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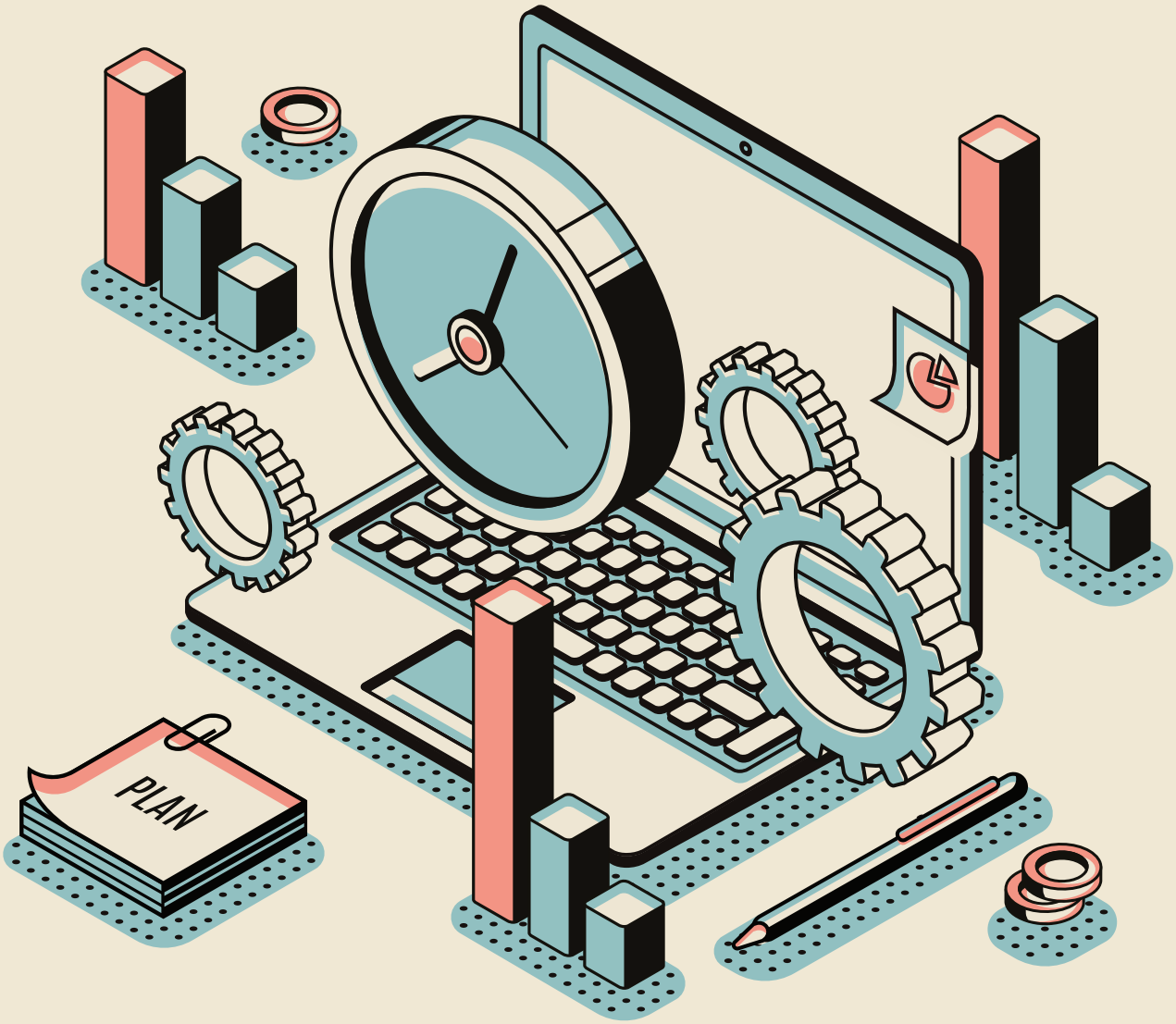
A DECENT WORK AGENDA

NEEDS ASSESSMENT AND ROADMAP



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A SHORT INTRODUCTION

FROM THE AUTHORS

DECENT WORK AGENDA (NEEDS ASSESSMENT AND ROAD MAP) IS THE FIRST COMPREHENSIVE RESEARCH THAT WAS CONDUCTED AFTER REFORMING LABOUR LEGISLATION IN RECENT YEARS. IT STUDIES AND ANALYSES EXISTING CHALLENGES AND SHORTCOMINGS IN THE FIELD OF LABOUR RIGHTS AND PROTECTION OF OCCUPATIONAL SAFETY IN GEORGIA. THE DOCUMENT ADDRESSES PERSPECTIVES OF ALL THREE COMPONENTS OF THE STUDY - LEGAL REVIEW, LITERATURE REVIEW AND ANALYSIS OF INTERVIEWS ON THE ISSUES RAISED. MOREOVER, THE DOCUMENT PROVIDES THE ROAD MAP AND RECOMMENDATIONS ON POSSIBLE WAYS FOR SOLUTIONS OF THE IDENTIFIED CHALLENGES. THE RESEARCH WILL HELP THE GOVERNMENT OF GEORGIA, SOCIAL PARTNERS, OTHER STAKEHOLDERS, LAWYERS AND EXPERTS TO DETERMINE THE FIELDS OF FURTHER DEVELOPMENT AND IMPROVEMENTS OF LABOUR RELATIONS IN GEORGIA.

This research was prepared with the support of the International Labour Organization project in Georgia, “Inclusive Labour Market for Job Creation”, funded by the Ministry of Foreign Affairs of Denmark, and the Friedrich-Ebert-Stiftung South Caucasus Office.

DECENT WORK AGENDA

Needs Assessment and Road Map

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Introduction

Historical Background

The recent history of regulating labour rights and labour safety in Georgia can be divided into three main phases reflecting shifting political and governance priorities, namely 2003-2012, 2013-2017 and 2017-2020. The first phase was ushered in during a period of radical changes when the political-economic agenda of the country was heavily oriented towards a neo-liberal approach. It is from 2005-2006 that the Labour Code gets altered and shifted focus on giving more freedom to the employer, deregulation, and disbanding virtually all labour administration institutions, including the labour inspection supervisory system. The general deregulation policy, including the legalization of such power imbalance between the actors in labour relations, over the years, has significantly changed the labour culture in the country.

The Labour Code of Georgia, which has been in force since 2006, was considered by some to be the most liberal labour law in the world.[1] Its main tenet was that labour relations should be regulated through a free agreement between the employer and the employee, and the state almost completely abolished the function of regulating and supervising labour relations.[2]

Although such liberalization of labour law was not in line with Georgia's stated foreign policy priorities for EU integration, the deregulated legal environment remained until 2013.

During the second phase, the first steps towards re-regulation of labour relations was initiated in 2013, mainly driven by the deepening cooperation with the European Union and the conclusion of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States (hereinafter the Association Agreement), which required the harmonization of Georgian legislation with certain EU directives. In 2013, at the initiative of the Government of Georgia, amendments were adopted to the Labour Code that defined the rules for termination of the agreement, overtime pay, concluding a fixed-term and permanent employment agreement, and new regulations were introduced on individual and collective labour disputes.[3]

The 2013 amendments also transformed the status of the Tripartite Social Partnership Commission (TSPC) designating the Prime Minister as its Chair, rather than the Minister. However, in reality, this tripartite format still was not used as an effective and inclusive

1. *U.S. Department of State, 2013. 2012 Country Reports on Human Rights Practices – Georgia, Refworld.org, https://www.refworld.org/publisher,USDOS,,GEO,53284adb5,0.html [last accessed: 10.11.21].*
2. *Human Rights Watch, 2019. No Year without Deaths. A Decade of Deregulation Puts Georgian Miners at Risk. https://www.hrw.org/report/2019/08/22/no-year-without-deaths/decade-deregulation-puts-georgian-miners-risk [last accessed: 10.11.21].*
3. *http://www.economy.ge/?page=economy&s=74 [last accessed: 10.11.21].*

platform for social dialogue on labour policy issues. The Tripartite Social Dialogue Commission, despite the efforts of the EU and the broad support of the International Labour Organization (ILO), has failed to establish itself as an effective institution and to encourage cooperation between the social partners - both in terms of labour policy dialogue and labour dispute resolution.[4]

The process of re-establishing a Labour Inspectorate began in 2014-2015 as a necessary precondition for concluding the Association Agreement with the European Union. At the first stage, the Inspectorate was established with a limited authority as the Labour Conditions Inspection Department under the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs (hereinafter referred to as the Ministry of Labour). Despite the country's international commitments to establish a strong and independent Labour Inspectorate Service, the newly established structure had only a nominal inspection mandate, as inspections could only be carried out at the request of the company itself, its mandate was mainly limited to occupational safety and health issues, and it could only issue recommendations to address violations, not sanctions.

The third phase of the labour legislation reform encompasses the period of 2017-2020, during which the legal and institutional mechanisms for the protection of labour rights and labour safety norms were significantly strengthened. A noteworthy feature of this period is that most of the legislative reforms were driven by the Parliament, not the Government, in spite of the obligations entered into by the Government under the Association Agreement.

During this phase, three main reforms took place, namely the labour safety reform in 2017-2019; the 2019 sexual harassment legislative regulation and the 2020 labour law reform.

The 2017-2019 Labour Safety Reform

The absence of an appropriate regulatory and supervision framework concerning occupational safety and health (OSH) was clearly reflected in the number of occupational accidents that occurred in Georgia.[5] Government action to improve the regulatory framework was not sufficient, as demonstrated by the limited mandate and resources provided to the Labour Conditions Inspection Department when it was established in 2014-2015. It took a series of mining accidents, and in particular a fatal event in April 2017 in which six miners died, for the authorities to take more urgent action in the face of harsh public and political criticism. It should be underlined though that the adoption of the Law of Georgia on Oc-

4. *Beltadze P., 2020, Social Dialogue in Georgia, Friedrich-Ebert-Stiftung, Tbilisi, http://library.fes.de/pdf-files/bueros/georgien/16267.pdf [last accessed: 10.11.21].*
5. *Georgian Trade Unions Confederation reports, based on their limited sources, following data on workplace accidents: 30 fatal and 42 injury accidents in 2013, 45 fatal and 72 injury accidents in 2014, 42 fatal and 81 injury accidents in 2015, 58 fatal and 85 injury accidents in 2016.*

cupational Health and Safety was Georgia's international obligation under the Association Agreement.

Despite the prevalence of occupational accidents, the adoption of the Law of Georgian on Labour Safety and approximation to international standards proved to be a long process. In March 2018, the Law of Georgia on Labour Safety was adopted, but with numerous limitations. In particular, the law only applied to hard, harmful, or hazardous work with increased risk. However, for the first time, the Law allowed the Department of Labour Inspection to proactively inspect and sanction organizations, although the law was not in full conformity with international standards in this area due to the weak institutional structure and capacity of the Inspectorate and remaining restrictions on its powers, such as the obligation to notify inspections in advance.

Following Constitutional reform in Georgia adopted in March 2018, it became necessary to re-adopt the Labour Safety law as an organic law. Although the new draft of the organic law was largely prepared on the basis of the existing Law on Labour Safety, significant improvements were introduced, through intensive cooperation with the ILO and the involvement of their international and local experts and brought much more in conformity with international labour standards. Following lengthy deliberations and discussions, the Organic Law on Labour Safety was adopted by the Parliament in February 2019. The adoption of the organic law extended its coverage to all areas of economic activity and the public sector, and the Labour Inspection Department was empowered to monitor compliance with labour safety standards in any organization without prior notice.

2019 Legislative Regulation of Sexual Harassment

In 2018-2019, a package of legislative amendments was prepared in the Parliament of Georgia, which aimed to prevent sexual harassment and to create mechanisms to respond to the facts of harassment. Within the framework of this package, amendments were made to the labour legislation and in addition to the introduction of the concept of sexual harassment in labour relations, which was fundamentally important, the Public Defender of Georgia, additionally was given the mandate to monitor cases of discrimination in the private sector.

The 2020 Labour Law Reform

Considering the need to improve minimum labour standards and Georgia's international commitment under the Association Agreement, as a result of efforts from the parliament initiative group, on September 29, 2020, the Parliament of Georgia adopted important package of labour law reform. The Parliament of Georgia has gone through a long and difficult process of reforming the labour law with the broad support of the ILO. The work on the reform began in May 2019 and the process included consultations with the Government

of Georgia, social partners, and other stakeholders, including public hearings, committee hearings, and plenary sessions in the Parliament.

As a result of the amendments to the Labour Code, among others, the following topics were regulated differently: prohibition of discrimination (definition of direct and indirect discrimination); scope of prohibition of employment discrimination; burden of proof; the concept of reasonable accommodation; limits on verbal employment contracts; presumption that fixed term employment contract is qualified as indefinite term employment; part-time work; new regulation of working hours (minimum weekly rest period and the right to a daily break); definition of shift work and a limitation on working in two shifts in a row; collective redundancy; transfer of undertakings; enforcement of collective labour mediation agreement; workplace information and consultation.

The 2020 Labour Law Reform package included changes to different laws, such as the Organic Law on Trade Unions; the Code of Civil Procedure; the Organic Law on Labour Safety; the General Administrative Code; the Administrative Procedure Code; the Code of Administrative Offenses; the Law on Civil Service, and others. Significantly, as part of the reform, a new Law on Labour Inspection was adopted, and a full-fledged independent labour inspection service was established.

At the onset of the reform process it was obvious, that the labour law draft package would not cover all critically important aspects from the point of view of ensuring conformity with relevant international labour standards. Even before the formal initiation of the labour law reform package in the Parliament, during the preliminary consultation stage important topics were not properly considered in the registered version of the draft package. Initiators of the bill also had to make some compromises on some of the provisions suggested in the first version of the package prepared by the ILO. Some other significant topics were also removed during the committee and plenary readings of the package in the Parliament.

Overall, the approval of the 2020 Labour Law Reform package was considered a major step forward in bringing Georgia's labour legislation in line with relevant international labour standards of the ILO and EU Directives.[6] The reform was hailed as significant progress by almost all organizations working to protect the rights of employees, however it also warranted criticism for the compromises made in the package review process.

6. Georgia's Parliament adopts historic labour law reform package, https://www.ilo.org/moscow/news/WCMS_758336/lang--en/index.htm [Last access: 10.11.21].

Research aims and objectives

Labour laws should regularly be reviewed and updated to reflect societal and technological change and to ensure conformity with relevant international labour standards. Their application in practice should also be regularly reviewed, especially following significant reforms such as the ones introduced in Georgia in September 2020. Despite the positive legislative changes and administrative reforms in the country in recent years, new standards in the field of occupational safety and health and labour rights have not yet been substantially reflected in the workplace. At the same time, public and political debates took place within the 2020 Labour Law Reform process that resulted in the introduction of some compromised provisions in the law that was adopted. It is considered that not all of these provisions are in line with relevant international labour standards or as clear as they should be. It therefore follows that there are still a number of challenges, both in terms of improving the legislation and compliance with international standards, as well as ensuring the effective implementation of existing legislation**.** The objective of this study is to identify through empirical research the main challenges and shortcomings that still exist in the field of labour rights and the protection of occupational safety in Georgia.

Stemming from the main objective, the study aims to:

- Identify the main inconsistencies and shortcomings of Georgian labour law in relation to international labour standards;
- Demonstrate the attitudes and assessments of various local and international actors towards existing labour policies and identify areas and issues that require state attention;
- Identify key factors and barriers that hinder the introduction of labour rights and safety norms and their effective enforcement in the country.

The research focused on the following thematic issues of labour policy:

- Freedom of association and the right to strike;
- Mandate of labour inspection, institutional regulation and effectiveness;
- Labour safety;
- Prohibition of discrimination and sexual harassment in labour relations;
- Maternity leave;
- Working hours and rest;
- Overtime work;
- Labour contract;
- Labour disputes and mediation;
- Social dialogue and cooperation in the workplace;
- Minimum wage;
- Work in the informal economy.

Research Methodology

To achieve the goals and objectives of the research, a multi-faceted research methodology was developed, which included three components: legislative - legal review (hereinafter the Legal Review), third parties reports – literature research and review (hereinafter the Literature Review) and stakeholder views – interviews and analysis thereof (hereinafter Analysis of Interviews) using in-depth interviews and focus groups. This multi-faceted research approach enabled the researchers to provide a comprehensive and manifold analysis of the different issues.

Based on the comparison and analysis of the research components, the main findings of the research were identified, and policy recommendations were developed to address the need for future legislative changes, and to further improve the institutional system to ensure effective enforcement.

The Legal Review section reviews Georgia's international obligations under international labour standards. In particular, a comparative study of national labour law / practice and international standards was conducted, and the issues of Georgian labour law will be analyzed that are viewed as problematic in terms of compliance with international standards.

The Legal Review covers:

- Georgian labour law and its compliance with the conventions of the ILO ratified by Georgia;
- Georgian labour law and its compliance with the conventions of the ILO not ratified by Georgia, focusing mainly on non-ratified conventions referred to in the Association Agreement, as well as those non-ratified conventions that are relevant to the challenges facing Georgian labour law;
- Georgian labour law and its compliance with the directives contained in the Association Agreement.

The Literature Review section, using a qualitative content analysis method, reviews the research, evaluation and analytical documents, action plans and reports related to the labour rights situation in Georgia and the labour reforms implemented in 2013-2020. In particular:

- Assessments, surveys and reports on labour rights and occupational safety reforms in Georgia prepared by the EU, the Council of Europe and other European institutions;
- Assessments, surveys, and reports elaborated by the ILO and the United Nations on labour rights and occupational safety reforms in Georgia;
- Evaluations, surveys, and reports of international human rights organizations on labour rights and occupational safety reforms in Georgia;

- Assessments, surveys and reports prepared by political foundations or done with the help of their supervision, on labour rights and labour safety reforms in Georgia;
- Assessments, surveys and reports on labour rights and occupational safety reforms in Georgia prepared by trade unions, employers' associations, local human rights and academia.
- Annual reports of the Public Defender;
- State Department reports.

Analysis of Interviews was conducted through in-depth interviews and small focus groups. This approach allowed the researchers to undertake an in-depth analysis of the different positions and visions of the parties involved, listen to their individual assessments, and explore the issue from different angles.

The guiding principle for selecting the target group was to involve all parties in the survey who, due to their work, had the opportunity to assess changes resulting from occupational safety and labour law reform, participated in the labour law reform process, or had expertise in labour policy.

At the initial stage, four main target groups were identified:

- Trade unions and other employee representatives;
- Employer and business member organizations (national and sectoral/professional associations);
- State structures;
- International Organizations;
- Non-Governmental Organizations.

A total of 17 individual interviews and 2 mini focus groups were conducted. A total of 23 respondents were interviewed (List of surveyed organizations - Annex 1).

The interviews were conducted with the use of a pre-designed, semi-structured guideline in which the research variables were pre-defined by the researchers.

Interviews were conducted in June-July 2021.

At the final stage of the research, the three main components of the study were summarized - through comparison and qualitative analysis of the variables identified in separate components of the research, the main findings were identified, existing shortcomings were explored, and corresponding practical policy recommendations were developed.

Structure of the Research

The research is composed of 13 thematic sections. Most of the sections also include subsections. Each section – subsection brings together all three components of the research – Legal Review, Literature Review and Analysis of Interviews. Each section – subsection has its own set of conclusions and recommendations. A list of all recommendations is provided at the end of the research.

