, tragic harassment of one particularly persistent union activist named Khlebanov, all attempts to establish free unions were crushed in spite of appeals to the ILO and the International Federation of Trade Unions (Grancelli 1988).

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Ledin, Agapov and Belogradin 2010). This was the first significant split under the Soviet model of monolithic unionism.

After the socialist system collapsed, some reorganisation processes started within both former official and independent trade unions. During the course of union (re)organisation processes in Ukraine, several associations of workers' unions were established through the separation of some unions from the former official FPU and the expansion of newly established trade unions (e.g. Borisov and Clarke 2006, UCEPS 2001, Vyshnevs'ky, Mishenko, Pivnyev et al. 1997). Official trade unions declared their autonomy and independence from the Communist Party, but these successor trade unions were criticised for a lack of in-depth reforms (e.g. Kubicek 2007) necessary to develop the required capacities for successful independent worker representation. Meanwhile, newly established and independent trade unions grew their organisations. Significant differences have characterised the formation and characteristics of these groups of trade unions. Prior to illustrating these differences in greater detail, it is useful to have an overview of the historical development of coverage and the general scope of union activities in Ukraine.

4.3.1. Historic Context: The Development of Union Social vs. Protective Functions

The early evolution of trade unions in Ukraine[40] corresponded to the broader evolutionary processes of trade unions across Europe. Importantly, some Ukrainian provinces in the west were part of the Austro-Hungarian and later Polish empires. Here, trade unions initially emerged in the late 18th century as mutual assistance organisations that mainly provided a type of basic social insurance. Following a law in 1867 which established the protective rights of occupational workers' associations in the Austro-Hungarian Empire and further labour laws that were codified in the early 1920s by the Polish Empire, the obligatory insurance that had previously been provided by trade unions was legislated into a system that functioned independently of the unions. This led to a functional differentiation of trade unions as protective organisations of workers as opposed to assistance associations, the original model upon which trade unions had initially emerged.

By contrast, the more authoritarian regime of the Russian Empire to which the rest of Ukraine belonged, was less conducive to this kind of evolution of the structures of union functions. As a result of the equivalent legislative attempts to establish a system of social

[40] Unless otherwise specified, both this section and the subsequent section are based on the history of Soviet and Ukrainian trade unions published by Vyshnevs'ky, Mishenko, Pivnyev et al. (1997).

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insurance in 1912 in the Russian Empire, the social functions of unions were strengthened. Notably, in the regions ruled by an authoritarian regime, trade unions only spread to the area three decades later than in the rest of Ukraine. Following the overthrow of the monarchy, the All-Ukrainian Central Council of Trade Unions was established and proclaimed its independence in 1918. Shortly after its establishment, the Council's leadership was repressively replaced by the Bolsheviks, who governed Russia after the removal of the Tsar. The Council itself was reformed into the southern office of the All-Russian Central Council of Trade Unions (VTsRPS). Trade unions themselves were reorganised in line with the principles of 'democratic centralism', which enabled the establishment of the VTsRPS' control over lower-level union organisations.

The ongoing installation of socialism during the early 1920s increasingly constrained and limited the potential conflicts of interests between workers and enterprise administration and the Party-state. In 1920, Lenin defined the new role for the trade unions under the communist system of governance in terms of 'transmission belts' (Lenin 1920). The role of 'transmission belts' presupposed the unions' role as tools for ensuring that the wishes of the central planners were fulfilled at the enterprise-based level (e.g. Herod 2003). For instance, the main responsibilities of the union became building support for enterprise administration and the provision of 'strike breakers' in cases of strikes.

The unions' protective functions continued to diminish drastically in this part of Ukraine in the late 1920s and early 1930s under Stalin's repressive regime. By 1932, the elimination of non-obedient union leaders was completed by means of repression and harassment.[41] Stalin abolished the Ukrainian office of the VTsRPS and the Council of the VTsRPS was installed in place of the Ukrainian office.[42] The day before the abolition of the Ukrainian office of the VTsRPS, the VTsRPS itself was merged with the People's Commissariat of Labour (the equivalent of the Labour Ministry) by state decree. The state also transferred sanatoria and holiday establishments (that had previously been owned by the social insurance fund) over to the management of trade unions. As a result of this merger, trade unions took over the functions and assignments of the People's

[41] Vyshnevs'ky et al. (1997) cite an example where, as a result of Stalin's repression, the inhabitants of 24 apartments of a railway-owned, 42-apartment building were imprisoned and later killed en masse.
[42] The All-Ukrainian Central Council of Trade Unions was only reinstated in 1948. The reinstatement of the 'Council' was only formal. This is proven by the fact that the first congress of these trade unions only took place in 1958 – twenty-six years after the previous congress of trade unions.

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Commissariat of Labour, including its social insurance functions. Thus, by 1933, the process of the 'statisation' of Ukrainian trade unions was complete.

