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FREE TRADE UNION INSTITUTE

FINAL REPORT

ARD/CHECCHI RULE OF LAW PROGRAM

AGREEMENT NO. CCN-0007-G-01-3169-01

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**I. SUMMARY OF ACTIVITIES**

FTUI's Rule of Law Program in Ukraine was designed to contribute to the viability of the rule of law in that country.

The Ukrainian Institute for Legal Research and Education (UILRE) was established as a public interest labor law center to focus on enforcing existing laws that affect the daily lives of workers, both within and outside of the workplace.

The legal staff of the Institute advanced that goal by offering legal advice to unions in a variety of ways: providing legal consultations; conducting trade union legislative roundtables, conferences and seminars; providing legal representation to workers; distributing informational materials published by the Institute; and maintaining a law library at the Institute.

Most Ukrainian trade unions, particularly the smaller ones, do not have the resources to employ their own legal counsel. And, although most trade union leaders have a good understanding of the Ukrainian labor code, they still have a need for legal advice, which seems to fall into three major categories:

1. Dealing with the many situations not addressed by Ukrainian labor law;
2. Resolving complex problems that involve legal, economic and political issues (such as the refusal of management to enter into a collective agreement with an independent union);
3. Dealing with a legal system in which the courts refuse to enforce the law.

The legal staff provided assistance that addressed these needs in the following ways:

**o Legal Consultations**

A telephone hotline was established in order to facilitate phone consultation with unionists concerning labor issues. The service was advertised at all UILRE events and in all of its publication.

During any single reporting period, the Institute received and responded to an average of 24 written requests for legal information and advice. Countless other inquiries received oral responses.

Issues for which advice was requested and provided included: trade union recognition rights; trade union registration process; registration of collective agreements; wage payment processes and rights; layoff compensation and job transfer rights; the legal status of enterprise housing units; dispute resolution procedures; trade union strike rights; judicial appeal rights; allocation of the social insurance funds among trade unions.

**o Trade Union Legislative Roundtables, Conferences and Seminars**

An average of 3 roundtables, conferences or seminars was held each month during the course of this grant.

**o Legislative Roundtables**

Issues covered during the legislative roundtables included: untimely payment and nonpayment of wages; the process of enacting and amending labor-related legislation in the Parliament and ensuring that its provisions are responsive to workers' concerns.

**o Conferences and Seminars**

Issues covered at the conferences and seminars included:

- o Financial management for trade unions -- focusing both on the contradictory interpretations of Ukrainian law by various governmental bodies responsible for regulating trade union activities; and on procedures for calculating pension benefits, vacation benefits and on conducting a legal strike;**

- o Health and Safety at the workplace;
  - o Social guarantees contained in the draft Constitution;
  - o Fundamentals of Labor Law - its theoretical aspects and its practical application to advance the interests of workers.
- o Legal Representation**

The Institute's legal staff brought three main types of cases before the courts:

1. Cases involving wrongful enterprise treatment of an individual or small group of workers. These cases often involve wrongful enterprise dismissal or discipline of one or more workers. Generally, the enterprise engaged in such employee discharge or discipline in violation of Ukrainian labor code procedures. These cases have been the easiest to win. Generally, if a judge is presented with a clear violation of the labor code affecting a worker's job, then the judge usually is willing to require the enterprise to rehire and make whole the injured worker(s).

2. Cases in which an independent trade union sought to be recognized by an enterprise.

Management prefers to negotiate with the official union of which it is also a member. The law explicitly permits the existence of multiple unions at a workplace. Unfortunately, when independent trade unions have gone to court seeking to require an enterprise to recognize and bargain with the union, the courts have been reluctant to consider these complaints.

3. Cases involving the nonpayment or late payment of wages. Most enterprises remain state-owned. As the government continues to face financial shortfalls, the government has increasingly engaged in the practice of not paying wages on time to various sectors of the workforce.

Ukrainian labor law requires the timely payment of wages and contains provisions on interest and penalties for nonpayment. Because this is such a fundamental issue for workers, the Institute has assisted in seeking legal recourse to obtain workers' wages.

Over the course of this grant, legal staff handled a total of 58 cases.

**o Published Materials**

**Brochures and Bulletins**

Brochures and bulletins, prepared and published by the UILRE staff, proved to be an effective tool in the effort to respond to workers' questions about their legal rights.

Topics covered by the brochures included: trade union registration; collective bargaining procedures; individual layoff procedures; and social insurance benefits.