1

Freedom of Association and Collective Bargaining

Legal Review

According to Article 64(1) of the Labour Code, "a strike shall be an employee's temporary and voluntary refusal, in the case of a dispute, to fulfil, wholly or partially, the duties under an employment agreement. Such persons as determined by the legislation of Georgia shall not participate in a strike." This provision defines a prerequisite for exercising the right to strike – a dispute. By force of Article 61(1) of the Labour Code, "a dispute is a disagreement arising during the course of labour relations. The resolution of disputes is in the legal interests of the parties to an employment agreement". Pursuant to Article 61(2), "a dispute shall arise following a written notification of disagreement from one party to another." Article 61(3) specifies that the grounds for a dispute may be:

(a) the violation of human rights and freedoms under the legislation of Georgia;

b) the violation of the conditions of an individual employment agreement or a collective agreement, or the violation of employment conditions;

c) a disagreement between an employer and an employee over the essential conditions of an individual employment agreement and/or the conditions of a collective agreement.

According to the Labour Code, disputes arising during individual employment relations shall be resolved by means of a dispute settlement procedure providing for direct negotiations between the employee and the employer. A collective labour dispute[7] shall be resolved through a dispute settlement procedure providing for direct negotiations

7. Article 63(1) of the Labour Code defines collective labour dispute as a dispute between an employer and a group of employees (at least 20 employees) or an employer and an employees' association.

between the parties or through mediation. At any stage of negotiations and in order to reach an agreement, either of the parties may request in writing for the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health, and Social Affairs of Georgia (hereinafter the "Minister of Labour") to designate a mediator. Alternatively, at any stage of a collective labour dispute, in case of high interest of society, the Minister of Labour may, *ex officio*, appoint a mediator and must inform the parties in writing of such appointment. It is important to note that in case of a collective labour dispute, the right to strike cannot be exercised 21 calendar days from the moment of sending the written notification to the Minister of Labour requesting appointment of the mediator or 21 calendar days from the moment the Minister of Labour has *ex officio* appointed a mediator. The mediation (initiated only in case of collective labour disputes) is an essential precondition for the employees to go on strike. Therefore, Georgian Labour Code establishes an obligation to have recourse to prior mediation procedures in collective disputes before a strike may be called. As a result, employees are entitled to exercise the right to strike only in cases of a collective labour dispute and the dispute itself may arise only in the cases listed above.

At the Direct Request of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR)[8], it requested the Government to indicate whether strikes can be legally carried out on grounds not explicitly listed in the Labour Code. The CEACR had further requested that the Government indicate whether strikes not directly resulting from a dispute between the employer and his/her employees, such as general strikes related to the country's economic and social policy, could be legally carried out. The CEACR understands from the Government's report that organizations can carry out any action not prohibited by the law, including any action not expressly provided for by the law. It further notes the Government's indication that it is for the courts to determine the legality of a strike action. The Government transmits a copy of a case where, according to the Government, the court has considered that the solidarity strike was legal. The CEACR took due note of this information.[9] In this regard, it should be noted that no relevant court decision is publicly available where the judge ruled that a solidarity strike is legal. In fact, since, according to the Labour Code, collective labour disputes are the only reason workers can go on strike, the concerned party, e.g. the employer, may have the legal basis to argue that strikes can be carried out based on the grounds only explicitly listed by the Labour Code, thereby seemingly excluding strikes organized for on any other reasons.

According to the ILO Committee of Freedom of Association (CFA), workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction

8. Direct Request (CEACR) - adopted 2017, published 107th ILC session (2018) https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3344016,102639,Georgia,2017.
9. Ibid.

as regards economic and social matters affecting their members' interests. The CFA has considered that:

> "organizations responsible for defending workers' socio-economic and occupational interests should be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and standards of living".[10]

With regard to sympathy strikes ("where workers come out in support of another strike"), the CFA has considered that: "a general prohibition of sympathy strikes could lead to abuse and workers should be able to take such action provided the initial strike they are supporting is itself lawful."[11]

The CFA has also considered that:

> "a ban on strike action not linked to a collective dispute to which the employee or union is a party is contrary to the principles of freedom of association."[12] "A declaration of the illegality of a national strike protesting against the social and labour consequences of the government's economic policy and the banning of the strike constitute a serious violation of freedom of association".[13]

Based on the approach taken by the CFA, it is obvious that the right to strike should not be limited solely to collective labour disputes and that the Labour Code should be amended to ensure it is in line with the requirements of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) of the ILO.

As a specific solution, the following provision should be introduced in the Labour Code as the last – 9th paragraph to Article 65 (strike and lockout) regulating procedures for strike: "the above paragraphs to a right strike [regulating legal basis for organizing strike] do not apply to strikes in support of a primary strike organized by other workers and strike action in support employee associations' positions concerning major social and economic policy trends which have a direct impact on their members and on employees in general. In the case of such a strike, employees' association must notify the employer and the Minister in writing about the time, place, and type of strike at least three calendar days before the strike."

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10. Freedom of Association, Compilation of decisions of the Committee on Freedom of Association, Sixth edition (2018), International Labour Office, Geneva, paragraph 759, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_632659.pdf.

11. Ibid, paragraph 770.

12. Ibid, paragraph 776.

13. Ibid, paragraph 780.

The right to strike should also be evaluated in the context of the current provisions concerning illegal strikes and possible liability. According to Article 348 (Violation of the procedure for striking) of the Criminal Code of Georgia, "Violation of the procedure for a strike by its organiser, which has resulted in grave consequences, – shall be punished by a fine or house arrest for a term of six months to two years, or by corrective labour for up to one year." Based on this provision, organizers of an illegal strike (as declared by the court) may face a criminal penalty like a fine, hours arrest or corrective labour.

According to the CFA,

> "The principles of freedom of association do not protect abuses consisting of criminal acts while exercising the right to strike."[14] "Penal sanctions should only be imposed as regards strikes where there are violations of strike prohibitions which are themselves in conformity with the principles of freedom of association. All penalties in respect of illegitimate actions linked to strikes should be proportionate to the offence or fault committed and the authorities should not have recourse to measures of imprisonment for the mere fact of organizing or participating in a peaceful strike."[15] "Criminal sanctions may only be imposed if during a strike violence against persons or property or other infringements of common law are committed for which there are provisions set out in legal instruments and which are punishable thereunder."[16] "Arrests and dismissals of strikers on a large scale involve a serious risk of abuse and place freedom of association in grave jeopardy. The competent authorities should be given appropriate instructions so as to obviate the dangers to freedom of association that such arrests and dismissals involve."[17]

Specifically in relations to penal sanctions, the CEACR explains that,

> "Most legislation restricting or prohibiting the right to strike provides for various sanctions against workers and trade unions that infringe this prohibition, including penal sanctions. However, the Committee has continually emphasized that no penal sanctions should be imposed against a worker for having carried out a peaceful strike and thus for merely exercising an essential right, and therefore that measures of imprisonment or fines should not be imposed on any account. Such sanctions could be envisaged only where, during a strike, violence against persons or property, or other serious infringements of penal law have been committed and can be imposed exclusively pursuant to legislation punishing such acts, such as the Penal Code (for example, in the case of failure

14. Ibid, paragraph 965.
15. Ibid, paragraph 966.
16. Ibid, paragraph 972.
17. Ibid, paragraph 975.

to assist a person in danger, deliberate injury or damage deliberately caused to property)."[18]

Generally speaking, the principles developed by the supervisory bodies of the ILO in relation to the right to strike are only valid for lawful strikes, conducted in accordance with the provisions of national law, with the condition that the latter are themselves in conformity with the principles of freedom of association. They do not cover the illegal exercise of the right to strike, which may take various forms and may give rise to certain sanctions. However, organizers and participants in strikes declared illegal by the courts should not be criminally punished as long as the strike in question remains peaceful and does not result in violence and damages. In this context Article 348 raises some concerns with regard to questions such as, who is the proper subject of the criminal act, proportionality of the sanctions, and a lack of clarity as to what constitutes "grave consequences". Therefore, in line with relevant international labour standards, Article 348 should provide a clear and precise definition of what constitutes "grave consequences", as well as ensure that organizers in strikes declared illegal by the court are not held criminally liable for the mere fact of organizing the strike, but only when such a strike results in the commission of acts that are in any case punishable under a criminal code (violence, destruction of property, etc.), bearing in mind causality and proportionality. Another aspect to consider, is the issue of compliance with the Abolition of Forced Labour Convention, 1957 (No. 105) of the ILO, ratified by Georgia. Article 1(d) of this Convention states that "Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour — [...] as a punishment for having participated in strikes." Therefore, the question of the possible imposition of corrective labour as a penal sanction for organizing an illegal strike should also be addressed and Article 348 revised, accordingly.

In relation to the right to strike, one should also consider challenges related to limitations of the right to strike in municipal cleaning services. Namely, according to paragraph one of Article 66 of the Labour Code, "in no case shall an employee fully exercise the right to strike if he/she performs work to carry out activities which, if completely interrupted, would pose an obvious and imminent threat to the life, personal safety, or health of society-at-large or a certain part of society." Paragraph two of the same Article further states that "the list of critical services (in the narrow sense of this term) involving the activities referred to in paragraph 1 of this article shall be determined by the Minister after consulting social partners". Based on this provision, by force of the # 01-78/N Order of the Minister of Labour (dated 7 September 2021) (hereinafter the Order #01-78/N), the list of essential services was approved. This Order, among others,

18. General Survey on the Fundamental Conventions Concerning Rights at Work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, "Giving Globalization a Human Face", International Labour Conference, 101st Session, 2012, paragraph 158. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_174846.pdf.

includes municipal cleaning services in the list of essential services. The CEACR, in 2015 and 2018 expressed concerns that Order No. 01-43/N of 6 December 2013, which prohibited strikes in a number of services connected with the life, safety and health of the population, included some services that do not constitute essential services in the strict sense of the term, contrary to the requirements of ILO Convention No. 87. In this respect, it specifically listed, among others, municipal cleaning services as services that does not constitute an essential services in the strict sense of the term.[19] The amended Labour Code addresses the main concerns of the CEACR in that it no longer prohibits the right to strike in "essential services", but rather requires that minimum services are established to safeguard the life, safety, and health of the population in case of a strike in an essential service. However, contrary to what was suggested by the CEACR, Order #01-78/N still includes municipal cleaning services as an "essential service", whereas it is clearly not considered to be so by the ILO Supervisory Bodies. Therefore, it is recommended to amend the relevant Order of the Minister of Labour in order to ensure that the right to strike is fully guaranteed in municipal cleaning services.

Literature Review

Issues related to freedom of association were not identified within the literature review.

Analysis of Interviews

The employees' representatives identified the need to improve the provisions regulating the right to strike. Particularly emphasizing, allowing strikes in relation to wider socio-economic issues to be carried out as well as expanding the existing grounds on the basis of which strikes are permitted.

Trade Union representatives and the non-governmental sector also stressed the importance of regulating the principle of solidarity strikes. In this respect, one representative stated that:

> *"The recent events* [strikes of employees in different companies], *I think, have shown us even more clearly the importance of solidarity strikes. It is important to allow this and the employees to have the right to strike. I think it is important leverage and the practice of strikes clearly shows that. The recent strikes show that employees are trying to unite for common demands and sparks of solidarity were apparent when they also voiced and articulated each other's demands and legislating this, I think,*

19. *See Direct Request (CEACR) - adopted 2017, published 107th ILC session (2018), https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3344016,102639,Georgia,2017; Direct Request (CEACR) - adopted 2014, published 104th ILC session (2015), https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3191791,102639,Georgia,2014*

will further promote this and contribute to the establishment of labour culture. This will be an important step taken in this regard."[20]

Regarding strikes, the amendment that introduced rules for the enforcement of collective labour mediation agreements and the establishment of mechanisms for the court to monitor the enforcement of the mediation agreement is acknowledged as a positive development. It was noted that:

> *"Prior to the Labour Code reform, mediation agreements were concluded. This would end the strike and the disagreement but then the mediation agreement was violated. So, I think this is significant progress that will make it possible in the future for workers to be more courageous and have a guarantee that if they reach some agreement then they will take it to court and enforce it. This will be a boost for the mobilization of workers."*[21]

Conclusions

Notwithstanding that concrete steps have been taken in recent years to strengthen the legislative guarantees on freedom of association and the right to strike, the study has identified several significant shortcomings and areas where the existing legal framework is not in conformity with international labour standards.

The legal review revealed that the law restricts the list of grounds for a strike, and it relates to only issues of collective disputes. The legislation limits the right to sympathy (solidarity) strikes and strikes stemming from socio-economic issues that are not directly related to the employer. This is inconsistent with the international labour standards, restricts the freedom of association, and contradicts the ILO Convention No 87.

The legal review also reveals the restriction of the right to strike in the municipal cleaning sector, which, by the ordinance of the Minister, is included in the list of critical sectors. Stipulating the municipal cleaning sector in the list of critical services is unjustified and not in line with international labour standards.

The legal review also outlined the issue of possible criminal liability in cases of illegal strikes. According to relevant international labour standards, the use of criminal sanctions is unjustified in the case of peaceful forms of protest, regardless of whether the strike is illegal (unless the strike includes such acts as violence, destruction of property, etc.).

20. *Interview with the Representative of the Social Justice Center.*
21. *Interview with the representative of the Georgian Institute of Public Affairs (GIPA)*

The Labour Code should allow sympathy (solidarity) strikes.

Article 65 of the Labour Code (the right to strike and lockout), which regulates the procedures related to strike, should be amended and see the addition of paragraph 9 with the following wording: "the above paragraphs to a right strike [regulating legal basis for organizing strike] do not apply to strikes in support of a primary strike organized by other workers and strike action in support of employee associations' positions concerning major social and economic policy issues which have a direct impact on their members and on employees in general. In the case of such strikes, employees' association must notify the employer and the Minister in writing about the time, place, and type of a strike at least three calendar days before the strike."

Municipal cleaning services should be excluded from the list of critical services.

Organizers of strikes declared illegal by the court should not be held criminally liable for the mere fact of organizing a strike.

2

Prohibition of Employment Discrimination

2.1 Scope of prohibition of employment discrimination, actors

Legal Review

Article 2(3) and Article 4(1) of the Labour Code provide a list of prohibited grounds for discrimination. In 2019, based on the government's initiative, amendments related to the list of prohibited grounds in the Labour Code were introduced. Due to these amendments, the list of discriminatory grounds became open-ended.

Within the 2020 Labour Law Reform, the ILO suggested to add some new grounds (e.g. "health status", "employment status") in the list of prohibited grounds, so as to reflect recent developments in discrimination laws. It also suggested to make the list itself exhaustive, to ensure its interpretation would not become too broad. However, the ILO's suggestions were not considered, and the Labour Code still contains an open-ended list

of prohibited grounds, as it states that discrimination is prohibited based "on any other grounds".

According to the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) of the ILO (ratified by Georgia),

> "for the purpose of this Convention the term discrimination includes - (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies."

Under the Association Agreement, Georgia must harmonize national legislation with three different Directives of the European Union covering the issue of discrimination[22], which set the general framework for combating discrimination on the grounds of sex, religion, belief, disability, age, sexual orientation, racial or ethnic origin. None of these Directives requires that the list of prohibited grounds should be open-ended. Therefore, under the Convention No. 111 and EU Directives, no requirement is observed to introduce an open-ended list of discriminatory grounds.

Considering the national context, wherein the labour legislation of Georgia has prohibited employment discrimination only since 2006, it is important to ensure that the law is clear and does not allow for overly broad and/or incorrect interpretations of the grounds on which discrimination is prohibited. Labour regulation should be predictable, requiring that norms on which grounds employment discrimination is prohibited are precise. Normally, the list of prohibited grounds should reflect actuality in, and relevance for, the labour market. The inclusion of any new ground(s) to the list of prohibited grounds of discrimination, as may be required due to new manifestations of discrimination that may arise in the labour market periodically, should be subject to consultations between the government and the social partners and ultimately determined by the legislature, not individual employers, or workers. According to established case law in Georgia, courts have taken the approach that the list of prohibited grounds should be interpreted broadly.[23] This under-

22. Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast); Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

23. Ruling of the Constitutional Court of Georgia, 27 December 2010, case #1/1/493.

lines that the inclusion of the open-ended clause of "any other grounds" adds no value from a legislative point of view and, if not removed, is likely to create a need for future legislative intervention as a varied interpretation of the clause by the courts is to be expected. It is therefore recommended to amend Article 2(3) and Article 4(1) of the Labour Code and remove the clause "on any other grounds". From the perspective of international labour standards the current provision is not in line with Convention No. 111, and also goes beyond the requirements of the implementation of EU law, in that it provides an open list of "discrimination grounds". Here it should be considered that Article 11 of the Constitution of Georgia[24] includes an open-ended list of discrimination grounds. Given the Constitutional regulation and the national judicial context, it appears that the concept of including an open-ended clause within the list of discrimination grounds is well-established in national legislation, in spite of the fact that it is not in conformity with international labour standards. Needless to say that the ILO considers that it is in the interest of judicial clarity and consistency that the grounds for the prohibition of discrimination are:

- In line with those contained in ILO Convention No. 111 and other relevant sources of international law; and that
- Any additional grounds are included only after consultation with the social partners, as required by ILO Convention No. 111.

Literature Review

Reports reviewed generally consider relevant legislative reforms a positive development for anti-discrimination law in Georgia. The Constitution of Georgia, international treaties and agreements, the Labour Code and the Law of Georgia on the Elimination of All Forms of Discrimination form the normative basis for the prohibition of and protection against discrimination in labour relations. Discrimination was prohibited already under the 2006 version of the Labour Code, although the provisions therein were largely declaratory. The adoption of the anti-discrimination law in 2014 outlined the state's goal of establishing institutional mechanisms for equality and bringing national legislation closer to international anti-discrimination standards.[25]

As a result of the 2019 Legislative Regulation of Sexual Harassment and the 2020 Labour Law Reform, the principle of equal treatment now clearly applies to labour and pre-contractual relations, including at the stage of the vacancy announcement and selection. Experts pointed out that the issue of legislative silence on the principle of reasonable

24. All persons are equal before the law. Any discrimination on the grounds of race, colour, sex, origin, ethnicity, language, religion, political or other views, social affiliation, property or titular status, place of residence, or on any other grounds shall be prohibited

25. Kereselidze T., Analysis of Georgian Labour Legislation – Employment Discrimination based on Sex and its Legal Consequences, Georgian Young Lawyers Association, Tbilisi, 2014.

accommodation remained outstanding which was a significant impediment to the employment of persons with disabilities[26].

Despite the improvement of the legislation in 2019, the Public Defender's Office points out that labour relations is one of the spheres, most vulnerable to discrimination, and the facts of discrimination are observed both in public service and in the private workplace.[27] Unequal treatment often manifest in an unfavorable environment for workers, in most cases due to different opinions, political or otherwise.[28] According to the Public Defender's Office, discriminatory acts create harassment practices in workplaces and often entail forms of unethical communication, the non-provision of monetary benefits, and creating made-up obstacles in the performance of work duties. Most often, employers try to cover up discriminatory motives for dismissals by employing formal legal grounds such as structural reorganization and disciplinary proceedings.[29] The Public Defender's Office also emphasizes pre-contractual discriminatory practices, especially in vacancy announcements.[30]

Within the 2020 Labour Law Reform process, amendments to the anti-discrimination provisions (including the introduction of the definition of direct and indirect forms of discrimination) were supported by human rights organizations and trade unions. A "People in Need" study notes that the inclusion of provisions on discrimination was one of the most noteworthy changes under the 2020 Labour Law Reform.[31] Moreover, the analysis of the documents developed by the organizations representing the interests of the employers in the reform process shows that these changes were not actively rejected by the employers either. The Human Rights Education and Monitoring Center (2020) positively assessed the Labour Code amendments in relation to the principle of equal treatment and reasonable accommodation of persons with disabilities, although it was noted that they considered the amendments insufficient. According to their assessment, further clarification is needed as to what constitutes proportional burden and which definition of disability will be used when applying the norm; in order to enforce the principle of reasonable accommodation in practice, it is necessary to define the principle of a reasonable period in the legislation.[32]

26. Liparteliani, R., Kardava, E. 2018. Harmonization of Georgian National Legislation with EU on Women Labour Rights Directives. Friedrich Ebert Foundation, Tbilisi. Fes.de. Available at: http://library.fes.de/pdf-files/bueros/georgien/14997.pdf [Last access: 10.11.21]; Ghvinianidze, L., Kashakashvili, N. 2018. Equality in Employment Relations (Georgian Law in the Light of the EU Directives). Human Rights Education and Monitoring Center. Socialjustice.org.ge. Available at: https://socialjustice.org.ge/ka/products/tanastsoroba-shromit-urtiertobebshi [Last access: 10.11.21].