When both parts of Ukraine (the one that had been previously controlled by the Polish Empire and the one that was controlled by the Soviet regime) were united in 1939 under Soviet governance, all remaining leaders were replaced by appointees of the Communist Party. There was no one left to advance the ideology of independent union representation, as it had been previously known (Buketov 1999). Under Stalin's dictatorship, trade unions were additionally assigned the functions of control and discipline. Their tasks included basic attendance monitoring at the workplace. To this end, trade unions were given the responsibility to enforce discipline and punish workers for any violations. Unions at the time supported the adoption of several additional laws that further diminished workers' freedoms,[43] thus strengthening their capacity to control workers.

The 'statisation' of trade unions, as expressed in the merger of unions with state organs, abruptly interrupted the evolving functional differentiation of trade unions: on the one hand, the development of their protective functions in the formerly Polish owned part of Ukraine, and on the other, the 1918 installation of independent trade unions in the post-Tsarist Ukraine. In contrast to any protective function, by the end-1930s trade unions had been turned into administrative organs of the state with functions that were completely opposite to those of conventional trade unions; as part of the administration, the unions disciplined workers and strengthened the labour collective. This particular union development led to the trade unions' roles becoming anti-protective, as compared to the classic role of trade unions in representing workers in their relations with employers. Given this significant historical prelude to union development, RUCs have formed in Ukraine on the basis of these particular union roles and functions underpinned by union control and distribution; meanwhile the ITUs have attempted to depart from these functions of control and distribution.

4.3.2. Union Structuring and Density

According to unions themselves, the current density of unions in Ukraine constitutes approximately 50% of the workforce (Kondryuk, FPU's vice-president, Volynets, KVPU's and NPGU's president, Akimochkin, KVPU's and NPGU's vice-president, interviews). This

[43] These laws prohibited workers from changing their place of employment without permission from the enterprise administration, they punished workers for poor quality work and they allocated enterprise management the right to transfer workers to other regions.

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contrasts starkly with the almost 100% unionisation rate, which had been common under the socialist IR. The decline of union membership was due to the combined effects of the abolition of universal membership, privatisation and opposition by private owners to the establishment of unions (e.g. Kubicek 2004, Sayenko and Pryvalov 2003, UCEPS 2001).

Besides these structural causes of membership decline, workers' withdrawal indicated a severe disillusionment of workers with trade unions. Sometimes unions of whole organisations and, in rare cases, whole sectors or occupations withdrew. As workers' disillusionment with trade unions has a historical background, trade unions are still perceived in Ukraine as 'old', communist-style organisations (e.g. Shangina 2001, Verednykova 2005, Yatsenko and Piskovy 2011). According to one survey, only 18.7% of union members believe that unions are institutions that should and can protect their rights (UCEPS 2001). This negative image of trade unions has been continuously reinforced, because trade union activities have barely addressed the cost and consequences of post-socialist transformation for workers. Also, unions have continued to focus on traditional social services, such as the distribution of discounted holiday vouchers, presents and the organisation of free-time activities (Sayenko and Pryvalov 2003). According to UCEPS (2001), 55.8% respondents pointed out that they have not had any assistance in terms of protection of their work-related interests; 25.7% received New Year presents; 23.2% received discounted holiday or recreation vouchers from trade unions; 17.5% received material assistance; and 7.3% received discounted tickets for free-time events. Only 5.8% of workers surveyed were consulted by trade unions on their legal rights and 1.1% were assisted in their individual conflicts with an employer (ibid, Shangina 2001).

In spite of the still comparably high proportion of workers remaining union members, union coverage has not ensured the organisational strength of trade unions necessary for conflict-based worker representation. Around three-quarters of union members in Ukraine can be described as formal, inactive members (Bychenko 2001, UCEPS 2001). This is demonstrated by the results of one survey, showing that 43.7% of union members have habitually remained in the same former, official union and 20.2% of members originally joined, because it had been customary at their enterprise (ibid). In addition, 12.2% reported that nobody had been asked, if they consented to being a trade union member (ibid). In some cases, check-off of union membership dues even takes place without a membership declaration having been submitted by a worker (Ditkovsky,

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Kyiv Metro ITU's president, interview I).[44] Such cases reflect the persistence of the socialist practice of 'automatic membership'.

In addition to the factors pointed out above, the development of a strong trade union movement in Ukraine was inhibited by a variety of existing, competing unions. Inter-union competition mainly took place between reformed (successor) and independent trade unions. As long as independent trade unions questioned the legitimacy of reformed trade unions, the reformed trade unions responded with the exclusion of independent trade unions from different IR arenas (Akimochkin, KVPU's and NPGU's Vice-President, interview; Volynets, KVPU's and NPGU's president, interview). As a result of the critical position of independent unions towards the government, employers and reformed trade unions, many newly established local union organisations were immediately destroyed either by local authorities or by employers and reformed unions (ibid). For instance, with the check-off system of membership dues exemption being in place in Ukraine, employers often refused to transfer the deducted membership dues to independent trade unions as a means of counteracting these independent unions (Volynets, KVPU's president, interview to Gavrysh 2003). This imposed significant constrains on the development of independent trade unions in Ukraine.