Bimonthly bulletins on Institute activities and important trade union events in Ukraine were issued by the Institute. Articles featured in the Bulletins covered such issues as: the social insurance law and how it should be amended; the process of amending laws dealing with collective agreements, wages and the Ukrainian Labor Code; how to establish a trade union; activities of trade unions; procedures for resolving individual labor disputes; the draft law on the procedure for resolving collective labor disputes; accidents in the workplace; the draft law on trade unions"; socio-economic rights under the draft constitution; and the procedure for concluding a contract with workers.

Each Bulletin contained reports on the UILRE "Hot Line". These reports provided unionists with legal analyses of the most frequently-asked questions of the preceding two-month period.

Also included were reports on any UILRE conferences held since the last Bulletin was issued, along with reports on recent legal cases in Ukraine.

**Informational Documents**

Additional publications included:

- o A 200-page Compendium of key Ukrainian labor laws and regulations. 600 copies were distributed to Ukrainian trade unions.
- o Sample legal documents, such as court complaints and collective bargaining provisions, which are available for use by trade unions. These sample documents were tailored to meet the needs of specific trade unions..

**o Data Collection**

The UILRE maintains a library of all available materials on Ukrainian labor and labor law issues, for use by trade unions and the general public.

The law library now contains

- o Copies of key legal documents, including: all Ukrainian laws, several sets of the Ukrainian Labor Code, Ministry Regulations, Ukrainian law journals, a variety of international labor laws, and other relevant legal books and materials;
- o A current databank containing lists of key labor-related governmental agencies, and their staff; Ukrainian trade unions; Ukrainian labor lawyers available to accept labor cases; academic sources, international labor organizations;
- o A database of labor court cases;
- o Materials dealing with the individual rights provisions of the newly-adopted Ukrainian Constitution, including:
  - o A table comparing the provisions concerning the protection of socio-economic and political rights as contained in the old Ukrainian Constitution, with those contained in the newly adopted Ukrainian Constitution;
  - o An analysis of the draft Constitution's provision;
  - o A collection of literature discussing the legal protections of individual rights as contained in the Constitutions of the U.S., Poland, Germany, France, Italy, Japan, Switzerland and Russia.

**II. ASSESSMENT OF ACCOMPLISHMENTS**

FTUI set out to accomplish a number of objectives which were laid out in the original proposal. The following reflects the progress made toward achieving those objectives at the time that the grant expired:

**Objective 1: To create a group of public interest labor lawyers.**

The UILRE legal program hired and trained approximately a dozen public interest labor lawyers.

Labor law as a specialty did not exist in the Soviet Union, and it is therefore a relatively new field with few professionals. The Institute took a number of steps in order to compensate for the lack of experienced Ukrainian labor lawyers, including:

- o Implementing a labor law training program for non-labor lawyers, designed to create a pool of public interest labor lawyers and trade union representatives.
- o Engaging Ukrainian lawyers to act as consultants on labor law matters;
- o Maintaining a database of lawyers available for referrals;
- o Holding monthly conferences to educate and attract Ukrainian lawyers interested in various labor law issues.

**Objective 2: To establish a body of case law relating to workers' rights that will serve as persuasive legal authority.**

The Ukrainian judicial system does not rely on a system of precedent, and therefore, establishing a body of case law is a relatively new concept. Establishing a body of case law is further complicated by the fact that information concerning individual court cases is not considered public information in Ukraine.

The Institute sought to create and foster the development of a body of case law in the areas of workers' rights by undertaking a large number of labor cases. Over time, these court decisions will begin to develop into a "body" of case law.

Its full-time lawyers actively sought labor cases to defend in court, and have helped unions win approximately 8 court cases over the course of the grant.

The Institute has undertaken a number of other initiatives to help establish a body of labor-related case law, including:

- o Requesting that union representatives provide UILRE with copies of any decisions rendered in labor-related cases of which they have knowledge;
- o Subscribing to key law journals and periodicals that report on legal cases.

**Objective 3: To create a cadre of trade union representatives to inform workers of their legal rights and guide them through administrative procedures to collect benefits to which they are entitled.**

To meet this objective UILRE undertook a number of initiatives including:

- o Establishing a full-time legal assistance program for trade union representatives to enable them to better inform and assist the members they represent.
- o Monthly educational events were sponsored, designed to provide instruction in legal and related issues to trade union representatives;
- o Establishing an intensive labor law education program for trade union and public activists;
- o Providing written documents to guide trade union representatives and their members through the legal process and to assist them in obtaining benefits to which they are legally entitled;
- o Preparing brochures and bulletins which contain legal education information;
- o Meeting informally with trade union representatives to discuss labor issues.