27. Public Defender, 2019. The Situation in Human Rights and Freedoms in Georgia, 176. Available at: https://www.ombudsman.ge/res/docs/2020040215365449134.pdf [Last access: 10.11.21].

28. Ibid.

29. Ibid, 177; Public Defender, 2020. The Situation in Human Rights and Freedoms in Georgia, 181. Available at: https://www.ombudsman.ge/res/docs/20210401105739483397.pdf [Last access: 10.11.21].

30. Public Defender, 2019, 176; Public Defender, 2020, 180.

31. Markozashvili N., Charkviani N., Antadze G.,2021, Labour Rights in Georgia, People in Need, Tbilisi, 16.

32. Human Rights Education and Monitoring Center, 2020. Notwithstanding positive changes, still there are problems in legislation. Available at: https://socialjustice.org.ge/ka/products/emc-pozitiuri-tsvlilebebis-miukhedavad-shromis-kanonmdeblobashi-problemebi-rcheba [Last access: 10.11.21].

Analysis of Interviews

Employees and employers observed, recent significant changes made, concerning elimination of employment discrimination. Although the country has had a Law on the Elimination of all Forms of Discrimination since 2014, and discrimination on any grounds was already prohibited by the Constitution of Georgia, the new anti-discrimination provisions of the Labour Code have created additional mechanisms to eliminate discrimination.

> *"It is very important that in the Labour Code a separate chapter was introduced on prohibition of discrimination. At the legislative level, I think everything is at normal standing."*[33]

Stakeholders positively assessed legislative changes extending the scope of the prohibition of employment discrimination to the pre-contractual relationship between the employer and the candidate, the selection criteria, and the conditions of employment, as well as the fact that the burden of proof of non-discrimination in the pre-contractual relationship will lie with the employer. Attention was paid to the fact that the list of prohibited grounds is not exhaustive - a person can indicate any grounds for discrimination while seeking the protection of the right to equality. According to the representative of the business association, this approach may hinder various organizations from using open competition to select a candidate. Such cautious position of business organizations is understandable for the civil sector as well, although it is believed that if the executive bodies work properly and consistently, this issue will be resolved in a short time.

The recommendations of the non-governmental sector regarding the principle of reasonable accommodation should also be mentioned. Amendments initiated within the 2020 Labour Law Reform are considered to be a positive step, although it is noted that this provision has the character of a recommendation. It is therefore considered advisable by the different stakeholders, that the Labour Inspection Service elaborates practical recommendations and guidelines so that employees and employers have a good understanding of what would be considered a disproportionate burden, in which case the employer could refuse reasonable accommodation and vice versa, and what could be considered a proportional burden.

> *"For example, it may be noted that offering a flexible work schedule is a proportionate burden or the employee may ask for professional training programs and this may be considered a disproportionate burden because, for example, it requires financial costs. The Labour Inspection Service must create guidelines in this regard."*[34]

33. *Interview with the representative of the Public Defender's Office.*
34. *Interview with the representative of the Georgian Young Lawyers Association.*

The parties expect that European practice will be applied in Georgia as well, and that, for example, the proportional burden for different types of companies will be determined by taking into account the size and turnover of the company.

According to the representative of the United Nations Development Program (UNDP), the communities of persons with disabilities is already actively using existing legal provisions in their day-to-day operations, indicating that the adopted norms have been useful and helpful, although more information is needed on what reasonable accommodation means and how it can be enforced.

Different opinions were expressed among the respondents regarding the overlap of competencies between the Labour Inspection Service and the Public Defender's Office. According to the representative of the Public Defender's Office, this issue can be problematic for several reasons - on the one hand, it may confuse employees, e.g. to whom should they refer in the alleged case of employment discrimination. On the other hand, there is a risk that the Public Defender's Office and the Labour Inspection Service may implement different practices, and/or adopt different interpretations on the same or similar issues. One of the respondents also stressed the argument of inefficient spending of state resources, since the state is already spending resources for the development of the Public Defender's Office's capacity in this field.

According to some of the respondents, considering some international experiences, it would be more appropriate if the competence of employment discrimination falls under one institution - the Labour Inspection Service. This institution should cover a range of violations in labour relations, including alleged cases of employment discrimination. Moreover, the Labour Inspection Service has the authority to sanction an employer, whereas the Public Defender's Office can only issue a recommendation to the employer. Consequently, in theory, the Labour Inspections Service can be more effective and efficient in eliminating employment discrimination. Other respondents mentioned that in practice, in Georgia, the Public Defender's Office has had many years of experience responding to cases of discrimination, enjoys a high degree of independence, and high competence to study and respond to cases of discrimination.

The representative of the Labour Inspection Service emphasized the importance of confidentiality which is an effective mechanism of the Labour Inspection Service from the perspective of employee protection. The employee is entitled to refer to the Labour Inspection Service with the request to attend to the alleged case of discrimination with the condition of not revealing his/her identity. This gives the employee more motivation to expose the facts of employment discrimination and to protect their rights. Additionally, according to the representative of the Labour Inspection Service, the potential risk of discrimination is eliminated a priori when they execute monitoring over labour rights.

> *"By prevention, I mean that there is no need for somebody to address us. When we inspect the organization and if there are violations, we eliminate in advance to deter the risks of discriminatory treatment to anyone. For example, one company concluded an employment agreement with an employee, with a clause that the employee could have been fired for health problems. We considered this practice as discriminatory that could potentially put someone at risk. The company removed this clause from the contract."*[35]

The Labour Inspection Service, itself, acknowledges the sensitivity of the issue and the need for strong competence when investigating and responding to cases of discrimination. They believe that some time will be needed before the inspection staff develop the proper experience, which is why they expressed a willingness to work closely with the Public Defender's Office to share expertise and existing standards. This is confirmed by the fact that a memorandum of cooperation is planned to be signed between the Labour Inspection Service and the Public Defender's Office, which will outline the type of response from the Labour Inspection Service to the various complaints and the standards for referring the case to the Public Defender's Office. The Labour Inspection Service already has the practice of referring cases to the Public Defender's Office.

Conclusions

The study unequivocally identified the positive changes that have taken place within the anti-discrimination framework in labour legislation during the recent period. However, some issues remain that still require further steps by the state.

It should be noted that from a legal perspective, the newly established discrimination definitions, list, and scope are largely in line both with the international standards and the existing needs. However, it is considered that from a legal perspective having an open-ended list of discrimination grounds is not in necessarily in conformity with ILO Convention No. 111 and also goes beyond the requirement of implementation of European Union law. The ILO believes that this approach makes the legal norms ambiguous and creates opportunities for different interpretations. Some of the respondents in the qualitative research share a similar opinion, but at the same time, it should be noted that such an open-ended list of the grounds of discrimination stems from national case law and the Constitution of Georgia.

Differing views have been expressed about the monitoring and enforcement of discrimination cases. As a result of the 2019 legislative amendments, the Public Defender's Office has been empowered with a mandate to oversee employment discrimination cases in the private sector. In addition, within the framework of the 2020 Labour Law Reform, the Labour Inspectorate was also authorized with monitoring powers on employment discrimination

35. *Interview with the representative of the LEPL Labour Inspection Service.*

cases. Therefore, there is an overlap between these two institutions in terms of their oversight of employment discrimination cases.

On the one hand, the Public Defender's Office has significant experience in working on discrimination issues and has relevant human resources. On the other hand, according to Georgian legislation, this institution is only authorized to exercise its mandate on the basis of appeals, while the Labour Inspection Service has the mandate to respond to and identify employment discrimination and harassment cases, both in case of appeal and planned inspections. The Inspectorate has the powers to sanction the organizations (including fines) and to order the employers to establish discrimination and harassment-free working environments, whereas the Public Defender's Office can only issue recommendations.

It should also be noted that according to best international practice, Labour Inspection Services and equality committees similar to the Public Defender's Office often operate simultaneously in terms of monitoring and/or enforcing the prohibition of employment discrimination. On the one hand, the Public Defender's Office has a much longer and broader experience in handling allegations of discrimination, from which the Labour Inspection service can benefit as it develops its capacity in its area of its responsibilities. On the other hand, the Labour Inspection Office will be able to relieve some of the case burdens of the PDO and should be able to develop more clarity on specific employment discrimination issues fairly quickly, given its resources.

The principle of reasonable accommodation is evaluated as a positive novelty within all three components of the study. However, there are some challenges in the implementation of the new legislative norm. Both desk and qualitative research have identified the need to further specify the norms. Namely: the principle of proportionality; disproportionate burden, the deadlines for adapting the work environment and when and in what circumstances can request to adapt the work environment be refused, and so on.

RECOMMENDATIONS

The Labour Inspection Service should pay particular attention to training the inspectors on employment discrimination issues, including, periodically holding roundtables, seminars, and discussions at local and international levels, with the participation of inspectors.

The Labour Inspection Service and the Public Defender's Office should actively cooperate with each other so as to ensure that optimal use is made of their combined expertise, experience, and financial and human resources in monitoring and/or enforcing the prohibition of employment discrimination. In this respect, the swift signing of the Memorandum of Understanding that was developed between the two parties

some time ago would be an important symbolic and practical step towards ensuring such cooperation.

Establish a format of periodic meetings and cooperation between the Public Defender's Office and the Labour Inspection Service on issues of discrimination and harassment, within which the institutions will exchange information and knowledge, discuss challenges and issues in the field, and plan strategies for adequate use of their resources.

The Labour Inspection Service should pay special attention to cooperation with relevant local and international non-governmental organizations on issues of discrimination and harassment.

The Labour Inspection Service should develop and issue advisory instructions/guidelines to ensure effective enforcement of reasonable accommodation.

2.2 The concept of equal remuneration for work of equal value

Legal Review

Until the 2020 Labour Law Reform, there was no provision in Georgian domestic law regulating equal remuneration between men and women for work of equal value. The first draft of the reform package prepared by the international and national experts of the ILO included the provision that employers shall provide equal remuneration for men and women for work of equal value. The rules and regulations to ensure application of the given principle was suggested to be determined by the Minister of Labour in consultation with the social partners. This provision was modified during preliminary consultation with the stakeholders and the current Article 4(4) of the Labour Code reads as follows: "employers shall ensure equal remuneration of female and male employees for equal work performed."

The Equal Remuneration Convention, 1951 (No. 100) of the ILO (ratified by Georgia) regulates the concept of equal remuneration for men and women workers for work of equal value, not only for equal work. According to the CEACR, equal value is the cornerstone of the Convention and "the concept of "work of equal value" lies at the heart of the fundamental right of equal remuneration for men and women for work of equal value, and the promotion of equality."[36] Provisions ensuring "equal pay for equal work" and "equal pay for work of equal value" are different as "equal pay for equal work" is a limited concept. For several years, the CEACR has been raising concerns regarding the absence of legislation giving full expression to the principle of equal remuneration for men and women for

36. General Survey on the Fundamental Conventions Concerning Rights at Work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, paragraph 673.

work of equal value. The CEACR states that while general non-discrimination and equality provisions are important, they will not normally be sufficient to give effect to Convention No. 100, as they do not capture the key concept of "work of equal value". The concept of "work of equal value" is fundamental to tackling occupational sex segregation, as it permits a broad scope of comparison, including, but going beyond equal remuneration for "equal", "the same" or "similar" work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value. The CEACR respectively "urged the Government to take concrete steps to give full legislative expression to the principle of equal remuneration for men and women for work of equal value, with a view to ensuring the full and effective implementation of the No.100 Convention".[37]

The case of Georgia on this issue was discussed by the Committee on the Application of Standards (International Labour Conference, 107th Session, May-June 2018). The Committee adopted 7 concluding recommendations[38], addressed to the Government of Georgia. The first and most important recommendation should be emphasized here:

> "the Committee recommended the Government to: ensure that national legislation, in particular the Labour Code, the Law on Gender Equality, the Law on Elimination of All Forms of Discrimination and/or the Law on the Public Service, expressly commits to the principle of equal remuneration for men and women for work of equal value in consultation with the social partners".[39]

Concerning the 2020 Labour Law Reform and the issue of equal remuneration between men and women for work of equal value, the CEACR in its 2021 Observation stated that:

> "It notes with regret that the Government did not use these opportunities to include a provision giving full legislative expression to the principle of the Convention". "Recalling that the Convention has been ratified in 1993, the Committee once again urges the Government to amend the labour legislation, in cooperation with the social partners and the Council for Gender Equality, in order to give full legislative expression to the principle of "equal remuneration for men and women for work of

37. Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 103rd Session, 2014, 294-295.http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_235054.pdf

38. Other recommendations are: "- implement effective enforcement and detection mechanisms to ensure that the principle of equal remuneration for men and women for work of equal value is applied in practice; - take steps to raise awareness among workers, employers and their organizations of the laws and procedures available in order to allow them to avail themselves of their rights; - continue to provide information on decisions handed down by the judiciary, and cases handled by the Office of the Public Defender; - continue to provide gender-disaggregated data on labour market participation and remuneration; - provide the Committee of Experts with information related to the 2018–20 Georgian National Action Plan on Gender Equality adopted in May 2018 and its potential impact on the principle of equal remuneration for work of equal value in law and practice; and - avail itself of ILO technical assistance in implementing these recommendations." Individual Case (CAS) - Discussion: 2018, Publication: 107th ILC session (2018), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3953286

39. Ibid.

equal value", with a view to ensuring the full and effective implementation of the Convention without delay."[40]

Here it should be noted that the same problem is observed in relation to Law on Civil Service. In its 2021 Observation the Committee noted that:

> "regarding the public sector, the Committee once again urges the Government to take the necessary steps to amend section 57(1) of the Law on the Public Service (2015) to capture the concept of "work of equal value" so as to ensure that public officials covered by the Law are entitled not only to equal remuneration for equal work, but also for work that is entirely different but nonetheless of equal value. The Government is requested to provide information on the progress achieved in this regard"[41]

As the Labour Code does not regulate the concept of equal remuneration for men and women workers for work of equal value, as required under the Convention No. 100, *a new provision should be* introduced ensuring that men and women workers shall be granted equal remuneration for work of equal value. The provision should state that regulations ensuring the application of the given principle should be determined by the Minister of Labour in consultation with the social partners. When subsequently developing a methodology for evaluating work of equal value the CEACR has noted that:

> "The concept of "equal value" requires some method of measuring and comparing the relative value of different jobs. There needs to be an examination of the respective tasks involved, undertaken on the basis of entirely objective and non-discriminatory criteria to avoid the assessment being tainted by gender bias. While the Convention does not prescribe any specific method for such an examination, Article 3 presupposes the use of appropriate techniques for objective job evaluation, comparing factors such as skill, effort, responsibilities and working conditions".[42]

Literature Review

The issue of the gender pay gap and its relationship to women's participation and inequality in the labour market is covered in a number of reports. High unemployment is considered to be a fundamental problem in the Georgian labour market in general, and it is particularly critical for women. A study by the UN Women[43] shows that the difference

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40. Observation (CEACR) - adopted 2020, published 109th ILC session (2021), https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4057609,102639,Georgia,2020 [Last access: 10.11.21].

41. Ibid, see also Direct Request (CEACR) - adopted 2020, published 109th ILC session (2021), https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4057599,102639,Georgia,2020 [Last access: 10.11.21].

42. General Survey on the Fundamental Conventions Concerning Rights at Work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, paragraph 695.

43. UN Women, 2020. The Gender Pay Gap and Gender Inequality in Labor Market in Georgia, 8. Available at: https://www2.

between the employment rates of women and men is 10.4% - in favor of men. According to the National Statistics Office of Georgia (2020: 71), in the last 10 years, women's participation in the labour market was 20-21% lower than that of men.[44]

According to a World Bank report, the low participation of women in the labour market is explained by the gender pay gap.[45] The report considers that the gender pay gap constitutes a weak incentive for women to enter the labour market.[46] Georgia faces the challenge of reducing horizontal and vertical gender segregation in the labour market. Segregation by industry, occupation, and field of study, brought about by stereotypical perceptions of male versus female roles, locks women into economic activities with lower earnings.[47] According to the latest data, the monthly salary of women is 36.2% lower than the salary of men, and this figure has remained significantly unchanged in the last six years.[48] Research supported by Friedrich-Ebert-Stiftung, which studies women's labour rights in line with EU directives, considers the gender pay gap to be one of the shortcomings of labour legislation in Georgia. The study highlights that the legislation should recognize a fair concept of wages and the principle of equal pay for women and men, and the state should develop an objective and non-discriminatory methodology for measuring equal work.[49]

According to the Coalition for Equality, which unites ten human rights organizations, the gender pay gap illustrates well the issue of inequality in Georgia.[50] The Coalition believes that in addition to the gender pay gap, the state should address issues related to maternity (parental) leave (see details below in the maternity leave section).

Analysis of Interviews

The Labour Code amendment concerning equal pay for women and men was positively assessed by all stakeholders. According to the representative of the Public Defender's Office, the Labour Code is a guiding document for the employer and the clear provision on the prohibition of the pay difference explicitly defines the operational principles for the employer.

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unwomen.org/-/media/field%20office%20georgia/attachments/publications/2020/gender%20pay%20gap%20georgia%20geo.pdf?la=ka&vs=4255 [Last access: 10.11.21].

44. National Statistics Office of Georgia, 2020. Woman and Man in Georgia. Tbilisi, 71. Available at: https://www.geostat.ge/ka/single-news/2165/kali-da-katsi-sakartveloshi-2020 [Last access: 10.11.21]71

45. World Bank, 2021. Country Gender Assessment Georgia, 42. Available at: https://documents1.worldbank.org/curated/en/407151616738297662/pdf/Georgia-Country-Gender-Assessment.pdf [Last access: 10.11.21]. The report cites women's family responsibilities as a key factor. According to the estimates, 49% of women refuse to look for work because of family responsibilities (World Bank, 2021: 42). For the purposes of the study, we will not dwell on this issue.

46. Ibid.

47. Ibid, 74.

48. Georgian National Statistics Office, 2020. 75.

49. Liparteliani, Kardava, 2018.

50. Coalition for Equality, 2020. Report of the Coalition for Equality and other NGOs to the Pre-Sessional Working Group of the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), 6-7. Available at: http://equalitycoalition.ge/files/shares/Coalition_for_Equality_-_CEDAW_Report_-_June_16__2021.pdf [Last access: 10.11.21].