4.3.3. Reformed Trade Unions

In 1990 the Council of Trade Unions of the Ukrainian Soviet Socialist Republic was reformed into the Federation of Independent Trade Unions of Ukraine. One year later, the latter was renamed the Federation of Trade Unions of Ukraine (FPU). Currently, the FPU declares membership of over eight million workers (down from 26 million in 1989), including over 2 million students and pensioners (Mr. Kulik, FPU's acting president, in an interview with Zvorski (Zvorski 2011)). Numbers had started to decline as workers and single trade unions started to withdraw from the Federation.[45] Yet successor trade unions have barely addressed this decline, failing to develop a comprehensive organising strategy.

In the early 1990s FPU's leadership decentralised the organisational structure in order to abolish the previous structure of 'democratic centralism'. As a result of this decentralisation, around 90% of membership dues remained with enterprise unions

[44] For example, in 2007 when workers of the Kharkiv metro asked for the reimbursement of their union dues, because they had never applied for union membership, they were asked to prove that they had never applied for union membership (Diktkovsky, Kyiv Metro ITU's president, interview I).
[45] For instance, both the trade union of railway workers (766 000 members) and the trade union of workers of the Academy of Sciences (55 000 members) withdrew from the Federation (UCEPS 2001).

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(Kondryuk, FPU's vice-president, interview, Shylov, FPU's head of the international department, interview). The decentralisation of the FPU structure resulted in a disconnection between the different levels of union activities. For example, when enterprise union leaders faced conflicts with their employers, enterprise-based unions found themselves isolated from the higher level union bodies (Krychkevych, DBK-4 RUC president, interview, Pechenin, RUC President at Sukha Balka, interview). Meanwhile, the Federation still "preserved a Soviet trade union tradition of simultaneous membership of hired workers and employers" (Shangina 2001, UCEPS 2001: 28). Consequently, these FPU reforms were described as 'cosmetic', as the changes did not go beyond organisational restructuring (Kabalina and Komarovsky 1997) and have still not achieved a clear demarcation between the union itself and employers. In the context of this critique the FPU was seen as "a largely conservative organisation that did little more than to issue hollow proclamations while millions of workers were pushed into poverty" (Kubicek 2004: 29).

Over the years of its development, the FPU faced frequent changes in its leadership, with the FPU leadership becoming increasingly deeply implicated in the Kuchma regime (Borisov and Clarke 2006). All FPU's former presidents resigned against a background of controversy related to the FPU's political position (discussed in more detail below) and inherited property, undermining FPU's legitimacy in the eys of the public. By inheriting financial and material resources of Soviet trade unions the FPU became one of the richest collective property owners (Budzan 2002). The assets the FPU inherited amounted to approximately 3 billion dollars and further profits were generated as a result of commercial activities on the basis of those assets (Shangina 2001, Volynets, KVPU's and NPGU's president, interview; Akimochkin, KVPU's and NPGU's vice-president, interview). The FPU's financial standing was elucidated in 1993 by its former president Olexandr Stoyan. Stoyan declared that it was necessary for the FPU to strengthen the financial base of the Federation through commercial activities ("Trade unions' newspaper", 6 February 1993). Consequently, as a rich organisation, the FPU became financially independent from the dues money of its members. By choice, however, the FPU put itself into a dependent relationship with the government, as some politicians constantly threatened to withdraw the property rights from the FPU on different occasions,[46] while the FPU's legitimacy was repeatedly attacked in public (Kovalenko 2006, Martemyanov 2011, Shangina 2001).

[46] In 2011, for example, the Prosecutor General's Office opened 35 criminal cases and submitted 147 cancellation decrees regarding the illegal appropriation of 45 property units and land plots by the FPU ("Zerkalo Tyzhnya", web-news, dated 14 September 2011).

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As living standards deteriorated throughout the 1990s, the Federation publically criticised government policy. However, political criticism on the part of the FPU has never resulted in nation-wide strikes or protests.[47] The then president of the Federation, Olexandr Stoyan, publicly declared that "the trade unions of Ukraine supported the President's request to retreat from strikes" (UTN news, dated 4 April 1994). Despite declaring this as the FPU's position, it differed from that of the FPU's affiliated branch and those of regional union federations, some of which, meanwhile, have conducted ad hoc actions in order to challenge government policy. Against this background in December 1995, Stoyan, together with the then prime minister of Ukraine, received an award "For achievements in social partnership", for his "particular contribution to the conclusion of the General Agreement, the social partnership development and peace" (Mist, 29.10-05.11, 1995 cited in Bodnar, Shara, Kudina et al. 1996). Meanwhile, hardly receiving any support from the FPU, enterprise-based union organisations united with employers in their efforts to protect their enterprises (ibid).