**Objective 4: To develop legal defense strategies to counter violations of trade union rights.**

UILRE lawyers in Kyiv and the regions consult monthly to discuss and agree on legal strategies. The UILRE legal staff retains, as consultants, several well-known experts in Ukrainian labor law, who regularly provide their expert counsel on legal issues and strategies. Legal staff meet regularly with Ukrainian trade union and government officials, and international legal experts. These strategies have been employed by UILRE lawyers to win a number of cases.

In addition, the lawyers examine, in detail, legislation regulating the organization and activity of trade unions in collective agreements. Regional lawyers consult extensively with union leaders to help them resolve issues related to regulatory legislation.

In order to strengthen the positions of unions, UILRE staff lawyers work with union leaders to ensure that all union activities are in strict compliance with the law. The positions of all parties involved in the dispute are thoroughly reviewed by UILRE lawyers.

Finally, the lawyers also review filing procedures with unionists, emphasizing filing dates and deadlines that must be met when taking action.

**Objective 5: To foster confidence in the efficacy of legal procedures for resolving labor disputes.**

The UILRE has encouraged the independent trade unions to use the existing democratically based legal system to seek justice and remedy grievances. To the extent the courts and other legal entities act fairly, the trade unions are increasingly likely to trust this process.

During the course of this grant there were at least 8 cases with a successful outcome from the trade union/workers' point-of-view, resulting from legal action or the threat of legal action. As more such outcomes occur, worker confidence in the legal system will grow, thereby strengthening the rule of law in Ukrainian society.

The Institute has sought to build confidence in the legal system by encouraging trade unions to become involved in the legislative process, as a way of ensuring that the laws protect the interests of workers.

During the first six months of the program, the majority of trade union leaders expressed doubts about the ability of the Labor Law Centers to successfully resolve disputes and protect labor and civil rights. However, during the final months of the program, there was an enormous increase in case work and consultation in all regions.

**III. LESSONS LEARNED FROM THE DESIGN, DEVELOPMENT AND EXECUTION OF THIS PROJECT**

FTUI's Rule of Law Program faced many of the same difficulties that have hindered reform efforts generally in Ukraine, particularly the constant delays in dealing with the Ukrainian government and courts, and the slow progress in enacting legal reform.

In addition, the Rule of Law Program in Ukraine was hindered by a number of other difficulties, including:

**o A cumbersome and unresponsive body of labor law inherited from the old Soviet system;**

The bulk of Ukrainian labor law remains the Soviet labor code, which leaves many unanswered questions, and is not geared for a capitalist labor relations system.

To further complicate matters, legislation is often enacted which contradicts existing law, and ministry and department officials frequently adopt regulations which contradict current law. In other instances, laws advancing workers' rights are not adopted.

For example, the ongoing economic hardship in Ukraine has prevented the enactment of several economic laws, such as those requiring timely payment of wages and workers compensation. The courts and administrative tribunals have largely been sympathetic to enterprises, and have been not only reluctant to require timely payment of wages, as required by the law, but also reluctant to comply with collectively bargained provisions requiring interest or penalties for nonpayment.

**o The difficult process of achieving meaningful reforms to the existing body of labor law;**

Dozens of draft laws which would change parts of the outdated labor code are in the process of being written or considered by the government. However, because there are no public information rights to government proposals, the task of becoming involved in the labor law reform process was a difficult one.

Alternative sources to obtain information on pending proposals had to be found. Contacts made with individuals from the government, academics and international organizations at various UILRE-sponsored education conferences proved to be very useful in this respect. These conferences helped open up the democratic process and foster relationships between workers and the government.

**o The low level of legal culture in Ukraine;**

The new union organizations are in constant need of competent and objective legal assistance. With the current difficult political and economic situation in Ukraine, the majority of free trade unions are able to receive practical legal assistance only through the UILRE Legal Department.

In addition, Ukrainian legal education needs fundamental restructuring to move it away from the former Soviet methodology into a more Western approach.