According to the representative of the UN Women, the need to modify the Labour Code provision on equal pay is still the key issue as it should define the concept of equal pay for men and women employees for the work of equal value. However, the existing provision on equal pay is evaluated as an important starting point for intensive work to be conducted by the state and the non-governmental sector to eliminate the gender pay gap. According to the UN Women representative, for the executive body to be able to eliminate gender pay discrimination, it firstly needs to have a mechanism for identifying and monitoring discrimination. National standards are also needed to be formulated in this regard. Currently, it is difficult to determine what is meant under the principle of equal work in the country, let alone work of equal value. There are no uniform standards and classification criteria. Consequently, the country has a long way to go to achieve the mechanisms for the determination of the principle of equal work. In this regard, UN Women provided the Labour Inspection Service with recommendations on how to develop this mechanism, how organizations can produce data themselves, in what cases they should share this data with the Labour Inspection Service, and how to determine, at a general level, whether there is a gender pay gap.

The representative of the United Nations Development Program (UNDP) also spoke about the importance of the equal pay provision in the Labour Code. The UNDP representative considers that this provision may be the basis for the introduction of various effective mechanisms to eliminate the gender pay gap in Georgia.

Conclusions

Equal pay for equal work is a novelty in the labour legislation and the key stakeholders have assessed it as a significant positive step. However, this provision still does not fully provide necessary legal guarantees in this regard. The legal review, as well as the literature review and analysis of interviews, revealed the necessity to further modify the law and establish tools and processes to guarantee equal pay for work of equal value. This requires the development and establishment of a methodology for calculating the equal value of work.

RECOMMENDATIONS

Amend the Labour Code and the Law on Civil Service, and establish the principle of equal pay for work of equal value in accordance with ILO Convention No.100.

Develop and approve a methodology for calculating the equal value of work in cooperation with interested and competent international organizations and expert groups, as well as in consultation with the social partners.

2.3 Sexual harassment

Legal Review

Within the 2019 Sexual Harassment Legislative Regulation, the Parliament of Georgia introduced amendments to the Labour Code concerning the issue of sexual harassment. It was the first attempt of labour legislation in Georgia to prohibit workplace sexual harassment. The main goal of the amendments was to trigger a psychological and cultural shift in Georgian society to understand that sexual harassment in labour relations should be prohibited. According to Article 4.6 of the Labour Code sexual harassment is defined as "conduct of a sexual nature towards a person, with the purpose and/or effect of violating the dignity of the person concerned and creating an intimidating, hostile, degrading, humiliating or offensive environment for him/her." The same Article includes a note in relation to the definition of sexual harassment stating that "for the purposes of this Law, conduct of a sexual nature includes uttering and/or addressing a person with phrases of a sexual nature, displaying genitals, and/or any other non-verbal physical conduct of a sexual nature."

Regulation of the Labour Code related to sexual harassment should be further improved. The definition of sexual harassment, as provided in the Labour Code, already covers the prohibition of hostile environment sexual harassment. However, it does not include the prohibition of *quid pro quo*[51] sexual harassment and the definition of what constitutes conduct of a sexual nature is not as clear/broad as it should be.

First of all, it should be stressed that Article 4.6 of the Labour Code is too narrow even when compared to the prohibition of hostile work environment, sexual harassment in labour relations as regulated by Law on Gender Equality.[52] Moreover, Article 4.6 is not in line with EU law and international labour standards. Article 2(1)(d) of the Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), provides the following definition of sexual harassment: "where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment".

In its 2021 Observation, the CEACR:

> "notes with interest the introduction of a definition and prohibition of sexual harassment in the Labour Code, but notes that this definition does not cover the full

51. Defined as any physical, verbal or non-verbal conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men which is unwelcome, unreasonable and offensive to the recipient; and a person's rejection of, or submission to, such conduct is used explicitly or implicitly as a basis for a decision which affects that person's job

52. According to Article 6(1)(b) of the Law on Gender Equality, it is prohibited in labour relationships to have any type of sexual verbal, non-verbal or physical behaviour, which is aimed at or causes violation of person's dignity or creation of humiliating, hostile or offensive environment for the person.

range of forms of behaviour that constitute sexual harassment in employment and occupation". Respectively, CEACR "asks the Government to take steps to include in the labour legislation a complete definition of sexual harassment, including both quid pro quo and hostile work environment, and to provide information on any progress made in this regard".[53]

According to the CEACR, the concept of sexual harassment involves two different elements: (i) *quid pro quo,* defined as any physical, verbal or non-verbal conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men which is unwelcome, unreasonable and offensive to the recipient; and a person's rejection of, or submission to, such conduct is used explicitly or implicitly as a basis for a decision which affects that person's job; (ii) hostile work environment - conduct that creates an intimidating, hostile or humiliating working environment for the recipient.[54]

Therefore, Article 4.6 of the Labour Code is not in full compliance with ILO and EU approaches concerning the definition and prohibition of *quid pro quo* and hostile work environment sexual harassment and should be amended. The current wording of Article 4.6 of the Labour Code should be replaced as follows: "Sexual harassment shall be prohibited. Sexual harassment is any sex-based behavior, including unwanted verbal, non-verbal or physical behavior of a sexual nature that is unwelcome, unreasonable, and offensive to its recipient. Sexual harassment may take two forms: a) *quid pro quo*, when the basis for a decision which affects that person's job, is made conditional, explicitly or implicitly, on the victim acceding to demands to engage in some form of sexual behavior; or b) hostile work environment in which the behavior creates conditions that are intimidating, hostile or humiliating for the victim."

Literature Review

As a result of the 2019 Legislative Regulation of Sexual Harassment, the anti-discrimination supervision authority of the Public Defender's Office was extended to the private sector. Prior to these changes, human rights organizations spoke of the urgent need for legislative reform, as the Labour Code, at that time, did not define harassment as a form of discrimination. [55] The Human Rights Education and Monitoring Center positively assessed the new regulation of sexual harassment norms and the determination of administrative liability for the employer in such cases.[56]

53. Observation (CEACR) - adopted 2020, published 109th ILC session (2021).
54. General Survey on the Fundamental Conventions Concerning Rights at Work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, paragraph 789._
55. Liparteliani, Kardava, 2018; Gvinianidze, Kashakashvili, 2018
56. Human Rights Education and Monitoring, Center, 2020.

Analysis of Interviews

Stakeholders generally considered the new provisions of the Labour Code that oblige the employer to notify the Labour Inspection Service and/or to react to cases of sexual harassment as positive developments.

Several respondents believe that work needs to be continued in terms of providing protection to victims of sexual harassment, including, guaranteeing physical distance from the abuser in the workplace. According to the expressed views, a sanction from the Labour Inspection Service alone may not be sufficient to deter a recurrence of the act. Additionally, it is important that a person who addressed the Labour Inspection with a claim on this form of discrimination, is guaranteed confidentiality.

It was also noted that it is important to raise the awareness of both the general public and employers about sexual harassment because, on the one hand, employees are not aware of their rights and remedies available against harassment and, on the other, attempts to trivialize sexual harassment are frequent. Moreover, it was mentioned that it is important to ensure that employers have access to information about internal measures and standards they can use and adapt to, that facilitate the prevention and early identification of sexual harassment within their businesses.

Conclusions

The legislative regulation of sexual harassment was attempted back during the ratification of the "Istanbul Convention" and the adoption of the consequent legislative amendments. However, the general provisions introduced at that time failed to provide adequate protection mechanisms against sexual harassment. In 2019, as part of the adoption of the legislative framework regulating sexual harassment, a definition of sexual harassment was introduced into labour legislation, which remained unchanged under the 2020 Labour Law Reform, although the authority to monitor sexual harassment in the workplace was granted to the Labour Inspection Service in addition to the Public Defender's Office.

The study has identified two main problems pertaining to eliminating sexual harassment. First, it is the lack of awareness of both employees and employers on the issue, which is why it is considered necessary to intensify inspections by the Labour Inspection Service on sexual harassment issues and to strengthen preventive mechanisms.

The second important challenge identified in the course of the legal review is that the current definition of sexual harassment is not in full compliance with international labour standards and EU Directive 2006/54 / EC. The current definition refers to only one form of sexual harassment, namely, violating the dignity of a person and creating an intimidating, hostile, degrading, humiliating, or offensive environment for him/her. However, the law

does not envisage such circumstances as *quid pro quo*, where the receipt of work-related benefits, including pay increases, promotions, continuation of employment, and so on, are dependent on the recipient's consent in response to sexual harassment.

RECOMMENDATIONS

Clarify the definition of sexual harassment in the legislation by including the *quid pro quo* principle. Recommended draft provision:

"Sexual harassment shall be prohibited. Sexual harassment is any sex-based behavior, including unwanted verbal, non-verbal or physical behavior of a sexual nature that is unwelcome, unreasonable, and offensive to its recipient. Sexual harassment may take two forms: a) Quid pro quo, when the basis for a decision which affects that person's job, is made conditional, explicitly or implicitly, on the victim acceding to demands to engage in some form of sexual behavior; or b) hostile work environment in which the behavior creates conditions that are intimidating, hostile or humiliating for the victim".

The Labour Inspection Service should develop and issue advisory instructions/guidelines to ensure the prevention of sexual harassment in the workplace.

The Labour Inspection Service, along with international and local partner organizations, should organize an information campaign to raise public awareness about sexual harassment.

3

Employment contract

3.1 Internship

Legal Review

Article 18 of the Labour Code provides regulation of internships. Paragraph one of the Article provides a definition of an intern, which includes the purpose of the internship legislated – "an intern is a natural person who performs for an employer particular work, whether paid or not, in order to upgrade his/her qualifications and to gain professional knowledge, skills or practical experience." The Labour Code provides some limitations for employers and requires that

> "an employer shall not use an intern's labour in order to avoid entering into an employment agreement. An intern shall not replace an employee. An employer shall not have the right to hire an intern to replace an employee with whom labour relations were suspended and/or terminated."

The provision allows for both paid (maximum one year) and unpaid (maximum 6 months) internships. The Labour Code defines that "a person may do an unpaid internship with the same employer only once." The Labour Code (and in general, Georgian legislation) is silent on what the status is of an intern performing particular work for an employer. This is not clear, especially with regard to unpaid internships. Article 18(4) of the Labour Code states that the relations between an intern and employer shall be regulated by a written agreement. So, the Labour Code defines that internship contracts are not considered to be a full employment relationship, although it states that all the minimum labour standards of protection provided for by the Labour Code shall apply to agreements concluded with interns (except for regulations related to maternity and parental leave and dismissal procedures). It should be also mentioned here that there is a special regulation applicable to internships in state institutions. Namely, the rules and conditions of internship in civil service, self-government municipal organs and legal entities of public law are regulated by the No. 410 Ordinance of the Government of Georgia on Approval of the Programme of Internship Rules and Conditions in Public Establishments (dated 10 June 2014).

As with all work-based learning (WBL) arrangements (apprenticeships, etc.), internships in employment relations should be regulated in a systemized manner, taking into account/within the framework of education policies and laws. Regulating internships only, without regulating other WBL arrangements is likely to lead to abuse (unpaid work performed, no learning provided, repeated use, etc.). Respectively, Georgia should elaborate and initiate relevant legislative and policy reform concerning WBL arrangements, covering different areas of law, including labour law, education laws, civil service law, law on employment, etc.

Literature Review

Internships are important mechanisms for integrating young people into the labour market, for them to acquire the knowledge and skills necessary for the work process.[57] According to the National Statistics Office of Georgia, unemployment is particularly high in the 15-24 age group.[58] Before the 2020 Labour Law Reform, Georgian labour legislation did not provide regulation for internships[59] in the private sector, which often encouraged the un-

57. Young Socialists, 2019. Study of Internship Needs, 9. Available at: http://library.fes.de/pdf-files/bueros/georgien/16011.pdf [Last access: 10.11.21].
58. National Statistics Office of Georgia, 2020.
59. Internship issues in the public sector are defined by the # 410 Resolution of the Government Resolution on Approval of State Program related to Rules and Conditions of Internship in Public Establishments.

lawful use of the institution and created false expectations. This pattern is confirmed by the needs assessment study, which showed that in addition to the positive aspects (such as gaining knowledge and experience and accumulating social capital), internships are most often associated with unpaid work, free labour, and so-called spadework.[60] Young people with internship experience also indicated in the study that most of them did not have signed contracts which made them vulnerable due to unpredictable work schedules and unforeseeable rights and responsibilities[61].

Introducing the regulatory framework of internships under the 2020 Labour Law Reform has been positively assessed by the Young Lawyers Association[62] and Human Rights Education and Monitoring Center.[63] The Young Entrepreneurs Association[64] had a different position, according to which, the regulation of internships would further complicate the prospects for young people to gain practical experience. The Association also criticized the provision in the Labour Code, according to which internships should not deter employment. In their view, the practice shows that often starting a paid employment relationship is preceded by hiring an intern who temporarily replaces the employee.[65]

Analysis of Interviews

Generally, human rights organizations positively assess the 2020 Labour Law Reform amendments relating to internships. A representative of the Trade Union Guild expressed the opinion that the law should limit the possibility of concluding a contract with a 6-month probationary period after the completion of one year of an internship. According to the respondent, during the one-year internship employees' work performance is still being examined and the mentioned norm allows the employer to simply postpone entering into a more responsible employment relationship with the employee.

Conclusions

The concept of an internship first appeared in labour legislation as part of the 2020 Labour Law Reform. The norms adopted as a result of the reform still lead to different assessments from employers and employees' representatives, although both the literature review and analysis of interviews have shown that the amendments largely address the challenges, the remaining issue is unpaid internships, which are still allowed under the

60. *Young Socialists, 2019. 14-15.*
61. *Ibid, 32.*
62. *Georgian Young Lawyers Association, 2020. GYLA submitted its opinion on the package of amendments to the Labour Code to the Parliament of Georgia. Available at: https://gyla.ge/ge/post/saia-m-saqartvelos-parlaments-shromis-kodeqsshi-cvlile-bebis-pakettan-dakavshirebit-mosazrebebi-tsarudgina#sthash.wVN5CQHh.DIJls44A.dpbs [Last access: 10.11.21].*
63. *Human Rights Education and Monitoring Center, 2020.*
64. *Association of Young Businessmen, 2020. Review of changes to be made to the Labour Code of Georgia and the Law on Labour Inspection, and Assessment of Expected Results. Available at: https://www.aba.com.ge/%E1%83%A1%E1%83%90%E1%83%A5%E1%83%90%E1%83%A0%E1%83%97%E1%83%95%E1%83%94%E1%83%9A%E1%83%9D%E1%83%A1-%E1%83%A8%E1%83%A0%E1%83%9D%E1%83%9B%E1%83%98%E1%83%A1-%E1%83%99%E1%83%9D%E1%83%93%E1%83%94%E1%83%A5/ [Last access: 10.11.21].*
65. *Ibid.*

current provisions of the law. At the same time, the legal review revealed the need to regulate internships in a broader context. Among them, it is necessary to regulate the principle of internship in terms of public service. It is also important to consider the principle of internship in the higher and vocational education system as well as the implementation of employment and education policy.

RECOMMENDATIONS

The legislation should ensure that all work-based learning is regulated comprehensively across all relevant legislative and policy frameworks, including the civil service, higher and vocational education, and employment.

The legislation should ensure the gradual restriction of unpaid internships and set standards for internship pay._

3.2 Fixed-term employment contract

Legal Review

Under the 2020 Labour Law Reform certain important aspects related to employment contracts are now regulated differently. However, some issues remain in relation to the ground for the conclusion of the fixed-term employment contract. According to Article 12(3) of the labour Code,

> "except when the duration of an employment agreement is 1 year or longer, an employment agreement shall only be concluded for a fixed term if one of the following circumstances is present:

a) a specific amount of work is to be performed;
b) seasonal work is to be performed;
c) the amount of work has temporarily increased;
d) an employee being temporarily absent from work due to suspended labour relations is being replaced;
e) the employment agreement provides for the subsidizing of wages as defined in the Law of Georgia on Facilitating Employment;
f) other objective circumstances justifying the conclusion of an employment agreement for a fixed term."

It is observed that, when the period of a labour relationship does not exceed one year, a fixed-term employment contract may be concluded only in the concrete cases listed above. Howev-

er, the wording of the last sub-paragraph of Article 12(3) of the Labour Code - other objective circumstances under which the purpose to use fixed-term contracts is justified - gives a very wide possibility to the employer to abuse the unlimited right for using fixed-term employment contracts and to use such fixed-term contracts successively. According to Council Directive 1999/70/EC of 28 June, 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (hereinafter the Council Directive 1999/70/EC),

> "to prevent abuse arising from the use of successive fixed-term employment contracts or relationships, Member States, after consultation with social partners in accordance with national law, collective agreements or practice, and/or the social partners, shall, where there are no equivalent legal measures to prevent abuse, introduce in a manner which takes account of the needs of specific sectors and/or categories of workers, one or more of the following measures: (a) objective reasons justifying the renewal of such contracts or relationships; (b) the maximum total duration of successive fixed-term employment contracts or relationships; (c) the number of renewals of such contracts or relationships".[66]

According to Article 12(5) of the Labour Code, if a fixed-term employment contract has been concluded in the absence of any of the grounds referred to in Article 12(3), an indefinite-term employment contract shall be deemed to have been concluded. The Labour Code, therefore, includes a preventive mechanism for such abuse, but employees will need to initiate proceedings either in court or with a labour inspection to scrutinize the justifiability of the objective circumstances for the usage of the fixed-term employment contracts and obtain recognition of the existence of an indefinite term employment contract. However, this mechanism does not seem to be an adequate and proportional measure to protect workers' rights, given the time and effort required to take such measures, and in light of the fact that Article 12(3)(f) does not set clear boundaries. It can be argued that Article 12(3)(f) is not in line with the Council Directive 1999/70/EC. Therefore, it is recommended to amend the Labour Code and remove sub-paragraph "f" from Article 12(3).

Literature Review

The initial version of the 2020 Labour Law Reform package provided the possibility of the removal of concluding fixed-term employment contracts based on objective grounds., which was positively assessed by the Georgian Young Lawyers Association.[67] The Business Ombudsman of Georgia[68] took a position against the withdrawal of said provision, stating

66. See clause 5.1 of the Annex to the Council Directive 1999/70/EC.
67. Georgian Young Lawyers Association, 2020.
68. Business Ombudsmen of Georgia, 2020. Comments and proposals of the Business Ombudsmen's Office of Georgia to the draft amendments to the Organic Law of Georgia "Labour Code of Georgia". Businessombudsmen.ge. Available at: https://businessombudsman.ge/ka/news/sakartvelos-biznesombudsmenis-aparatis-shenishvnebi-da-tsinadadebebi-sakartvelos-organuli-kanonis-sakartvelos-shromis-kodeksi-proekttan-dakavshirebit [Last access: 10.11.21].

that the amendment would induce problems in concluding an employment agreement when a fixed-term contract is in the common interest of both the employee and employer. The Business Ombudsman also pointed out that the removal of this provision from the Labour Code was not in line with Directive 1999/70/EC. In fact, the Assessment Document of the 2020 Labour Law Reform, prepared under a EU project, indicated that such a provision did not set clear boundaries for concluding a fixed-term employment contract and did not comply with the said directive.[69] The Human Rights Education and Monitoring Center[70] concludes that such provision in the legislation is a significant obstacle to employment stability; according to them, the predictability of the term of employment is the most important circumstance for the employee, hence the law should formulate an unambiguous framework for the possibility of concluding a fixed-term contract.

Relating to the regulation of fixed-term employment, in the framework of the 2020 Labour Law Reform, another amendment was introduced in the Labour Code, according to which, if a fixed-term employment contract is concluded in the absence of any of the grounds provided by law, it is considered that a permanent employment contract is concluded. This change is considered an important step forward by the Georgian Trade Union Confederation,[71] which believes that this provision will be an effective means of protection against employers abusing the use of fixed-term contracts.