During the presidency of Olexandr Stoyan (1992-2005), the FPU's lack of political independence from the governing Party of Regions served as a particular cause for criticism (Yakymenko 2009). Stoyan was elected in the 1992 elections to the parliament as a member of the oppositional party Batkivshyna and changed afterwards to the governing Party of Regions. He was re-elected during the next four parliamentary elections. Shortly before the presidential election of 2004 the FPU concluded its alliance with then prime minister and candidate for presidency from the governing Party of Regions, Viktor Yanukovych (Kuzio 2007). During the election, Yanukovych was alleged to have taken part in falsifying votes, which ultimately allowed him to win. The FPU leadership, nevertheless, ignored the allegations against Yanukovych. This led to considerable tensions within the FPU, since some sectoral and regional trade union organisations opposed Yanukovych's corrupt regime (Borisov and Clarke 2001). During the protests against the fraudulent vote of Yanukovych – identified later as the Orange Revolution – Stoyan publicly appealed to the President of Ukraine to prevent protests on the streets. This action, on the part of an organisation claiming to represent workers, prompted worker outrage. The reaction was clear and immediate; the central FPU building was occupied by protesters and Stoyan was forced to flee.

[47] For example, the FPU once declared countrywide strikes which were aimed at stopping the decline in living standards and consequently stopped work at enterprises for one hour. As one can imagine, it was much easier to sustain a one-hour work freeze than a general strike at all enterprises. Such tactics were used by the FPU on a regular basis throughout the 90s (Bodnar, Shara, Kudina et al. 1996).

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The new FPU President, Olexandr Yurkin (2005 - 2008), focused his efforts on enhancing the FPU's public image, which lead to a new PR-policy. Under his presidency, a new concept for the development of the FPU (FPU 2005) appeared and the FPU Congress adopted a detailed and advanced plan of action (FPU 2006). The FPU adopted an extensive range of ambitious and (barely achievable) goals to be implemented over the next five years. These goals required wider involvement in politics, economics and society. For example, the plan included the creation of 4 million workplaces, wage increases of four to five times minimum wage levels (as compared to the persistent 80-90% of the subsistence minimum) and an increase in the living standards of workers so that they would be comparable to those of Western Europe. The FPU also declared it would reform the medical and educational spheres, and to facilitate growth in the housing markets. Notably, for the first time in history, the FPU committed itself to establishing cooperation with trade unions outside the FPU and to coordinating union activities across the country with the other unions (FPU 2005, 2006).

It was during Yurkin's term in office that the debate on the internal structuring of the FPU was next resurrected, when the FPU embarked on a process of 'internal reforms' (Yurkin, FPU's former president, interview, cited in Alexeev 2006). These reforms aimed to strengthen and broaden the authority of primary union organisations, branch trade unions and oblast (regional) trade union councils (ibid). The structural reforms were hardly realised. As the government threatened to take away the FPU's property (e.g. Borisov and Clarke 2006), the bulk of activities that trade unions continued to concentrate on was retaining their property. Later on, even the few reforms within the FPU came to a standstill, as Yurkin resigned in 2008 after his vice-president had been caught offering a bribe (Zvorski 2009).

Despite several announcements, the extraordinary congress of the FPU did not take place after Yurkin's resignation until 2011. In November 2008, the FPU Council elected Vasyl' Khara, Party of Regions MP and President of the Donetsk regional council of trade unions, as the new FPU President. Similar to Stoyan and Yurkin, Khara's presidency has also been constantly surrounded with controversy. As he was elected by the FPU Council and not by its congress (as the FPU Constitution stipulates), the court of the city of Kyiv overruled the decree and legal rulings issued earlier by the Ministry of Justice, which had confirmed the legitimacy of Khara's election and presidency (Kyiv Post, 3 March 2009). However, Khara remained the FPU's President until his reelection by the FPU Congress in 2011. Under Khara's Presidency the FPU remained committed to its previously adopted concept of development and plan of action. The controversies

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related to the FPU's lack of political independence as well as to union property have since escalated. Shortly after his election by Congress in March 2011, in November 2011 Khara resigned. As he explained in his written statement, he "[...] can no longer lead the organisation, in which the majority of middle and lower level [union] presidents are chronically idlers, professional betrayers and provocateurs [...] glued to employers" (Khara, former FPU's president, written statement, Popovich and Zvorski 2011). Shortly before Khara resigned, an inspection by the Prosecutor General made public the appropriation of various FPU holiday resorts by both Khara's daughter for the total price of 20,000 Euro (Zerkalo Tyzhnya, 08 November 2011) and by FPU leaders (Gavrylyuk, Deputy Prosecutor General, interview to the newspaper "Kommersant Ukrayina", 14 September 2011, Mirror Weakly, 14 September 2011).