**o The shortage of trained labor lawyers;**

The demand for experienced labor lawyers in Ukraine far exceeds the supply. Finding qualified staff to work at the Institute to represent labor interests was particularly difficult. Therefore, the Institute primarily hired younger, less experienced lawyers. UILRE was able to use many of the lawyers interviewed to start a referral network of lawyers in Ukraine willing to take labor cases.

In its search for qualified UILRE staff, FTUI encountered difficulty in locating neutral candidates acceptable to the parties with whom they must work. Many of the trade unions and worker groups around Ukraine had some legal counsel that they were using. Each union wanted their candidate to be selected.

Also, many of the trade union candidates were not university-educated lawyers, and many of the academic recommendations were firmly rejected by the trade unions because of perceived anti-union bias.

**o The lack of a strong, independent judiciary.**

The concept of an independent judiciary remains far from fully formed, and many workers do not believe that the rule of law can be fair or predictable.

The overburdened courts, and the severe shortage of judges, frequently results in the postponement of consideration of labor cases, as judges give priority to criminal cases.

Most Ukrainians believe that the courts are corrupt and not the place to seek justice. Slowly, the Institute, with the trade unions' consent, has begun to change this conception.

Devising a successful strategy for getting the courts to consider labor cases fairly, particularly those in which an independent trade union has been denied recognition by an enterprise, was a key focus of the Institute.

Part of a successful legal strategy involves simply providing trained lawyers to present trade union complaints in court. Doing so increases the likelihood of a decision being rendered which is favorable to the worker. Reportedly, not only are judges influenced by the presentation of a trained lawyer, but also rely on the presence of a lawyer to apprise them of points of law of which the

judge may not be aware. This situation is like that in the western systems where an aggrieved individual stands a better chance of prevailing in court if he has trained legal counsel.

### **Conclusion:**

The FTUI Rule of Law program took longer than expected to get started and to show results, due to the above-mentioned obstacles, particularly the shortage of trained labor lawyers and the difficulty of finding candidates for lawyer positions acceptable to all the constituencies involved. As a result, considerably less than the original grant amount was spent during the grant period, even after ARD-Checchi gave FTUI a two-month extension to August 31, 1996.

However, despite these obstacles and the many political and economic difficulties facing Ukrainian trade unions, this project did show positive results. Most importantly, independent trade unions and their members are now beginning to show great interest in protecting their legal rights through all permitted means, including court examination of disputes. This appears to be evidence that confidence in the legal system has increased, which will in the long-run strengthen the rule of law in Ukraine.

It should also be noted that FTUI's legal program, through UILRE, helped facilitate input by trade unions into the process of drafting the new Ukrainian Constitution. It was thanks in part to this effort that the new Constitution includes Article 36, guaranteeing trade union rights. This Constitutional provision strengthens the position of democratic trade unions and thereby strengthens civil society and democracy in Ukraine.

Free Trade Union Institute  
Interim Final Financial Summary  
ARD Subcontract No. CCN-0007-G-01-3169-01  
As of August 31, 1996

Revised 7/26/96

Number	Project	Budget	Prior Exp. as Previously Reported	Current Expenses	Cumulative Expenses	Balance
1	Rule of Law: Ukraine					
	Salaries	138,713.00	28,325.83	2,972.36	31,298.19	107,414.81
	Benefits Allowances @ Taxes	83,959.00	6,956.07	1,666.60	8,622.67	75,336.33
	Travel and Per Diem	45,794.00	2,155.48		2,155.48	43,638.52
	Space and Utilities	14,000.00	5,361.25		5,361.25	8,638.75
	Supplies and Equipment	35,800.00	35,487.68		35,487.68	312.32
	Communications and Postage	9,000.00	216.94	15.40	232.34	8,767.66
	Contractual Services	4,200.00	678.38		678.38	3,521.62
	Consultants' Fees and Expenses	0.00	612.25		612.25	(612.25)
	Other Direct Costs	29,000.00	4,125.54	50.00	4,175.54	24,824.46
		360,466.00	83,919.42	4,704.36	88,623.78	271,842.22
	Indirect Cost Rate (ICR)	83,015.00	26,896.17	1,507.75	28,403.92	54,612.08
<b>Total</b>		<b>443,482.00</b>	<b>110,815.59</b>	<b>6,212.11</b>	<b>117,027.70 *</b>	<b>326,454.30</b>

\* Includes ICR of 32.05%

NOTE: It is FTUI policy to book program salaries on a quarterly basis. Therefore, this report does not reflect program salaries after September 30, 1996.