Analysis of Interviews

Different issues related to employment contracts were revealed during stakeholders' interviews. There were reports of frequent cases where the employee was not familiar with the contract or the employer tried to disguise the employment relationship in various ways, including a probationary period. As a result of the 2020 Labour Law Reform, the legislation regulates the topics pertaining to essential conditions of the employment contract, which the human rights defenders consider an important amendment, as it made labour relations more formalized and set uniform standards. Moreover, the reduction of the term for the verbal agreement, in the opinion of the respondents, does not change the existing situation substantially per se, although it indirectly affects the change in the culture of labour relations and emphasizes the need to formalize any relationship.

On the other hand, according to the representative of the Georgian Employers' Association, the employers had to renew the existing contracts and reflect the standards provided

69. Toman J., Palik M., Sudder S., Proos M., Balenovic K., Initial Assessment of the Amendments of the Labour Code of Georgia. Twinning Project "Improving the standards of employment conditions/relations as well as health and safety at work in Georgia, Tbilisi, 2020.

70. Human Rights Education and Monitoring Center, 2020.

71. Georgian Trade Unions Confederation, 2021. Individual Employment Relations (Information Newsletter). Gtuc.ge. Available at: http://gtuc.ge/wp-content/uploads/2021/06/%E1%83%98%E1%83%9C%E1%83%93.-%E1%83%A8%E1%83%A0.-%E1%83%AE%E1%83%94%E1%83%9A%E1%83%A8.-_-%E1%83%A1%E1%83%90%E1%83%98%E1%83%9C%E1%83%A4.-%E1%83%91%E1%83%98%E1%83%A3%E1%83%9A%E1%83%94%E1%83%A2%E1%83%94%E1%83%9C%E1%83%98.pdf [Last access: 10.11.21].

by the labour regulations in the employment contracts (e.g., including the provisions concerning discrimination in individual contracts). This proved to be problematic for organizations with large numbers of employees and therefore the process of renewing contracts was time-consuming. Employer representatives do not see any substantial hurdles in the adopted changes, although they do not expect any substantial benefits either.

Conclusions

The 2020 Labour Law Reform introduced amendments relating to employment contracts in several areas and established a significantly improved format of regulation. The stakeholder views study revealed that there was a lack of awareness among employees about their rights and the lack of information about the employment contract is still considered a persistent problem.

In relation to fixed-term employment contracts, an important shortcoming was identified during the legal review and third-party reports research process. The issues concern the presence of "other objective circumstances" in the list of circumstances for concluding a fixed-term contract, which creates a mechanism for the employer to avoid entering into a permanent employment relationship.

RECOMMENDATIONS

Regulate fixed-term contracts to ensure they can only be concluded for specific, clearly defined purposes.

3.3 Start-up business

Legal Review

The Labour Code requires specific grounds for conclusion of fixed-term employment contracts of less than one year.[72] It provides the limitation of the use of successive fixed-term employment contracts, and employment relations exceeding 30 months are automatically qualified as contracts with indefinite terms.[73] This regulation does not apply to start-up businesses, which are defined as entrepreneurial entities for which 48 months have not elapsed from the date of its incorporation/state registration. The only requirement that

72. See Article 12(3) of the Labour Code referred in the previous section on fixed-term employment contract.
73. According to Article 12(4) of the Labour Code, "if the duration of an employment agreement is more than 30 months, or if labour relations have continued on the basis of concluding fixed-term employment agreements on two or more consecutive times and the duration of said labour relations exceeds 30 months, an indefinite term labour agreement shall be deemed to have been concluded. Fixed-term employment agreements shall be considered to have been consecutively concluded if the current fixed-term labour agreement is prolonged upon the expiry thereof or the next fixed-term labour agreement is concluded within 60 days after the initial agreement expires."

the Labour Code provides that relate to start-up business is that employment contracts must be made for a minimum of three months.

In this respect, Article 12(6) of the Labour Code states that,

> "the restrictions imposed under this article on concluding fixed-term employment agreements shall not apply to business entities under Article 2(1) of the Law of Georgia on Entrepreneurs if 48 months have not elapsed since their public registration (start-up companies) and if they meet the additional conditions (if any) established by the Government of Georgia, on the condition that, for the purposes of this paragraph, the duration of a fixed-term labour agreement not be shorter than 3 months."[74]

As noted above, the Council Directive 1999/70/EC requires that abuse arising from the use of successive fixed-term employment contracts or relationships shall be prevented through introducing one or more of the following measures: (a) objective reasons justifying the renewal of such contracts or relationships; (b) the maximum total duration of successive fixed-term employment contracts or relationships; (c) the number of renewals of such contracts or relationships. Per Article 12(6) of the Labour Code, the employer is free to conclude successive 3-months employment contracts with all employees during the 4-year period from the date of incorporation. So, there are high-risk employer abuses given rights and the use of successive employment contracts for illegal (e.g. discriminatory) purposes. Therefore, Article 12(6) of the Labour Code is not in line with the Council Directive 1999/70/EC, and provisions on start-up business (paragraphs 6, 7, and 8 of Article 12) should be removed from the Labour Code.

Literature Review

The Assessment Document of the 2020 Labour Law Reform prepared under an EU project criticizes Article 12.4 of the Labour Code, which allows for businesses, within 48 months of their establishment, to apply for fixed-term contracts without any restrictions envisaged by the Code.[75]

Analysis of Interviews

Stakeholders' opinion on exempting start-ups from the requirement of concluding fixed-term agreements is different. Employers' representatives welcome fewer obligations and increased flexibility for start-ups. However, expressing the opposite opinion that the exemption of start-ups from the requirement of concluding fixed-term agreements puts

74. Article 12(7) further clarifies that provision on start-up business does not apply to a business entity established as a result of reorganisation through the transfer of another business entity's assets into ownership or for use, or under a fraudulent agreement.
75. Toman, Palik, Sudder, Proos, Balenovic.

workers in unfair conditions and gives employers the possibility to temporarily avoid the conclusion of open-ended employment agreements was also expressed.

Conclusions

Relating to fixed-term employment contract, both the legal review and the literature review identified the exceptions for so-called "start-up" businesses as an area of concern. The exception does not comply with international labour standards and contradicts the Council Directive 1999/70/EC.

RECOMMENDATIONS

Abolish exceptions made for a start-up business with regard to the use of fixed-term contracts, and equally apply the restrictions to any and all employers.

3.4 Part-time work

Legal Review

As a result of the 2020 Labour Law Reform, a new article regulating part-time work was introduced in the Labour Code. Article 16 of the Labour Code defines part-time workers and full-time workers. It defines employers' obligations to treat part-time and full-time workers equally and provides further guarantees for part-time workers per the Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC - Annex: Framework agreement on part-time work (hereinafter the Directive 97/81/EC). However, the Labour Code does not provide for the concept of proportionality concerning working conditions and benefits.

According to Clause 4.2 of the Directive 97/81/EC, "where appropriate, the principle of *pro rata temporis* shall apply." The application of this principle requires that remuneration and other benefits are provided proportionate to the number of hours worked. For instance, a full-time employee is entitled to 24 days of annual leave per year under the Labour Code. When the *pro rata temporis* principle is applied this means that a part-time worker working 50% of the time is entitled to 50% of annual leave days per year, i.e. 12 days. This principle can also be found in Article 6 of the ILO Part-Time Work Convention (No. 175), which states that:

> "statutory social security schemes which are based on occupational activity shall be adapted so that part-time workers enjoy conditions equivalent to those of comparable full-time workers; these conditions may be determined in proportion to hours of work, contributions or earnings, or through other methods consistent with national law and practice."

Article 7 further defines that:

> "measures shall be taken to ensure that part-time workers receive conditions equivalent to those of comparable full-time workers in the fields of: (a) maternity protection; (b) termination of employment; (c) paid annual leave and paid public holidays; and (d) sick leave, it being understood that pecuniary entitlements may be determined in proportion to hours of work or earnings."

So as the Labour Code is silent on the concept of proportionality and the principle of *pro-rata temporis* does not apply to part-time work, the Labour Code is not in line with the Council Directive 97/81/EC and the Convention No. 175. Therefore, the Labour Code should be amended accordingly. In undertaking the necessary amendments, the Government and social partners must, to the extent possible, ensure that part-time workers who work multiple part-time jobs are in a position, in practice, to fully enjoy the benefits they are entitled to under all part-time jobs they hold.

Literature Review

In the Georgian labour market, there is a mutual demand from the employer and the employee for part-time jobs.[76] Part-time work was not regulated by Georgian law prior to the 2020 Labour Law Reform, however, such legislative absence was not mentioned among problematic issues within the relevant studies. The academic paper on part-time work, which analyses the issue in the context of the legislation of the EU and its member states, indicates the need to regulate the issue of part-time work, including the minimum workload and the rights that an employee working under such conditions shall be entitled to.[77] It should be noted that the regulation of part-time work under the framework of the 2020 Labour Law Reform was positively assessed by human rights organizations.[78]

Analysis of Interviews

Stakeholders positively assess the fact that the Labour Code provides for a definition of part-time employee. In their opinion, this provision does not create obstacles in practice.

Conclusion

Part-time work is now regulated as a result of the 2020 Labour Legislation Reform. The literature review confirms that the new regulations have addressed the key challenges in this area. However, the legal review shows that the norms in the legislation do not fully comply with the requirements of the ILO Convention No. 175 and the Council Directive 97/81/

76. Shudra T., 2014. Part-time Work. Labour Law (Collection of Article) (ed. Chachava, Zaalishvili). Meridiani Publishers, Tbilisi ,139.
77. Ibid.
78. Human Rights Education and Monitoring Center, 2020.

EC, as the principle of proportionality (pro-rata temporis) should apply to the receipt of working conditions and (social) benefits in case of part-time work. There is a possibility that the application of proportionality may negatively affect the ability of employees who hold multiple jobs to be able to enjoy their leave during longer, uninterrupted periods, as they need to negotiate leave days with several employers. However, the non-inclusion of the principle of proportionality currently leads to a situation wherein a part-time worker is entitled to the same number of annual leave days as a full-time worker, even when the part-time worker would, for instance, only work 1 day per week.

RECOMMENDATIONS

Ensure that the principle of proportionality (*pro-rata temporis*) applies to the working conditions and benefits of part-time workers, in line with relevant international labour standards. However, at the same time, the Government and social partners must, to the extent possible, ensure that part-time workers who work multiple part-time jobs are in a position, in practice, to fully enjoy the benefits they are entitled to under all part-time jobs they hold.

4

Working hours

4.1 Weekly limits of working hours

Legal Review

Article 24(2) of the Labour Code states that "standard working time shall not exceed 40 hours a week." Paragraph 3 further specifies that "the duration of standard working time in enterprises with specific operating conditions requiring more than 8 hours of uninterrupted production/work process shall not exceed 48 hours a week." According to the Labour Code, the list of industries with specific work regimes has to be approved by the Government of Georgia, however, so far no resolution has been adopted.

Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (hereinafter the Directive 2003/88/EC), requires that the average working time for each seven-day period, including overtime, not exceed 48 hours. The Directive 2003/88/EC allows for the setting a reference period for maximum weekly 48 hours working time which shall not exceed four months

(Article 16.b). The Directive 2003/88/EC also allows derogations from the rule on limitation of maximum 48-hours work week, with due regard for the general principles of the protection of the safety and health of workers. Member States may derogate from the 48-hours work week limitation, when, on account of the specific characteristics of the activity concerned, the duration of the working time is not measured and/or predetermined or can be determined by the workers themselves, and particularly in the case of: (a) managing executives or other persons with autonomous decision-taking powers; (b) family workers; or (c) workers officiating at religious ceremonies in churches and religious communities. According to Article 17(3) of the Directive 2003/88/EC, in certain cases derogations may be made from the provision setting a maximum four month reference period for weekly 48 hours working time[79].

A limited number of specific exceptions that allow the extension of normal hours of work are also authorized by the ILO instruments regulating the question of hours of work: the Hours of Work (Industry) Convention, 1919 (No. 1), the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), and the Forty-Hour Week Convention, 1935 (No. 47)[80].

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79. (a) in the case of activities where the worker's place of work and his place of residence are distant from one another, including offshore work, or where the worker's different places of work are distant from one another; (b) in the case of security and surveillance activities requiring a permanent presence in order to protect property and persons, particularly security guards and caretakers or security firms; (c) in the case of activities involving the need for continuity of service or production, particularly: (i) services relating to the reception, treatment and/or care provided by hospitals or similar establishments, including the activities of doctors in training, residential institutions and prisons; (ii) dock or airport workers; (iii) press, radio, television, cinematographic production, postal and telecommunications services, ambulance, fire and civil protection services; (iv) gas, water and electricity production, transmission and distribution, household refuse collection and incineration plants; (v) industries in which work cannot be interrupted on technical grounds; (vi) research and development activities; (vii) agriculture; (viii) workers concerned with the carriage of passengers on regular urban transport services; (d) where there is a foreseeable surge of activity, particularly in: (i) agriculture; (ii) tourism; (iii) postal services; (e) in the case of persons working in railway transport: (i) whose activities are intermittent; (ii) who spend their working time on board trains; or (iii) whose activities are linked to transport timetables and to ensuring the continuity and regularity of traffic; (f) in cases where occurrences are due to unusual and unforeseeable circumstances, beyond the employers' control, or to exceptional events, the consequences of which could not have been avoided despite the exercise of all due care; (g) in cases of accident or imminent risk of accident.

80. First it has to be mentioned that the Convention No.1 embodies a combination of the two principles of eight hours a day and 48 hours a week as a legal limitation on hours of work in the industrial sector. The same standards is observed in the Convention No. 30. Convention No. 47 "requires ratifying countries to declare their approval of the principle of the 40-hour week applied in such a manner that the standard of living is not reduced in consequence. As a promotional instrument, the Convention does not set out detailed rules, but calls on ratifying countries to take or facilitate such measures as are appropriate to secure the 40-hour working week." As regards to specific exclusions, according to the CEACR, "considered together, Conventions Nos 1 and 30 cover the vast majority of economic sectors, although there are some important exclusions, such as agriculture and domestic workers. In particular, Convention No. 1 applies to public or private industrial undertakings, including mines and quarries; industries in which articles are manufactured or materials are transformed, such as shipbuilding and energy generation; construction, maintenance and demolition of roads, bridges and tunnels; and transport of passengers or goods by road, rail, sea or inland waterway. Convention No. 30 covers commercial establishments, and establishments and administrative services in which the persons employed are mainly engaged in office work. It does not apply to hospitals and similar institutions, hotels, restaurants, cafés or theatres. Recommendation No. 116 does not specify its scope of application, although Paragraph 23 excludes agriculture, maritime transport and maritime fishing." CEACR further specifies that "Article 1(3)(b) of Convention No. 30 provides that competent authorities in each country can exempt from the application of the Convention offices in which the staff is engaged in connection with the administration of public authority. In several countries, this category of workers is specifically exempted from the scope of application of provisions on working hours". "The exclusion from the scope of application, foreseen in Article 1(2)(b) of Convention No. 30, of hospitals, hotels, restaurants, theatres and places of public amusement is also reflected in the legislation in a few countries. For example, in the Netherlands, performing artists are excluded from the application of the provisions on working time. In other cases, categories of workers who are covered by Convention No. 30 are excluded by national provisions on working time. For example, educational and training institutions are excluded in a number of countries. In this case, primary legislation normally provides that their working hours shall be set through special regulations. Finally, the legislation in several countries specifically excludes domestic workers from the scope of application of the provisions on working time." "Other excep-

According to the CEACR, many countries provide for a 40-hour working week[81], a working week of 48 hours is envisaged in a number of countries – Antigua and Barbuda, Bahrain, Cambodia, Eritrea, Ethiopia, Malawi, Philippines, Qatar, Sudan, Suriname, Thailand, and Tunisia; Argentina, Bangladesh, Plurinational State of Bolivia, Colombia, Costa Rica, Egypt, Equatorial Guinea, India, Iraq, Kuwait, Mexico, Myanmar, Nicaragua, Panama, Peru, Syrian Arab Republic, and Uruguay. Moreover, in certain countries, the working week is longer than 40 hours but shorter than 48.[82] Finally, in a few countries, the legislation provides for a working week of more than 48 hours[83], or less than 40 hours[84].[85]

Considering all the above, it can be argued that the Labour Code approach to the normal 48-hour working week does not comply with the EU Directive 2003/88/EC. In virtue of Article 24(3), there is the risk that the Government's Resolution will include a broad list of industries with supposed specific work regimes. The Resolution may include sectors where a 48-hour work week extension is not genuinely required by the nature of the work undertaken in the sector.

Speaking of the international context, it is interesting to note that according to the CEACR,

> "globally, average weekly working time is approximately 43 hours. With the exception of North America, Eastern Europe, and northern, southern and Western Europe, average weekly working hours for most subregions are above the 40-hour standard established in Convention No. 47. The Northern, Southern, and Western European subregions have the lowest reported average, at 36.4 hours a week, followed by North America and Eastern Europe, both at 38.7 hours and the African continent with an average of 43.3 hours. In contrast, the southern and eastern Asian subregions have the highest reported weekly working time at 46.6 and 46.3 hours, respectively, followed by the Arab States at 45.8 hours".[86]

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tions found in the great majority of countries relate to undertakings in which only members of the same family are employed (Convention No. 1, Article 2, and Convention No. 30, Article 1(3)) and to persons holding positions of supervision or management or who are employed in a confidential capacity (Convention No. 1, Article 2(a), and Convention No. 30, Article 1(3)(c))." General Survey concerning working-time instruments, "Ensuring decent working time for the future", International Labour Conference, 107th Session, 2018, paragraphs 23-25, 27, 38, 41, 42.
https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_618485.pdf
81. Algeria, Austria, Azerbaijan, Belarus, Benin, Bosnia and Herzegovina, Burkina Faso, Cameroon, Central African Republic, China, Côte d'Ivoire, Croatia, Ecuador, Estonia, Finland, Gabon, Guinea, Iceland, Indonesia, Italy, Jamaica, Japan, Kazakhstan, Latvia, Republic of Korea, Madagascar, Mauritania, Republic of Moldova, Montenegro, New Zealand, Poland, Russian Federation, Samoa, Senegal, Serbia, Slovenia, Sweden, Tajikistan, the former Yugoslav Republic of Macedonia, Togo, Turkmenistan and Uzbekistan; among countries that have ratified one or both of the Conventions: Belgium, Bulgaria, Canada, Czech Republic, Ghana, Greece, Lithuania, Luxembourg, Malta, Portugal, Romania, Slovakia and Norway.
82. Brazil, Burundi, Cabo Verde, Chile, Cuba, Dominican Republic, El Salvador, Guatemala, Honduras, Mauritius, Morocco, Namibia, Oman, Rwanda, Singapore, South Africa, Sri Lanka, Turkey and Zimbabwe.
83. Kenya, Seychelles and Switzerland.
84. Cyprus and France.
85. General Survey concerning working-time instruments, "Ensuring decent working time for the future", 2018, paragraph 44.
https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_618485.pdf
86. Ibid, paragraph 29.