On 11 November 2011 the FPU Council elected Yuriy Kulyk to chair the Federation until the next congress. Kulyk reinforced the compliant position of the FPU:

> *[FPU's] number one goal [is] to establish social dialogue. [...] Not only in Ukraine, but all around the world negotiations are the key means of trade unions in order to achieve the improvements in workers' social and economic conditions. [...] If we fail to come to an agreement with the political authorities, we can move on to other means of achieving our goals such as: pickets, boycotts and strikes. However, the first and foremost task of trade unions is to come to an agreement. To come to an agreement — it is my style, it is to what I have always been heading towards, and this is what I worked upon in the first three days of being FPU's president (*Kulyk 2011*).*

To this end, Kulyk met the Head of the Ukrainian Parliament and different MPs in the first three days of his presidency (ibid). By indicating this 'partnership'-oriented position of the FPU, Kulyk's strategy was the one of enhancing the establishment of more solid contacts in politics (ibid). He expressed the intention to improve and tighten the dialogue with the political decision-makers and to raise their awareness of the FPU's problems in the Ukrainian parliament.

4.3.4. Independent Trade Unions

Independent trade unions have been structured and have developed in a markedly different manner from that of the FPU. Independent trade unions first arose out of miners' strike committees in the Eastern Donbass region of Ukraine in 1989. Remarkably, one impetus for their organisation that was stressed by different union leaders was the impotence of existing trade unions to address the decline in workers' living standards that had begun in the last years of socialism (e.g. Tretyakov, Sukha Balka ITU's president, interviews I and II, Ditkovsky, Kyiv Metro ITU's president, interviews I-III). These unions emerged in opposition to the government and existing miner trade unions that had ignored workers' growing complaints over low wages and price inflation (Volynets, KVPU's president, interview; Fundovny, VPONU's president,

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interview; Panasenko, FTUMWU's president, interview). Similar initiatives and independent unions followed among transportation and metro workers (Ditkovsky, the president of the independent trade union of Kyiv metro workers, interview). Starting with economic demands to stop inflation and adjust workers' wages, the protests of independent unions soon grew into political protests, which demanded the resignation of the government and establishment of a market economy (e.g. Crowley 2001).

No law on trade unions existed at that time, so these newly established independent unions acquired legitimacy and recognition through the scale of their collective action (Kabalina and Komarovsky 1997, Ditkovsky, Kyiv Metro ITU's president, interview, Sydorenko, Zaporizhya clinical hospital ITU's president, interview). As independent unions initially appeared critical of reformed trade unions and enterprise directors (Akimochkin, KVPU and NPGU vice-president, interview), employers and former official unions both responded with outright opposition to independent trade unions, in some cases working in unity with each other (ITUC 2010, 2011, ILO 2006).

As the economic situation worsened and workers' wages could no longer ensure even the purchase of basic food necessities, independent miners' unions went on strike again. In 1996, workers affiliated with the Independent Miners' Union walked 600 km to the capital city of Ukraine, Kiev, and demanded the payment of wage arrears (Ledin 2009a, b). Afterwards, the leaders of the march were threatened with imprisonment. Under threat of new strikes, the government stopped the criminal allegations against union leaders. Instead, independent union offices were illegally searched, their safes seized and their documentation and computers stolen (Tretyakov, Sukha Balka ITU's president, interview I). In answer to this persecution, miners went on a hunger strike.

However, throughout 1994-1996 it was notable that the leaders of independent trade unions could not effectively develop a stable unifying strategy of worker representation (Bodnar, Shara, Kudina et al. 1996). Structurally dispersed independent trade unions had been consolidated in the early 1990s following numerous attempts, which coordinated their activities into the Free Trade Union Association. During the course of the structural consolidation of the independent trade union movement, however, it became evident that a united vision of how this unionism should look and a clear decision on which strategy to pursue were lacking (ibid). The crisis of union leaders' ideas about the role of independent trade unions was the origin of the divisions between the leaders of different independent unions in their negotiations for an all-Ukrainian strike, planned for 18 January 1994, which aimed to oust the prime minister at the time

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(ibid). This disagreement resulted in the withdrawal of some unions from the first Free Trade Unions Association, following which the association dissolved. Later actions and strikes were organised by separate branches of trade unions in an uncoordinated manner (Vyshnevs'ky, Mishenko, Pivnyev et al. 1997). In place of the association, independent trade unions established the Confederation of Free Trade Unions of Ukraine (KVPU) in 1998. At its start, the KVPU had 90,000 members in total. The confederation was founded on the initiative and on the basis of Ukraine's Independent Trade Union of Miners (NPGU) providing the bulk of the KVPU's membership and resources.

The overall situation of independent trade unions made it clear that an isolated occupational unionism had few prospects in view of the continuing dominance by former official trade unions (Tretyakov, Sukha Balka ITU's president, interview I; Ditkovsky, Kyiv Metro ITU's president, interview I). It was necessary, on the one hand, to structure and improve the organisation and, on the other, to expand the activities of independent unions into other sectors, coordinating them in a better manner. This understanding prompted leaders of independent unions to launch the debate and activities to organise workers beyond the frontiers of the mining sector (Akimochkin, KVPU's and NPGU's vice-president, interview; Tretyakov, Sukha Balka ITU's president, interviews I-II). As a result, significant organising activities were undertaken and independent unions started to emerge in sectors of the economy, in which they had not previously been represented, including the medical and education sectors. Yet many of these newly established trade unions were immediately destroyed (Akimochkin, KVPU's and NPGU's vice-president, interview).