Concerning exceptions and derogations, one should also factor in issues related to long hours of work. According to the CEACR,

> "long hours of work are defined as usual hours of more than 48 a week, as recommended by the Tripartite Meeting of Experts. Working more than 48 hours a week regularly [which may easily happen in case of sectors defined per Article 24(3) of the Labour Code] is associated with a range of safety and health risks, as well as increased work–family interference." "Workers in southern and eastern Asia (54.5 and 44.9 per cent, respectively) are the most likely to work such long hours, followed by those in the Arab States (43.6 per cent). In contrast, workers in Eastern Europe and in northern, southern and Western Europe, as well as in North America, have the lowest percentage of long hours of work (5 and 16 per cent, respectively). While men spend relatively longer hours in paid work than women workers in general, the percentages of hours of work are similar for men and women workers in eastern Asia, the Arab States, South-East Asia and the Pacific and Eastern Europe."[87]

Literature Review

Before the 2020 Labour Law Reform, the issue of working time and rest was considered one of the shortcomings of Georgian labour legislation. Long working weeks and inadequate and, often, unpaid leave has been cited as major challenges in labour rights surveys and studies. According to a survey by the Caucasus Research Resource Center,[88] 57% of the population considered the violation of working hours to be a problem, while 30% talked about the violation of the right to paid leave. The issue of working and rest time was also mentioned in the reports of the Georgian Trade Unions Confederation and Alternative Trade Unions of Georgia, according to which the average number of hours worked per week in service, healthcare, trade, and light and heavy industry exceed 40-48 hours/week as established by the Labour Code.[89] According to the 2019 observation of the European Committee of Social Rights, unregulated weekly rest time and night work were contrary to the requirements of the European Social Charter.[90] Human Rights Watch believes that long,

87. *Ibid, paragraph 31.*
88. *Caucasus Research Resource Center, 2019. Survey on Political and Social Issues. Osgf.ge. Available at: https://osgf.ge/wp-content/uploads/2019/04/CRRC-research.pdf [Last access: 10.11.21].*
89. *Chubabria T., Gvishiani L., 2017. Assessment of the Labour Inspection Mechanism and Condition of Labour Rights in Georgia. Human Rights Education and Monitoring Center. Tbilisi; Tchanturidze G., 2019. Labour Rights Enforcement in Textile and Trade Industries. Georgian Trade Unions Confederation. Available at: http://gtuc.ge/%e1%83%a9%e1%83%95%e1%83%94%e1%83%9c%e1%83%a1-%e1%83%a8%e1%83%94%e1%83%a1%e1%83%90%e1%83%ae%e1%83%94%e1%83%91/publications/ [Last access: 10.11.21]; Gongadze T., Jokhadze L., Egriselashvili L., Dolaberidze N., 2019. The Study of Working Conditions of Fast-Food Workers. Georgian Professional Unions Confederation. Available at: http://gtuc.ge/wp-content/uploads/2019/11/kvleva-new.pdf [Last access: 10.11.21]; Sartania K., 2021. Behavioral Therapists Labour and Remuneration. Solidarity Network. Solnet.ge. Available at: https://solnet.ge/publikaciebi/ [Last access: 10.11.21]; Karanadze R., 2021. COVID-19 Pandemic and Price of Nurses Labour. Solidarity Network. Solnet.ge. Available at: https://solnet.ge/publikaciebi/ [Last access: 10.11.21].*
90. *European Committee of Social Rights, 2018. Conclusions 2018: Georgia. Available at: https://mycloud.coe.int/s/MN5DMbSANnFZkWM [Last access: 10.11.21].*

unreasonable working hours, *inter alia,* have been linked to cases of injury and death of workers in the mining industry.[91]

Analysis of Interviews

In terms of regulation of working hours, some of the interviewees consider the existence of a list of jobs with a specific 48-hour regime problematic. On one hand, the subject of criticism is the old list, which has already been abolished and it is believed that the list was already quite exhaustive and allowed many organizations to legalize the 48-hour workweek, while on the other hand, the process of forming and approving a new list was delayed. Employee representatives hope that the list will be optimal, while employer representatives think that the need for all types of businesses should be taken into account, especially if the list is adopted in the context of the pandemic, as this may create additional barriers for the business sector. Trade unions consider it unacceptable to allow a 48-hour workweek for any type of activity.

Conclusions

The regulation of working time is an issue related to the protection of labour rights and also the length of working hours has a significant impact on the health and safety of the employee. The 2020 Labour Law Reform paid significant attention to the regulation of working hours and many novelties were reflected in the legislation. However, the present study revealed significant shortcomings and non-compliance with international labour standards.

It is problematic that the law allows different, 48-hour standardized working weeks for specific jobs/sectors/enterprises, the list of which according to the legislation is approved by a governmental decree (the decree was not adopted during the study period). This provision creates ambiguity and contradicts international standards. There is a risk that the government decree will define a broad list of specific work regime fields and include those fields where a 48-hour work week is not actually required, due to the nature of the work.

RECOMMENDATIONS

Limit maximum working hours to 48 hours, in line with EU Directive 2003/88/EC, in general, and in particular, limited list of specific work regime sectors should be approved to exclude extension of normal working hours in sectors where such extension is not genuinely required by the nature of the work undertaken in the sector.

91. Human Rights Watch, 2019.

4.2 Daily limits of working hours

Legal Review

According to the ILO Conventions No. 1 and No. 30 on hours of work, a person's working hours should be limited to eight hours in the day. According to the CEACR, "the Conventions set a double limit – daily and weekly – on hours of work and that this limit is cumulative, not alternative." "In many countries where the legislation sets a weekly limit on normal hours of work, daily limits are also set."[92]. Thus, according to international standards, setting weekly limit on normal hours of work should also be accompanied by daily limits. After observing and evaluating different approaches in different countries on statutory limits for normal hours of work, the CEACR positively assesses

> "the fact that the legislation in most reporting countries establishes statutory limits on normal weekly and/or daily hours of work and that these limits are, in a majority of cases, in conformity with those provided for in the Conventions. However, the Committee also observes that in certain cases only daily or weekly limits are fixed, or that there is no limit at all to normal hours of work".[93]

In this regard, the CEACR emphasizes the importance of the eight-hour day as a legal standard for hours of work in order to provide protection against undue fatigue and associated risk concerning occupational safety and health, as well as to ensure reasonable leisure and opportunities for recreation and social life for workers. The CEACR has clearly considered that when fixing limits to working hours, governments should also take into consideration the health and safety of the workers and the importance of a work–life balance.[94]

The Labour Code is silent on the maximum hours per working day. It should be noted that the daily limit of working hours (twelve hours – 11 hours of work and one hour of break) is derived from the regulation of a) the minimum daily rest periods - the length of rest time between the working days shall not be less than twelve consecutive hours; and b) the minimum statutory requirement for the rest break during the working day - where the working day is longer than 6 hours, an employee shall be entitled to a break (at least 60 minutes). To ensure clarity of the law, as well as conformity with international standards, the maximum hours of work should be specifically legislated.

In the context of daily and weekly limits on normal working hours, the issue related to the distribution of normal hours of work should be also addressed. As already noted, the Labour Code sets a maximum limit of weekly working hours. However, there can be situations where working time arrangement requires the distribution of working hours within a

92. General Survey concerning working-time instruments, "Ensuring decent working time for the future", 2018, paragraphs 45-46.
93. Ibid, paragraph 49.
94. Ibid,

week or over a week. According to Article 26 of the Labour Code, "taking into account working conditions, a procedure for summing up ["averaging of" is meant] working time may be introduced where observing the duration of daily or weekly working time is impossible."

This provision allows for the possibility of averaging normal daily or weekly hours of work over a certain period, but the Labour Code is silent on what the reference period is and fails to set limits for variations in the distribution of normal hours of work. For example, in case of shift work when employee works 12 hours once in every two days, the Labour Code does not define the maximum reference period for averaging shift work. According to the CEACR,

> "the variable distribution of hours of work is a system that consists of averaging normal weekly hours of work over a defined period (known as the reference period), to allow the extension of working hours beyond their normal length on certain days, and their shortening on other days, without resorting to overtime. The reference period for averaging can be weekly, monthly, or annual. In particular, the Conventions[95] and the Recommendation[96] provide for the following possibilities: - the distribution of working hours within the week; - the distribution of working hours over a period longer than a week; - averaging in the case of shift work in continuous processes; - averaging in the case of shift work."[97]

There are different variations observed in the distribution of normal hours of work.[98] For example, Convention No. 1 allows for the possibility of setting three weeks or less as a reference period for averaging shift work.[99] According to the CEACR, at the national level, the reference period over which hours may be calculated varies greatly, ranging from three weeks to one year.[100] Averaging working hours without a reference period creates a lack of clarity, and is likely to lead to very long working hours, and is not in line with relevant ILS. It is therefore recommended that the Labour Code define the maximum (reference) period for averaging working hours and limits the variations in the distribution of normal hours of work allowed for averaging normal daily or weekly working hours.

Literature Review

When discussing the 2020 Labour Law Reform, the issue of working time has become one of the main topics. Particular resistance came from the employers and their advocacy organi-

95. The Hours of Work (Industry) Convention, 1919 (No. 1), the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)
96. Reduction of Hours of Work Recommendation, 1962 (No. 116).
97. Ibid, paragraph 51.
98. Ibid, see paragraphs 50-74
99. According to Article 2(c) of the Convention No. 1, "where persons are employed in shifts it shall be permissible to employ persons in excess of eight hours in any one day and forty-eight hours in any one week, if the average number of hours over a period of three weeks or less does not exceed eight per day and forty-eight per week."
100. General Survey concerning working-time instruments, "Ensuring decent working time for the future", 2018, paragraph 76.

zations with regard to the regulatory norms concerning working time and overtime pay. The American Chamber of Commerce and Industry opposed the regulation of working hours.[101]

Trade unions and human rights organizations supported the regulation of working hours and overtime work. The Georgian Trade Union Confederation[102], like the Human Rights Education and Monitoring Center[103] and the Georgian Young Lawyers' Association,[104] welcomed the amendment, which defined working hours and allowed at least a 60-minute break after 6 hours of work.

Despite the introduction of new regulations related to working hours, the issue of regulating the 40-hour working week remains a problem. The legislation, on the one hand, states that the standardized working hours should not exceed 40 hours per week (48 hours in an enterprise with a specific working regime), however, on the other hand, the combined effect of working time norms reveals that the Labour Code de facto allows 66 hours per week, including overtime.

Analysis of Interviews

The absence of an upper limit for the duration of a normal working day was cited as a problem in conversations with employees' and state's representatives. Moreover, in circumstances where the law does not limit overtime hours within the working week, employers have a possibility to establish a 66-hour working week for employees. It was suggested as important by the stakeholders to regulate normal hours of the working day in order to ensure that the existing standard of a 40-hour working week is unequivocal and does not leave room for interpretation.

Conclusions

The existing regulations do not set a standard daily working time. The current regulations stipulate a 24-hour break during the week, a 60-minute break during the working day, and a 12-hour break between working days, which sets the maximum limit for a real working week within 66 hours, and during the day - 11 hours (plus one hour break). The existing regulations are not fully aligned with international labour standards or the Directive 2003/88/EC. The Directive 2003/88/EC allows for certain exemptions for some work, although these exemptions must provide for the necessary conditions for the safety and health of workers.

101. Business Media Group, 2019. Inspection of an organization any time is an excessive right – GCCI on Amendments to the Labour Code. Bm.ge. Available at: https://bm.ge/ka/article/nebismier-dros-organizaciis-shemowmeba-gadacharbebuli-ufleba---gcci-shromis-kodeqsshi-cvlilebebze-/56400 [Last access: 10.11.21].
102. Georgian Trade Unions Confederation, 2020. Amendments were made to the Labour Code. Available at: http://gtuc.ge/shromis-kodeqsshi-cvlilebebi-shevida/ [Last access: 10.11.21].
103. Human Rights Education and Monitoring Center, 2020.
104. Georgian Young Lawyers Association, 2020.

The legal review revealed inconsistencies between the existing Labour Code and the international labour standards in regard to the distribution of working hours as the Labour Code does not stipulate the reference period within which average normal working hours should be calculated.

RECOMMENDATIONS

Ensure the Labour Code contains a clear limit on maximum daily working hours; regular working hours should be limited to eight hours a day._

Include a reference period in the Labour Code for the purpose of calculating average normal daily or weekly working hours. This reference period, after analyzing objective necessity, should be determined in full consultation with the social partners._

4.3 Overtime work

Legal Review

According to Article 27(1) of the Labour Code, "overtime work is work performed by an employee by agreement between the parties for a period of time longer than the standard working time." The Labour Code fails to fix the maximum of overtime hours during the working day and/or within the working week. The same article provides a limitation only in relation to overtime work of minors - the total overtime work performed by minors shall not exceed 2 hours per working day, and 4 hours per working week.

As noted above, the EU Directive 2003/88/EC states that the average working time for each seven-day period, including overtime, shall not exceed 48 hours, over a reference period not exceeding four months. According to the Convention No. 1 and Convention No. 30 on hours of work, the regulation shall determine and fix the number of additional hours of work which may be allowed in the day and, in respect of temporary exceptions, in the year. CEACR states that there are cases where

> "no precise limits are established, either in relation to specific exceptions, or more generally, on overtime in the country. In this respect, the [CEACR] has recalled that the Conventions call for the imposition of a limit on the additional hours of work that are authorized, not only in the day, but also in the year. The maximum number of additional hours, while not specifically prescribed in the Conventions, must be kept within reasonable limits in line with the general goal of the instruments to establish the eight-hour day and the 48-hour week as a legal standard for hours of work in order to protect against

> undue fatigue and ensure reasonable leisure and opportunities for recreation and social life".[105]

According to the CEACR, in certain countries, specific overtime limits are set only for particular sectors.[106] In other cases, although limits are set, exemptions may be made under certain conditions, such as the consent of the worker.[107]

Therefore, the Labour Code is not in line with international labour standards and it should be amended to set daily and weekly limits for overtime work for all workers.

The issue of overtime work rate shall be separately addressed. According to Article 27(2) of the Labour Code, "overtime work shall be paid for at an increased hourly rate of remuneration. The amount of the said payment shall be determined by agreement between the parties." The Labour Code is silent with regard to what should be the increased rate of overtime pay, be it a minimum standard rate used for guidance purposes or to be applied mandatorily in case of no agreement or disagreement between the parties.

According to the CEACR,

> "in many countries, rates of pay for overtime range between a 25 per cent[108] and a 50 per cent[109] increase on the rate for normal hours. In certain countries, pay for overtime is a 75 per cent[110] or up to a 100 per cent[111] increase on the rate for normal hours. In a number of countries, there is no unified overtime rate, and a distinction is drawn between overtime worked during the day and overtime during the night, as well as additional hours during the working week and additional hours during official holidays and weekends. In a number of countries, there is a scale with an increasing rate of pay according to the number of hours worked."[112]

According to the ILO Convention No. 30, the rate of pay for overtime should not be less than one and one-quarter times the regular rate. The CEACR affirms "the need to provide for the payment of overtime hours in all circumstances at no less than 125 per cent of the ordinary

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105. General Survey concerning working-time instruments, "Ensuring decent working time for the future", 2018, paragraph 148.
106. Ibid, paragraph 145.
107. Ibid, paragraph 146.
108. There is a 25 per cent increase in the normal hourly rate in Bosnia and Herzegovina, Cuba, Czech Republic, Japan, Philippines, Qatar, Slovakia, Switzerland and Syrian Arab Republic; a 26 per cent increase in Serbia; and a 35 per cent increase in Cabo Verde and the former Yugoslav Republic of Macedonia; and a 40 per cent increase in Islamic Republic of Iran, Luxembourg, Montenegro and Norway.
109. Algeria, Antigua and Barbuda, Austria, Belgium, Brazil, Bulgaria, Cambodia, Canada, Chile, Costa Rica, Estonia, Finland, Guatemala, Hungary, Indonesia, Iraq, Kazakhstan, Kenya, Republic of Korea, Lithuania, Malta, Mauritius, Namibia, Russian Federation, Samoa, Singapore, South Africa, Thailand and Turkey.
110. Romania.
111. Plurinational State of Bolivia, India, Latvia, Myanmar, Nicaragua, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.
112. General Survey concerning working-time instruments, "Ensuring decent working time for the future", 2018, paragraph 152-164.

wage rate, irrespective of any compensatory rest granted to the workers concerned."[113] Recent case in Georgia has adopted this approach concerning the need to pay an increased rate of 125% for overtime worked. The court applied Convention No.1 and Convention No. 30 as a guide for interpretation of the Labour Code provision related to overtime work payment and defined that overtime work shall be paid for at an increased hourly rate of remuneration, which should not be less than 125 per cent of employee's salary.[114]

Literature Review

According to the original version of the 2020 Labour Law Reform package, the maximum overtime work was to be determined at no more than 2 hours a day and no more than 8 hours a week, which, according to the Business Ombudsman of Georgia,[115] contradicted the principle that the duration of overtime work must be agreed upon based on the free expression of the will of the parties to the employment contract. According to the Business Ombudsman,[116] limiting the length of overtime work would significantly increase the employer's business outlays, as the enterprises would have to either increase the number of employees or outsource operations; According to the same conclusion, setting a time limit for overtime work is also not in the interests of those employees who have the ability to increase their earnings by working longer hours than the normal working time.

The Business Ombudsman of Georgia believed the determination of the overtime pay was also critical. According to the initial version of the 2020 Labour Law Reform package, overtime work was to be remunerated at 125% of the minimum hourly wage. They pointed out that the overtime tariff should be decided by the parties to the labour relationship and its regulation by law would create additional and unjustified costs for the employer, which in turn would increase the outlay cost of products and services produced by the business.[117]

The Young Entrepreneurs Association[118] took a similar approach, estimating that a 125% increase in overtime tariffs would be proportionally reflected in the company's expenses. The Georgian Business Association,[119] for its part, indicated that regulating this issue under a legal framework was not part of the commitments made in the EU-Georgia Association Process and the matter should be settled by agreement between the parties.

113. Ibid, paragraph 158.
114. Rustavi City Court, Case #2-1126-19, 30 September 2019.
115. Business Ombudsmen of Georgia, 2020.
116. Ibid.
117. Ibid.
118. Association of Young Businessmen, 2020..
119. Business Association of Georgia, 2019. Amendments to the Labour Code Will Have an Irreparable Negative Impact. Available at: https://bag.ge/ge/advocacy/ongoing-topics?n=1380&i=3&m=&y= [Last access: 10.11.21].

The Decent Labour Platform issued a public statement a few days before the adoption of the reform, urging parliament not to yield under the pressure of businesses and support the increase of the overtime tariff to 125%.

Analysis of Interviews

During the interviews, the need to set an upper limit on overtime hours per week was emphasized. According to a representative of the Ministry of Labour, it is necessary to improve the standard on the number of overtime hours, as the law currently allows for interpretation and indirectly legalizes 66 hours of work per week, including overtime. As for the existing practice of the Labour Inspection Service, they are guided by the principle that permanent overtime work of an employee is, according to the law, impermissible, and in such a case, the Labour Inspectorate recommends the employer to hire additional staff.

> *"We have had cases during the inspection that overtime work was continuing for an extended period and the labour inspectors issued a recommendation to the employer to hire additional staff. The concept of overtime work implies that it is conducted temporarily, or seasonally, or because of a specific need, and not permanently. When the work is permanent, this means that there is a lack of staff and additional human resources are needed. We follow this principle. I think that in practice this record does not create many obstacles, although it allows for this kind of treatment, which is not right. It is important how we enforce the issue in practice, and I think we are on the right track."*[120]

The absence of the overtime pay rate in the legislation is a problem commonly identified by trade unions and employees' organizations, as well as by the civil sector. There is still a risk that the employer will pay the employee for overtime work only a slightly, symbolically increased number of wages. According to a representative of the Georgian Trade Union Confederation, even though they have achieved high overtime pay rates through various collective agreements, they support the establishment of a 125% minimum rate by law.

A different approach in the context of overtime work is required at jobs where employees' commute time to time to prepare their personal equipment is counted as working time, which could take several hours for employees working at mines. According to a representative of Human Rights Watch, the law must provide mechanisms to protect the rights of employees at this type of work.