The expansion of independent trade unions in the 1990s and early 2000s, especially within coal mining, coincided with the consolidation of oligarchies and financial-industrial groups that were partly concentrated in the same sectors (section 4.1.). During this period, independent trade unions faced harassment and persecution that intensified under Kuchma's presidency in the early 2000s (Volynets, KVPU's and NPGU's president, interview, Ditkovsky, Kyiv Metro ITU's president, interview I, II). According to the KVPU's estimates, sustained pressure on the independent trade unions resulted in the loss of about 133,000 members within one year in 2002 (Volynets, KVPU's president, interview with Gavrysh (Gavrysh 2003)). Between 2002 and 2004, for example, the KVPU president was physically beaten five times by the police in public places (ITUC 2005, ILO 2006). His family members were also persecuted and in 2004 his son was kidnapped and seriously beaten (ibid). Leaders of regional and local trade union

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organisations were persecuted as well. Due to the heavy persecution and harassment of members, as well as the physical abuse of leaders and activists, the KVPU filed cases with the Ukrainian courts, but the court hearings did not yield results. Consequently, the KVPU filed a complaint with the ILO's Committee on Freedom of Association (ILO 2006). It took the ILO and the government several years to investigate the complaint. Meanwhile, the government tried to deny the assaults and to exclude the representatives of the KVPU from the delegations to the annual ILO conferences (Akimochkin, KVPU's and NPGU's vice-president, interview, Volynets, KVPU's president, interview).

In addition to such pressure, the KVPU suffered from a constant lack of resources. While the FPU employed some of the best economists and lawyers, independent unions could only afford to employ experts, who could not find better jobs, given that the KVPU could only pay very low wages (Volynets, KVPU's and NPGU's president, interview). The independent union movement also lacked experienced leaders in newly emerging enterprise-based unions, as the financial and technical capacity of the KVPU to educate all newcomers was also limited. Both organising and education activities of the KVPU were only made possible due to the technical assistance of other organisations. Thanks to bilateral cooperation with foreign trade unions, with the then International Confederation of Free Trade Unions (now the ITUC) and some global union federations as well as the Solidarity Center of the American AFL-CIO, KVPU received training and education assistance in organising and educating union leadership.

In spite of the difficulties surrounding the establishment of new trade union organisations, their proportion increased threefold during the period of 2000-2004 (Chernyshev 2006). At present, the KVPU has 275 000 members (Volynets, KVPU and NPGU president, interview; Akimochkin, KVPU and NPGU vice-president, interviews). Even though this number remains very low in comparison to the present eight million members of the FPU, the KVPU's strategy of extending unionism across branches, professions and enterprises has led to an increase in KVPU's growth (ibid). It currently has five branches (teachers, miners, transportation, medical workers and football players), as well as the All-Ukrainian Trade Union, "Defence of Justice", uniting primary organisations across different sectors.

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4.4. Conclusion: the Implications of the Co-existence of Reformed and Independent Trade Unions for Worker Representation

This chapter has addressed the formation of the IR institutional structure and trade union developments within the Ukrainian context. The chapter showed that in Ukraine, the external context surrounding unions (authoritarian governance and an oligarchic economy) has created unfavourable conditions for the establishment of new institutional structures to deal with conflicts of interest. As political and economic elites lobbied for their own preferential treatment, the articulation of conflicting interests through formal channels was difficult.

The conditions described above provided a challenging context for the enactment and enforcement of the institutional framework of the IR system. Firstly, although basic, internationally recognised premises in the form of the pluralistic model of IR (including the freedoms of association and bargaining and the right to strike) were integrated into the institutional infrastructure through the drafting and adoption of new laws throughout 1990s, the lawful exercise of these principles cannot be taken for granted. In the context of the weak rule of law, it has been possible to violate laws without penalty. Developing under such conditions, both FPU and KVPU confronted these challenges and stretched the traditional boundaries of IR. For instance, in order to exercise their rights in terms of worker representation, they first had to ensure that the law was enforced.

Secondly, the validity of the assumption that weak worker representation has been due to unions' efforts to reproduce their traditional role and, consequently, their inability to represent workers is hardly questioned by the academic literature, which focuses solely on union weaknesses across the FSU. The reorganisation processes of Ukrainian trade unions have been unstable, as shown by the frequent changes of FPU presidents and the disintegration of the independent trade unions' Association in 1997. Certainly, these unstable reorganisation processes of Ukrainian trade unions show union weaknesses. At the same time, as the differences are made clear in the examples of the Ukrainian major centres of unions – the FPU and KVPU – that have been put in place since the early 1990s, the analysis of the specific features of the FPU and KVPU shows that such arguments may not prove correct right away for all trade unions. As the problems of both KVPU and FPU discussed above show, the root of these union weaknesses can be found in a deeper understanding of different choices of trade unions and their historic development along different paths.

Firstly, the mission statements by the newly established KVPU and reformed FPU reveal stark differences in their understandings of what worker protection actually means. The

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KVPU's mission is aimed at raising the workers' awareness of their identity based on a respect for their rights as hired workers as provided for in law. This indicates a rights-based approach to worker representation that has been accepted as a basis for independent trade unions and the KVPU. As the mission of the KVPU states,

> *"[t]he major task of free trade unions, trade unions of the new European democratic type, is to make a labourer aware of the ideology of freedom, justice and solidarity. No one is going to promote the rights of a person, unless s/he puts effort in it. Therefore, now it is the major mission of trade unions to change the consciousness of hired labourers in order to raise their awareness that one has to fight for one's own rights […] The mission of trade unions is to create a civil society, to protect hired labourers and to promote the social rights of citizens"* (KVPU, n.d.).

This formulation of the mission by ITUs and KVPU contrasts with the formulation of the mission of the FPU. The statement of the FPU reveals a rights-based approach to worker representation but it refers, first and foremost, to the rights of its union organisations:

> *"[T]he promotion and representation of the interests, and the protection of the rights, of member organisations of the FPU; the coordination of their [organisations'] collective actions; the promotion and defence of labour, socio-economic rights and the interests of union members in relations with the state and regional authorities, in their relations with employers, organisations and associations, as well as with other associations of citizens"* (FPU n.d.).

As this extract from the FPU's mission statement shows, the FPU's concerns are orientated towards member organisations. Given the enduring membership of many workers in managerial positions, the mission to represent the FPU's affiliated organisations refers to the representation and protection not only of workers but also of managerial staff. In 2003, on the back of this persistent membership of managerial workers in the FPU's affiliated unions, the then-ICFTU's mission to Ukraine postponed the affiliation of the FPU.

Identifiable differences between the KVPU's and FPU's missions are further indicated through the listing of violations that both organisations are concerned about:

> *"[T]he Federation of Trade Unions of Ukraine (FPU) has recorded 43 unique cases in 32 companies where the management did not comply with the Law on Trade Unions, their Rights and Guarantees of Activity. Violations range from failure to transfer special funds that the companies are obliged to allocate to trade unions, the refusal to utilise membership dues check-off mechanisms, the interference in unions' internal matters and obstruction of the work of their representatives, to serious cases of trade union discrimination" (ITUC 2010).*

In contrast,

> *"Members of the Confederation of Free Trade Unions of Ukraine (KVPU) have [...] suffered from anti-union harassment, and their employers often ignored the right to organize and bargain collectively. KVPU reports that turning to the courts or law enforcement bodies for protection is hardly ever effective, and sometimes local authorities side with the employers against trade unions. However, there were also reports about unfairly dismissed trade unionists being reinstated, and KVPU has won over 20 different court cases over the last four years just against one company"* (ibid).

At first glance, these reports demonstrate that both union associations reinforce their rights-based approach to worker representation by fighting for the enforcement of legal rights. Upon closer inspection, it is evident that the FPU is more concerned with the violation of the organisation-related legal provisions that benefit member unions as

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organisations (e.g. a transfer of special funds, check-off of membership dues or interference in union matters). Meanwhile, in the case of the KVPU, workers' individual and collective rights, such as the right to organise, are stressed. This brief excursion into the positioning of the two national union associations supports the argument that there are systematic, representative differences in the positions of ITUs and RUCs.

Secondly, stark differences have characterised the subsequent development of reformed and independent trade unions. The FPU declared autonomy under very specific constraints, including its political alliances with governing parties and commercial activities. Although the FPU distanced itself from its former role as 'transmission belts', its historical development and resulting legitimacy-related problems have inhibited the transformation of its role and functions in terms of conflict-based worker representation. Controversy surrounding its leadership, political position and commercial activities has made it difficult, if not fundamentally contradictory, for the Federation to challenge the government and employers, and the Federation has been attacked in public on various occasions. In contrast, independent trade unions developed from generating and articulating conflicts as their starting point. This approach of the KVPU and independent trade unions reveals more conflict-based forms of worker representation, bearing a greater similarity to those common under the pluralistic system of IR. At the same time, it also reveals that high set-up costs were needed.

As the result of having been established at different points in time, successor and independent trade unions have each confronted different organisational problems over the course of their development. As different controversies surrounded the FPU, it was forced to develop new sources of legitimacy and ways to retain its property and preserve its declining membership. These overarching organisational challenges hindered the FPU's development of its representational capacity, not because it lacked representational capacity itself but rather, these organisational challenges (legitimacy, property and membership) threatened the union's very ability to continue to exist. In contrast the KVPU's organisational issues have not included problems of legitimacy in the eyes of the workers. The independent trade union won its legitimacy by conducting strikes and protests, especially throughout 1990s. Instead, the KVPU's organisational problems revolved around high set-up costs and a lack of the resources necessary to ensure the KVPU's daily operations, to found new independent organisations and educate new leaders. These particular organisational problems, which challenged the

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FPU and KVPU show that reformed and independent trade unions have been subject to contrasting sets of challenges.