Representatives of employees and business organizations have different opinions regarding the determination of overtime pay. In their opinion, the employer and the employee must agree on this issue individually, because many nuances must be taken into account

120. *Interview with the Representative of the Ministry of Labour.*

when performing the work, which is why it would not be fair to apply the same approach to all types of work. In their view, this would lead to staff changes on the part of employers, and instead of overtime work, different employees would be tasked to work the same amount of work, which could result in reduced wages for specific people.

The same argument is made by employees' representatives, and some of them believe that imposing only overtime tariffs may not be effective and justified, if the minimum wage in the country is not set. The representative of the Solidarity Center considers it necessary to introduce a minimum wage in addition to the hourly limit, without which there is a high risk of employee salary reduction or dismissals on top of reducing overtime hours.

A representative of the Public Defender's Office has a similar approach when it comes to overtime pay. In their assessment, if a specific tariff is fixed in the law, this a priori will not be a high tariff but will be the minimum that can be included in the legislation given the Georgian context. This may lead employers to formally comply with a law requirement and not pay the employee more than what might have been more adequate according to the specifics of the employee's labour.

A representative of the Parliament of Georgia notes that the introduction of a fixed tariff has its disadvantages, as it may not be fair for all types of employees and it is better to develop a concept of overtime pay, which will take into account the individual working conditions of the employee.

Conclusions

The existing regulations do not set an overtime limit for a daily and/or weekly period.

Overtime pay issue has emerged as a significant problem in all three directions of the given study. The legislation is not specific on the rate of what percentage should be remunerated for overtime work and creates ambiguities. This ambiguity does not comply with the international labour standards and is contrary to the ILO Convention No. 30.

There is a court decision on this issue, which clarified the ambiguity in the law based on the ILO Conventions No. 1 and No. 30 and found that the hourly rate of overtime pay should not be less than 125% of the standard rate.

The ambiguity of the current version of the law regarding overtime pay and at the same time the case law based on international norms and conventions creates an unpredictable environment for both the employee and the employer. On the one hand, the law does not set a minimum rate for overtime pay, but in the event of an appeal by an employee, it is possible for the court to impose an obligation on the employer to compensate for the non-payment of overtime pay

RECOMMENDATIONS

In line with the international labour standards, set a maximum daily limit of overtime work in the amount of 2 hours.

Include a minimum overtime pay rate of 125% of normal wages into the Labour Code. Before the relevant legislative changes, in accordance with the case law and the requirements of international conventions, the Labour Inspection Service should issue a recommendation on a 125% overtime pay rate.

4.4 Shift work

Legal Review

According to Article 25(1) of the Labour Code, "where an employer's activities require 24 hours of uninterrupted production/work process, the parties may conclude a shift work agreement, without prejudice to the requirements [on the minimum right to 12 hours rest between], and subject to the condition that rest periods that are adequate to the hours worked will be granted to the employee."

Article 25(2) defines that "shift work is a method of organizing work in shifts whereby workers succeed each other at the same workstations according to a certain schedule, including in a rotating pattern, so as to enable the production/work process to continue longer than the working week set for the employee." The Labour Code does not regulate the maximum length of daily (single) shift work. It only defines the period of rest between the shifts – according to Article 24(4) of the Labour Code, the duration of uninterrupted rest between shifts shall not be less than 12 hours. Therefore, as the question of the maximum length of a single shift is not legislated, 24-hour single shift work is a routine practice in Georgia meaning that employee work in successive – a 24-hour shift once in every three days.

According to the CEACR,

> "in some cases, national legislation limits the length of a single shift. For example, in Brazil, the Federal Constitution limits rotating shift work hours (defined as variable daily shift lengths including, even in part, both day and night work, which can disrupt the worker's circadian rhythms) to a normal limit of six hours a day. In other countries, such as the Republic of Moldova, the length of a single shift is limited to less than 12 hours, while in Azerbaijan and Belarus no shift may be more than 12 hours. In Turkmenistan, the legislation provides that when working in shifts, each group of workers must carry out their work for the specified number

> of working hours for one shift, which must not exceed 12 hours. In some countries [e.g., Switzerland], limits are applied to shift length depending on the shift system used, with longer hours for fewer shifts and shorter hours for more shifts."[121]

As the Labour Code is silent on limits of the length of a single shift, labour legislation of Georgia is not in line with international standards and best practices and, therefore, the Labour Code should be amended to define the maximum limit for daily shift work.

Single enterprise-based regulation of working hours in mining is noteworthy in the context of shift work. According to Article 25(5) of the Labour Code, "the rules governing working time in the mining sector shall be determined by the Minister after consulting social partners." However, at the moment, specific rules governing working time in the mining sector have not been approved. In principle, it should be noted that special regulation of the given topic implies that workers are present in the workspace/work area without observing a number of important working hours related norms (e.g., limits of the normal working week, the minimum rest period between workdays/shifts, right to break, right to an uninterrupted 24-hour rest within a 7-days period).

Although some argue that given arrangement of specific working hours regulation in the mining sector could be in the interest of the workers, the concept of Article 25(5) of the Labour Code is particularly egregious as it is included to accommodate the working practices of a single enterprise in a single sector without the presence of an objective justification for doing so, rather than ensure that enterprise is subject to the same rules and regulations as all other enterprises. Therefore, Article 25(5) of the Labour Code should be removed, and the special order of the Ministry of Labour should not be adopted.

Literature Review

In a report published in 2019, Human Rights Watch highlighted the issue of shift work in the mining industry. According to the report, employees work in 12-hour shifts, including night shifts, for consecutive 15 days. Furthermore, Human Rights Watch indicated that shift workers, work without rest days and breaks. In the organization's assessment, long shifts in hazardous work environments such as mining also heavily impact occupational safety and the health of the workers.[122]

Analysis of Interviews

Within the stakeholders' interviews the uncertainty of the maximum limit for working hours per week for shift workers is identified as a problematic point. Shift workers may not

121. General Survey concerning working-time instruments, "Ensuring decent working time for the future, 2018, paragraph 762.
122. Human Rights Watch, 2019.

realize the maximum number of working hours set for them as a normal working time per week, so it may be difficult for them to determine whether their rights are being violated.

The issue of shift work remains a challenge for miners, which is a specific case. For example, some manganese miners have to work 12-hour shifts for 15 consecutive days, including at night. If the total number of working hours is calculated, the employer may comply with the law. However, according to a representative of Human Rights Watch, such work practice leads to fatigue of employees and increases the risk of accidents and injuries. Therefore, it is important to review the legal requirements for shift work for this industry.

Conclusions

The research reveals it is problematic that legislation allows a 24-hour shift mode, as well as the so-called "Vakhturi" method with the 15-day shift mode (as, for example, in the Chiatura mines), which, on the one hand, protects the average working hours within the months, but fundamentally contradicts international labour standards.

RECOMMENDATIONS

Ensure the Labour Code contains a clear limit on maximum daily shift work and a 12-hour daily limit of shift work should be determined. Abolish the special working time regime for the mining industry and extend the common standard of shift work to them.

4.5 Night work

Legal Review

According to the CEACR,

> "broadly speaking, night work is performed at a time when people would normally sleep".[123] "Night work requires workers to act in opposition to their biological clocks by remaining awake, alert and productive at a time when the human biological drive for sleep is at its strongest.[124] "Night may have an impact on workers' health, safety and work–life balance, as it is incompatible with biological rhythms and the normal scheduling of social, family and community activities[125]".[126]

123. General Survey concerning working-time instruments, "Ensuring decent working time for the future2018, paragraph 381.
124. Ibid, paragraph 394.
125. Ibid, paragraph 390.
126. For further details on understanding the specificity of night work, overview of night work trends, minimum protective measures for night workers see Chapter IV of the General Survey concerning working-time instruments, "Ensuring decent working time for the future", 2018.

There are different protective measures for night workers provided and required under the international labour standards[127] and specific - reduced working time is one of the measures envisaged. The CEACR "considers that setting clear and enforceable limits for both normal hours of work and overtime is useful to allow night workers to recover from night work, protect their health and safety and maintain a balance between work and leisure."[128]

According to Article 28(2) of the Labour Code, "a night worker shall be any worker who during night time [the period between 22:00 and 6:00] works at least 3 hours of his/her standard working time as a normal course, and any worker who works during night time a certain proportion of his/her annual working time." Paragraph four of Article 28 states that "the maximum working time shall not exceed 8 hours per 24-hour period for night workers who perform arduous, harmful or hazardous work. This rule shall not apply to shift work." First of all, the statement that the 8-hour limitation for night workers does not apply to shift work is against international labour standards (see above on the maximum length of daily shift work). Moreover, the Labour Code fails to legislate normal hours of work for all night workers as paragraph 4 of Article 28 applies only to night workers employed in hard, harmful, or hazardous sectors. Therefore, the provision is not in line with Article 8(a) of the EU Directive 2003/88/EC stating that "Member States shall take the measures necessary to ensure that: (a) normal hours of work for night workers do not exceed an average of eight hours in any 24-hour period". No exception is provided with regard to the type of work performed, i.e., it applies to all persons who work at night, regardless of what type of work they do. Paragraph 4(1) of the Night Work Recommendation, 1990 (No. 178) of the ILO indicates that the normal hours of work for night workers should, in normal circumstances, not exceed eight hours in any 24-hour period in which they perform night work. Therefore, relevant amendments should be introduced into the Labour Code.

Additional attention should be paid to the issue of guarantees and protective measures for night workers. According to the EU Directive 2003/88/EC, Member States may make the work of certain categories of night workers subject to certain guarantees, under conditions laid down by national legislation and/or practice, in the case of workers who incur risks to their safety or health linked to night-time working. Night Work Convention, 1990 (No. 171) of the ILO and Night Work Recommendation, 1990 (No. 178) of the ILO further include specific protective measures for night workers like health and safety of night workers (assessment of workers' health and advice, transfer and benefits for workers unfit to work at night, first aid facilities, a safe and healthy environment for night workers), maternity protection, social services (transportation, rest facilities and housing, access to suitable food, other social services), consultation.[129]

127. See Night Work Convention, 1990 (No. 171) of the ILO and Night Work Recommendation, 1990 (No. 178) of the ILO.
128. General Survey concerning working-time instruments, "Ensuring decent working time for the future", International Labour Conference, 107th Session, 2018, paragraph 533.
https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_618485.pdf
129. For further details see Chapter IV, ibid.

We should separately mention that the Convention No. 171 enshrines appropriate compensation for night workers that recognizes the nature of night work. According to Article 8 of the Convention No. 171, "compensation for night workers in the form of working time, pay or similar benefits shall recognise the nature of night work." CEACR states that the "article is broad enough to encompass various types of compensation, not only financial, including the alternatives of reduced working time and additional benefits, depending on the circumstances."[130] The CEACR further clarifies that

> "the general principle of Article 8 is supplemented by Paragraphs 8 and 9 of Recommendation No. 178. Paragraph 8(1) indicates that appropriate financial compensation for night work should be additional to the remuneration paid for the same work performed to the same requirements during the day".[131]

The CEACR

> "notes that a majority of countries, including all ratifying countries, have specific legal provisions recognizing the nature of night work through some kind of compensation for night workers. In a few of these countries, provision is made for both financial compensation and a reduction in working time for night work."[132] "In many countries, the rate of pay for work at night is higher than for the same work during the day"[133]

Except for rights to a free health assessment[134] and possible transfer[135], and prohibition of night work for minors, pregnant women and women who have recently given birth or are breastfeeding[136], no other guarantees or special protective measures for night workers is legislated. Respectively, the legislation should define relevant mechanisms and regulation on guarantees and protective measures specifically for night-workers.

Literature Review

Issues related specifically to night work were not identified during the literature review.

Analysis of Interviews

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130. Ibid, paragraph 485.
131. Ibid, paragraph 486.
132. Ibid, paragraph 488.
133. Ibid, paragraph 489.
134. According to Article 28(5) of the Labour Code, "upon the request of a night worker, the employer shall, at his/her/its own expense, provide the night worker with pre-employment and subsequent periodic medical examinations in compliance with the principle of medical confidentiality. The frequency and the scope of the medical examinations shall be determined by the Minister after consulting social partners."
135. According to Article 28(6) of the Labour Code, "if a night worker who, according to a medical report, has a health problem due to performing night work, the employer shall, where possible, transfer him/her to a suitable day job."
136. According to Article 28(3) of the Labour Code, "minors, pregnant women and women who have recently given birth or are breastfeeding, shall not be employed for night work. Persons with disabilities or persons who have children under the age of 3 shall not be employed for night work without their consent".

The civil sector has noted that work on providing additional benefits to night workers needs to continue. They consider that this issue may be regulated not by the Labour Code, but by a separate law or by-law, and it should determine what benefits the employer should provide to the employee, in the case of night work, such as transportation, monetary benefits, overnight accommodation, etc.

Conclusions

The existing night work regulations were identified as problematic question during the study. In particular, the 8-hour night work limit applies only to hard, harmful, or hazardous work. For those employed in any other type of work, the law does not provide a system of any additional benefits, and they are in similar conditions to those employed in similar daytime work. This approach is contrary to international labour standards and needs to be modified.

RECOMMENDATIONS

Amend the Labour Code to ensure that the limit of 8-hours for night work are regulated for all workers.

Ensure guarantees and protective mechanisms for night workers are included in the legislation (e.g., financial compensation for night work or increased rate of pay for work at night, transportation support or other logistical benefits, provision of different work schedules).

4.6 Working hours records

Legal Review

Under the 2020 Labour Law Reform employers now bear an obligation to record working hours. According to Article 24(11) of the Labour Code, "employers shall, in writing and/or electronically, keep a record of the hours worked by employees in the working day, and shall make available to the employee the monthly records of the working time (hours worked), unless this is impossible to do due to the specific nature of the organisation of work." The form of records of working time is determined by the N01-15/n Order of the Ministry of Labour on Approval of Working Hours Record Form and Rules (dated 12 February 2021).

In general, legislation of many different states, including member states of the European Union, require the keeping of records of working time.[137] ILO Conventions Nos 1 and 30 on

137. See for example General Survey concerning working-time instruments, „Ensuring decent working time for the future", 2018, paragraph 813.

working hours provide for the keeping of records on the "additional hours" worked, or in other words, overtime. The CEACR has considered that, while these Conventions only require the recording of additional hours, this necessarily also implies the recording of normal hours. In accordance with Article 8(1)(c) of Convention No. 1 and Article 11(2) of Convention No. 30, the purpose of the keeping of records on working time (including overtime) is to ensure the "effective enforcement" of the provisions on working time and to control compliance with the relevant provisions on wages.[138] The CEACR further concludes that

> "While the Committee notes that the working-time instruments provide for flexibility in the keeping of records, it considers that the keeping of effective records of working time is one of the most important means of controlling compliance with working hours and overtime payments, and that they greatly assist labour inspectors in the enforcement of working-time provisions. The Committee considers that labour inspectors and workers should be given access to records so that they can easily verify compliance with the relevant provisions".[139]

In relation to the use of new technologies for recording working time, the CEACR

> "considers that, even where the national legislation lays down comprehensive rules on working hours, rest periods and night work, these rules should be accompanied by reliable tools to record their application which allow their examination by employers, workers and their representatives and labour inspectors. The Committee is of the view that employers should take advantage of the opportunities offered by new technologies to record working and rest time, such as time-tracking software, which offers the potential for more accurate and reliable, easier and less costly ways of monitoring working time".[140]

Literature Review

Issues related to the recording of working hours were not identified during the literature review.

Analysis of Interviews

Within the research of stakeholder views, it was revealed that the established form of working hour recording has been sharply criticized by representatives of business organizations and in some cases by civil society. Concerns were expressed that the working hours recording standard is inflexible, not tailored to different types of business processes, and has become a difficult bureaucratic hurdle for many organizations.

138. Ibid, paragraphs 811-812.
139. Ibid, paragraph 816.
140. Ibid, paragraph 820.

According to the representative of the Association of HR Professionals, the Ministry of Labour did not accept their offer to assist in the development of the working hours record form, which, in their opinion, would significantly help the process, as recording the working time of employees is within the scope and capacity of HR professionals. They are familiar with the various practices prevalent in organizations and have the expertise to share their experience with the state, which, in turn, would result in a working hour record form that is highly compatible with business processes. Additionally, according to them, the communication was incorrectly implemented by the Ministry of Labour and the Labour Inspection Service before the approval of the working hours record form. Simply informing the members of the tripartite commission and receiving a recommendation from them was not enough, it was also needed to involve field experts into the process.

Additionally, according to business representatives, the European directives do not provide for the regulation of working time in this form but prescribe the obligation to regulate overtime work and identifying sectors where recording of working hours is not possible. Accordingly, they express the opinion that it was necessary to introduce a differentiated approach in Georgia as well and not to apply the same standard to all organizations. It is because of this criticism that civil society representatives fear that this crucial issue of recording of overtime work will become a formality and will in practice not serve to regulate the working hours of employees.

Some of the parties believe that the obligation to record working hours should not apply equally to all types of workplaces, especially in conditions where it has not been explored how effectively all types of organizations can comply with the assigned regulations. According to the representatives of business organizations, it would have been preferable for the said obligation to be imposed only on the sector where the practice of overtime work is more common or the obligation to cover the record of overtime work only. According to them, the recording of working hours is logical and rational in organizations with the production process, where the employee's physical time at work is almost equal to their actual working hours, while the registration of actual working hours in office services is difficult and only creates bureaucratic hurdles not only for the employers but also for the employees. This is especially impossible in the context of remote work. Since the obligation to record working hours was enforced during the pandemic, many organizations faced additional problems when registering the working hours of remotely employed staff.

This view is not substantially contradicted by some representatives of the employees. However, they believe that since the labour market, organizational structures, overtime employment risks by sectors, etc. are not well studied in the country, consequently, there is no basis for the sectoral distribution of a specific obligation.

The HR Professionals Association thinks it is important to have a differentiated approach and different responsibilities depending on the size of the company. Government agencies

should be highly competent in enacting such regulations, which is reflected in their knowledge of the internal processes of the addressee of the regulation and the imposition of relevant obligations. It should take into account, depending on the number of employees and the production process, what forms of working time registration will be optimal.

According to employers' representatives, the current form of hourly accounting is associated with bureaucratic hurdles for several reasons:

1. In some companies, where employees do not work with a computer, it is needed to print the data for the employees to get acquainted with the working hours and deliver the hard copy to each employee, which requires quite a lot of time and resources.

2. The number of hours worked during the month should be disclosed individually to each employee, as the general data contains confidential information of specific employees, which should not be disclosed to their colleagues. The Employers' Association recommends that its members be assigned unique codes which will simplify the process.

3. The existing form of job registration in large organizations has created the need to hire additional staff, as a large volume of work had to be conducted. These responsibilities were mainly assigned to the company's HR department.

Respondents also point out that businesses were not given enough time to get acquainted with the obligations imposed before they entered into force, while HR specialists were deprived of the opportunity to share their feedback and recommendations with the state.

On the other hand, the representatives of the Labour Inspection Service, as they point out, precisely because the obligation of recording working time has only recently entered into force, during the inspection when they encounter cases of incorrect registration of the working time, they mostly advise organizations on how to complete the registration forms correctly, how to introduce a better standard in the organization and, at the same time, organizations are given quite a long time to correct their mistakes.

Conclusions

Analysis of stakeholder interviews revealed criticism from both employers and employees' representatives regarding the established forms for recording working time. As the parties point out, an overly complicated system prevents the effective implementation of the time recording mechanism. The adopted form goes beyond the purpose of the law, according to which only working hours during the day and week should be recorded and a consequent document certifying this should be created.

RECOMMENDATIONS

Following a process of consultations with the social partners, all stakeholders and experts, a new and revised form of recording working hours should be prepared. Meanwhile, in line with the recent increase in remote work practices, the Labour Inspection Service should develop additional recommendations regarding the recording of remote working hours.