Over and above these re-organisational problems confronting FPU and KVPU and constituting a part of their formation processes, rivalry and conflicts between reformed and independent trade unions have made learning, coordination and cooperation between both trade unions difficult in practice. The relationships between reformed and independent trade unions have been very problematic. Under Stoyan's presidency the FPU consistently and continuously refused to co-ordinate its activities with those of the KVPU. For instance, for some time, the FPU repeatedly refused to include the representatives of KVPU and other alternative unions into the tripartite bodies that negotiate the General Agreement (Akimochkin, KVPU's Vice-President, interview). The interactions between the KVPU and FPU improved during Yurkin's Presidency at the FPU, as a coordinating council of different trade unions was established (Volynets, KVPU's President, interview). Then, the FPU even agreed to provide the KVPU with several offices in the main trade union building that the FPU had inherited from the Soviet trade unions. Yet this approach adopted by Yurkin, co-ordinating union activities with the KVPU and developing a unified position of all trade unions, did not last long because Yurkin resigned from the position of the FPU President soon after his election. Under the new FPU President Khara any interactions between the two union organisations came to a halt. when the FPU reverted to its policy of non-cooperation with other trade unions. The lack of coordination, cooperation and unified positions of both trade unions resulted in union rivalry with union resources not being channelled into worker protection but into winning inter-union conflicts and, in case of independent trade unions, the inclusion into different IR arenas.

Additionally, as the KVPU has continuously criticised the FPU and its attempts 'to preserve FPU's monopoly' and to preserve the union's property exclusively for itself, independent trade unions threatened the FPU's legitimacy, which had already been damaged by the controversies surrounding the FPU's political position, leadership and its commercial activities. Similarly, albeit in a different form, the FPU threatened the further existence of the KVPU organisations. The FPU excluded KVPU representatives from different IR arenas and continuously refused to provide the KVPU with any of the offices inherited from the Soviet trade unions. This refusal of the FPU to share the inherited properties aggravated the KVPU's financial problems.

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All in all, inter-union rivalry inhibited the enforcement of the principles of pluralistic interest representation, which was the cornerstone of formal institutions. Furthermore, this rivalry had significant consequences for the subsequent enactment of a new institutional infrastructure. The analysis above clearly showed that this same institutional infrastructure became the object of inter-union rivalry and competition. First and foremost, collective bargaining law became an arena of contestation between different trade unions. Formal requirements demand that all trade unions existing at the same enterprise or in the same sector establish joint negotiating bodies in order to enter into collective negotiations and conclude and sign agreements. However, many cases can be cited, in which successor trade unions simply have avoided establishing joint negotiating bodies by postponing or hurrying the days of negotiations without giving notice to other unions, or just by signing an agreement with the employer on their own.[48] Such practices are not limited to the level of enterprise-based IR, but have also been channelled to higher levels, as in the case of the Free Trade Union of Education and Sciences of Ukraine (VPONU) and of the Free Trade Union of the Medical Workers of Ukraine (FTUMWU), despite the fact that these trade unions committed to conforming to all sectoral union requirements (Fundovny, VPONU president, interview; Panasenko, FTUMWU president, interview). In many cases, trade unions have failed to establish a joint negotiating body, and as a rule employers choose to negotiate with the biggest union at the enterprise, which is a successor trade union in the majority of cases. Hence, independent trade unions were frequently excluded from the collective bargaining and social partnership. This re-enforced the historic domination of successor trade unions within the IR arenas, while depriving independent trade unions from an opportunity to bring their issues relating to worker representation into IR arenas.

A similar conflict can be observed in relation to the Law on Trade Unions and the later Law on Social Dialogue that was submitted by the successor trade unions. By ensuring the further operation of the successor FPU within different IR arenas, due to its inherited position, the law helps the FPU to establish more stable pre-conditions for its organisational preservation. At the same time, as both these laws have explicitly excluded or tried to exclude any other union organisation from IR arenas, they threaten the access and participation of independent trade unions.

Within the IR arenas, this inter-union rivalry has therefore led to the development of somewhat surprising conflict lines. Rather than being between workers and trade

[48] For many examples of such cases see Case No. 2388 filed by the Confederation of Free Trade Unions of Ukraine (KVPU) with the ILO Committee of Freedom of Association since 2003 (ILO 2006).

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unions on one side, and the owners of capital on the other, conflicts have instead most commonly and frequently existed between differently formed, reformed and independent trade unions. In this way, the source of union weakness in Ukraine has not been the reproduction of the traditional form of worker representation, as was commonly argued in the literature. Instead, the conflict immanent in the ideational and organisational pre-conditions of the FPU and KVPU has led to intense inter-union rivalry and conflicts, the momentum of which has been channelled into the adjustment of labour laws. This has caused a notable lack of a unified position within institutional arenas, thus inhibiting the development of strong worker representation in Ukraine.

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