5

Maternity, paternity, and parental leave

Legal Review

As a result of the 2020 Labour Law Reform, the Labour Code section on maternity leave was substantially changed. Before the 2020 amendments to the Labour Code, a pregnant worker/working mother was entitled to receive maternity and childcare leave of absence in the amount of 730 calendar days. The benefits for the entire period of 183 calendar days out of the given 730 calendar days consist (in the event of pregnancy complications or multiple births 200 calendar days) of a fixed amount of 1000 Georgian Lari (GEL) paid from the state budget.

The 2020 amendments to the Labour Code did not change the total period of maternity and childcare leave, which still amounts to 730 calendar days. However, the Labour Code does now include the right of the father to take childcare leave.

Namely, according to Article 37(1) of the Labour Code), "an employee shall, upon her request, be granted paid maternity leave of 126 calendar days, and in the case of complications during childbirth or the birth of twins, maternity leave of 143 calendar days." Thus, under the Labour Code maternity leave has been reduced from 183 to 126 calendar days. Article 37(2) of the Labour Code states that an employee may distribute the period of maternity leave at her discretion over the pregnancy and postnatal periods.

According to Article 37(3) of the Labour Code, "an employee shall, upon his/her request, be granted childcare leave of 604 calendar days, and in the case of complications during childbirth or the birth of twins, a parental leave of 587 calendar days." Article 37(4) of the Labour Code clarifies that this is a period of parental leave and may be enjoyed in whole or in part by the mother or the father of the child. Therefore, the amended Labour Code

now legislates for a total of 730 calendar days of maternity leave and parental leave. The first 126 calendar days period is maternity leave, and the remaining 604 calendar days period is paternity leave. Article 37(4) of the Labour Code defines that enjoyment of maternity leave (126 calendar days) is, in principle, the exclusive right of the mother of the child. An exception is made where the father of the child has a right to enjoy those maternity days leave which have not been used by the mother of the child. The idea here is that if the mother of the child returns to work e.g., after 30 calendar days from the delivery date, the remaining 96 days of unused maternity leave will be modified as parental leave and it may be used by the father.

However, the regulation of maternity and parental leave raises serious concerns from the perspective of international labour standards. The Labour Code introduces the right to child care leave (that could be enjoyed either by a father or mother of a child) for the price of reducing paid maternity leave period. The Labour Code also fails to regulate the right to paternity leave. One may argue that the right to childcare leave, which may be enjoyed by a father during the first 126 calendar days (if the mother has not used the maternity leave period) is a decent possibility for the father to enjoy paternity leave. However, this approach is against the idea of exclusiveness of maternity leave. Overall, the provisions of the Labour Code attempting to govern maternity and paternity and parental leave are confusing and do not comply with the minimum requirements under international standards. The Labour Code should provide the following minimum rights concerning maternity, paternity, and parental leaves:

- Employee shall take a minimum of 14 days of maternity leave before giving birth;
- Employee shall take a minimum of 26 weeks of maternity leave after giving birth (the period of 26 weeks is the 6-month exclusive breastfeeding period recommended by WHO and UNICEF[141]);[142]
- The period of time remaining of the 730 days leave (currently total period of maternity and parental leave under the Labour Code) should be qualified as parental leave;
- Employees who have become a father should be entitled to 14 days paid paternity leave, which must be taken starting from the first day their child is borne (or from the first day of child adoption).
- It should also be considered to reduce the total number of 730 days of maternity leave, as research shows that such lengthy periods of maternity leave prevent women from (re)entering the labour market.

141. https://www.who.int/news-room/fact-sheets/detail/infant-and-young-child-feeding#:~:text=WHO%20and%20UNICEF%20recommend%3A%20early%20initiation%20of%20breastfeeding,up%20to%202%20years%20of%20age%20or%20beyond.

142. According to Article 4 of the Maternity Protection Convention, 2000 (No. 183) of the ILO, "On production of a medical certificate or other appropriate certification, as determined by national law and practice, stating the presumed date of childbirth, a woman to whom this Convention applies shall be entitled to a period of maternity leave of not less than 14 weeks." Paragraph 1(1) of the Maternity Protection Recommendation, 2000 (No. 191) further specifies that "Members should endeavour to extend the period of maternity leave referred to in Article 4 of the Convention to at least 18 weeks."

The issue of maternity leave benefits should be mentioned separately.

No changes were introduced in relation to benefit payment during maternity leave. Namely, as noted above, before the 2020 Labour Law Reform, 183 calendar days were subject to payment of a fixed amount of GEL 1000 from the state budget. After the 2020 amendment to the Labour Code, the amount of maternity leave payment has not been changed. Namely, under the Labour Code, 126 calendar days of maternity leave and 57 calendar days of parental leave (in total 183 calendar days) are paid from the state budget of Georgia and the cash allowance for a period of paid maternity leave and paid parental leave is a maximum of 1000 GEL in total (Article 39 of the Labour Code). Here it should also be mentioned, the issue of unequal policy approaches toward civil servants, covered under the Law on Civil Service, and employees, covered under the Labour Code of Georgia. According to the Law on Civil Service, maternity leave benefits for female civil servants consist of the payment of their full ordinary salary for the period of 183 days.

The standard on maternity benefits defined in the Maternity Protection Convention, 2000 (No. 183) of the ILO should be noted. According to Article 6(2) of the No. 183 Convention, "cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living". In paragraph three of the same Article, it is specified that "where, under national law or practice, cash benefits paid with respect to leave referred to in Article 4 are based on previous earnings, the amount of such benefits shall not be less than two-thirds of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits".

The issue of maternity leave benefits should be addressed generally in the context of the need for the development of a comprehensive social security system, where Georgian legislation requires significant policy reform and development. This issue does not only concern maternity leave compensation. Other questions of social security protection have to be taken into account, such as the requirement of introducing and developing a social security system in Georgia.

> "Comprehensive social security systems refers here to systems that include child and family benefit, maternity benefit, sickness cash benefit, unemployment benefit, employment injury benefit, disability benefit, survivors' benefit and old-age benefit schemes".[143] "Social security, or social protection, refers to all policies and programmes providing benefits, in cash or in kind, to secure protection from: lack of access or unaffordable access to health care; lack of work-related income, or

143. General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202), "Universal social protection for human dignity, social justice and sustainable development", International Labour Conference, 108th Session, 2019, 27, footnote 67 – further reference to ILO: World Social Protection Report 2017–19, 2017, Appendix IV, Table B.2.https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_673680.pdf

insufficient income, caused by sickness, disability, maternity, employment injury, maintenance of children; unemployment, old age, or death of a family member; general poverty, vulnerability and social exclusion."[144]

Literature Review

The Regulatory Impact Assessment C183 – Maternity Protection Convention, prepared under the auspices of the UN Women Program, identified two main problems with the provisions in the Labour Code and current practices: the compensation of maternity leave and the unequal utilization of maternity leave by different employment groups. On the former, the paper indicates that the labour legislation of Georgia does not provide for adequate compensation for mother and child during the period of paid maternity leave; According to the study, maternity leave remuneration amounts to 65% of the subsistence contribution equivalent to 1.5 adults for the period of 6 months. [145] The fixed amount of 1000 GEL "could not be deemed adequate even when taking into account the subsistence minimum for only one person."[146] According to the same document, a "second problem is the unequal take-up of maternity leave among different groups of workers, particularly the difference between women who are civil servants versus workers in other sectors. An extension of this is the unequal take-up of leave among women versus men. The Georgian labour legislation, while nominally not tying maternity leave to women only, makes it procedurally very difficult (for civil servants) or (until recently) impossible (in all other sectors) for men to take the paid childcare leave benefit. Thus, maternity leave is overwhelmingly taken by mothers".[147] The report findings demonstrate the need for legislation to provide adequate compensation for support of the mother (parent) and the child, at least during the period of paid leave, and to ensure access to and equal use of parental leave for both public and non-public employees, both women and men. [148] Similar recommendations are provided in a study by the Human Rights Education and Monitoring Center,[149] which examines the normative framework with regard to maternity leave in Georgia against the background of international standards and practices.

It is important to underline that human rights organizations critically evaluated the 2020 Labour Law Reform as it did not address the issues pertaining to the compensation for maternity (parental) leave.[150]

144. *Ibid, paragraph 4.*
145. *Babych I., Mzhavanadze G., Keshelava D., 2021. Regulatory Impact Assessment of C183 – Maternity Protection Convention. UN Women. Unwomen.org. Available at: https://georgia.unwomen.org/ka/digital-library/publications/2021/05/regulatory-impact-assessment-of-ilo-c183---maternity-protection-convention [Last access: 10.11.21].*
146. *Ibid, 14.*
147. *Ibid, 6.*
148. *Ibid, 6-7.*
149. *Human Rights Education and Monitoring Center, 2017. Right to Maternal, Paternal and Parental Leave in the Light of Equality: A Study of National and International Practice. Available at: https://socialjustice.org.ge/ka/products/kvleva-dedobis-mamobis-da-mshoblis-shvebulebis-ufleba-tanastsorobis-shukze [Last access: 10.11.21].*
150. *Human Rights Education and Monitoring Center, 2020; Coalition for Equality, 2021.*

Analysis of Interviews

The vast majority of respondents, including government officials, see significant weakness in labour policy pertaining to gender issues, more specifically to maternity leave pay. According to the stakeholders, the 1000 GEL amount of compensation makes the notion of paid maternity leave fictitious, as it does not cover even the official average monthly salary. Considering that women need to be encouraged to keep their jobs and stay in the labour market after having a child, a 6 months paid leave can be considered a guaranteed minimum. The stakeholders agree that imposing the burden of maternity leave compensation on the employer carries risks, as this may lead to an increase in gender discrimination at the pre-contractual stage and the demotivation of employers in terms of women's employment. Accordingly, it is considered that this expenditure should be reimbursed from the state budget, as is the case with women with public servant status.

> *"We were against it and said that the position of the UN Women is that the burden should not be delegated [to the private sector] until we have observed for years and seen that the Labour Inspectorate is working well and the Labour Inspectorate has the ability to deal with pre-contractual matters. While this is not working and if the burden of maternity pay shifts to business, there will be a very high risk that gender discrimination will increase. The second issue is the myth that women in the public sector benefit from a different rule for the reimbursement of maternity leave. It benefits only civil servants, who make up only 3% of employed women, and not all women employed in the public sector."*[151]

The representative of the Ministry of Labour noted that changes in the reimbursement of maternity leave are expected after the initiation of the Social Code by the Ministry of Labour, which could be a stepping stone for positive changes.

> *"The state commenced work on the so-called Social Code and we want one of the most important discussions within this process to be reimbursement for pregnancy, childbirth, childcare leave, reimbursement rules, and funding mechanisms. I hope we will develop and agree on mechanisms that will be more productive and better protect women's rights in the workplace. "*[152]

As part of the 2020 Labour Law Reform, consideration of the rights of surrogate mothers and parents in case of adoption is acknowledged as a positive change in the Labour Code. The formal division of 6-month ma/paternity leaves into leave for childbirth and childcare allows surrogate mothers, as well as, fathers of a newborn and parents in the case of adoption, an opportunity to take a leave.

151. Interview with the Representative of the UN Women in Georgia.
152. Interview with the Representative of the Ministry of Labour

According to the representative of the Public Defender's Office, the cases of dismissal of pregnant women are also noteworthy, which is why the employees often refer to the Public Defender's Office. This mainly happens when the employee's contract expires and is no longer extended for different reasons, although in reality, this fact constitutes discrimination against a pregnant woman.

As a result of the 2020 Labour Law Reform, pregnant women, those who have recently given birth, or breastfeeding women are not allowed to be employed in hard, harmful, and dangerous work, and if a woman performed this type of work before becoming pregnant, the employer is obliged to change her job requirements. The alternative is to dismiss her. According to the recommendation of the UN Women, it is necessary to guarantee compensation for women in case of dismissal from this type of work. The number of women leaving the labour market after the birth of their first child is already high and legislation mustn't encourage this practice, even for women employed in hard, harmful, and hazardous work.

Conclusions

Although some changes have been made to the Labour Code in recent years to improve maternity leave standards, all three components of the research identified identical problems and established areas of the existing systems' non-compliance with the international labour standards.

The major problem is the complete non-compliance of the current maternity leave remuneration system with the international labour standards. To this end, the one-time GEL 1000 allowance available today does not cover even the minimum needs related to pregnancy and childbirth. A different approach is applied in the case of public service employees, according to which maternity leave is paid in the amount of 6 months' salary. However, such a high standard applies only to narrow groups of employees in public service.

Both employees and employers believe that maternity leave should not be paid by the employer alone, as this may lead to an increase in cases of gender discrimination in the employment process, and believe that alternative ways of financing should be found.

Analysis of interviews also underlined that a woman employed in hard, harmful, or hazardous work in case of pregnancy might be at risk of losing her job if the employer does not have the opportunity to transfer her to another type of work. For such cases, neither the legislation nor the social protection system provides for any kind of compensation mechanism and facilitates the expulsion of women from the labour market.

The legal review also revealed other areas of non-compliance with the existing labour legislation norms with the international labour standards. As of today, paternity leave is not fully and effectively regulated, and the short leave period for fathers provided by the

law reduces the 183-day period of maternity leave set by international standards. In addition, there is no clearly and sharply separated paternity and maternity leave, which also contradicts international labour standards.

RECOMMENDATIONS

Revise the maternity leave system, which would clearly define maternity, paternity, and parental leave, their terms, and funding rules;

The legislation should provide a minimum of 14 days of maternity leave before giving birth;

A working mother shall take a minimum of 26 weeks of maternity leave after giving birth (the period of 26 weeks is the 6-month exclusive breastfeeding period recommended by the WHO and UNICEF);

Paternity leave should be defined as a 14-day period given to a child's father from the first day of the child's birth (or adoption) and which may be used in conjunction with the maternity leave;

The period after the 26-week leave should be defined as parental leave, which both parents will be entitled to use, but not simultaneously;

In order to encourage fathers to take paternity leave, an additional paid period (after 26 weeks) should be defined within the parental leave, which parents will be able to use only if the child's father takes advantage of this leave;

The system of maternity leave, both in terms of pay and length, should be implemented equally for both public and private sector employees;

In the case of women employed in hard, harmful, or hazardous work, for whom it is impossible to take other specific jobs in case of pregnancy, a special assistance package should be provided within the social protection system;

The issues related to remunerating the maternity leave should be resolved within the framework of the reform of the unified social system, as a result of which remuneration during the maternity leave and other material benefits will be covered by the state through unified social programs and/or funds;

The maternity pay should ensure that a woman can maintain proper health conditions for herself and as well as for her child and create an adequate standard of living;

The ILO Social Security (Minimum Standards) Convention, 1952 (No. 102) should be used to

guide the reform of the social protection system, with the following areas to be considered as a priority in order to promote family well-being:

- Child and family benefits;
- Pregnancy benefits;
- Sickness benefits;
- Short-term and long-term unemployment benefits;
- Benefits related to occupational injuries;
- Incapacity benefit;
- Benefit related to the death of the breadwinner.

6

Minimum wage

Legal Review

The Labour Code does not regulate the manner through which the minimum wage should be fixed. There is one old legal source regulating the minimum wage in Georgia. Ordinance No. 351 of the President of Georgia on the Minimum Wage, adopted on 4 June 1999, defines that in order to achieve the state's regulation of labour remuneration and to protect employees' social interests, the minimum monthly salary shall be 20 GEL. Technically speaking, the minimum wage is defined by Georgian legislation, but the amount of the minimum wage is outdated, it does not constitute an accurate reflection of current wage levels in the labour market and has no relevance or importance for the labour market regulation in Georgia (see in detail third party reports below).

The initial version of the labour law reform package included a provision concerning minimum wage fixing. The draft provision stated that the mechanism for minimum wage setting, the scope of application for minimum wages, and the regulation related to wage protection should be determined by a special law on wages. However, at the preliminary stage of consultations with social partners/government (before the draft package was formally registered with the parliament), the draft provision was removed from the draft text of the amendments to the Labour Code.

Current international developments view minimum wages as a tool to address poverty and inequality. According to the CEACR, "after two decades marked by a certain disinterest in minimum wage policy as a tool for social protection and poverty reduction, the ILO has noticed a renewed interest in this issue since the early 2000s." The CEACR notes that the

"minimum wage fixing has thus come back to the fore as a means of combating poverty and reducing income inequalities".[153] Another illustration of this interest is the initiative for the adoption of a Directive on minimum wage that emerged in the European Union. In 2020, the European Commission published a proposal for a "Directive on adequate minimum wages in the European Union"[154]. For the first time in the history of the EU, a draft Directive on minimum wage is being discussed which explicitly aims to significantly increase the level and scope of minimum wages in Europe. In light of these developments, it is recommended that Georgia develops legislation governing minimum wage-fixing.

In doing so, a number of issues should be borne in mind. There is no uniform definition of the minimum wage as such. No ILO instrument defines the term "minimum wage".[155] According to the CEACR, the minimum wage may be understood to mean

> "the minimum sum payable to a worker for work performed or services rendered, within a given period, whether calculated on the basis of time or output, which may not be reduced either by individual or collective agreement, which is guaranteed by law and which may be fixed in such a way as to cover the minimum needs of the worker and his or her family, in the light of national economic and social conditions".[156]

However, Relevant provisions of the ILO Minimum Wage Fixing Convention, 1970 (No. 131) should be considered. This Convention focuses on the processes for minimum-wage setting, as well as certain elements to be taken into account when setting a minimum wage. According to the CEACR,

> "the essential elements of a minimum wage system, as advocated by Convention No. 131, are as follows: (i) as broad a scope of application as possible; (ii) full consultation with the social partners, on an equal footing, in the design and operation of the minimum wage system and, where appropriate, their direct participation in the system; (iii) the inclusion in the elements to be taken into account of both the needs of workers and their families and economic factors in determining the levels of minimum wages; (iv) the periodic adjustment of minimum wage rates to reflect changes in the cost of living and other economic conditions; and (v) the implementation of appropriate measures to ensure the effective application of all provisions relating to minimum wages."[157]

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153. General Survey of the reports on the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135), "Minimum wage systems", International Labour Conference, 103rd Session, 2014, paragraph 16. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_235287.pdf
154. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0682 [last accessed: 10.11.21].
155. General Survey of the reports on the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135), "Minimum wage systems", paragraph 35.
156. Ibid.
157. Ibid, paragraph 61.

Literature Review

According to Geostat, the average monthly nominal wage for employees in 2020 is 1227,3 GEL.[158] The subsistence level in effect in the country today, as well as the old-age pension and all other types of social assistance, significantly exceeds the level of the minimum wage set by the No. 351 Ordinance. Studies show that the minimum wage in Georgia is disproportionately low compared to the EU member states and is at least nine times lower than in other post-Soviet countries.[159]

Discussions on minimum wage reform have intensified over the past three years. Trade unions have developed draft legislative packages[160], which provided for an increase in the minimum wage. Proponents of the minimum wage reform point out that the monthly salary of more than 25,000 employees in Georgia does not exceed 100 GEL, for about 63,000 monthly salaries are below the subsistence level set in the country, and more than 130,000 people have the salary below the family subsistence level.[161] According to the proponents of the reform, in case of increase of the minimum wage, some poor families with minimum wage workers will overcome a poverty.[162] The public demand for an increase in the minimum wage is confirmed by a survey conducted by the Caucasus Research Resource Center (CRRC), according to which 75% of the population fully (48%) or partially (27%) support the introduction of the minimum wage.[163] According to the same study, the idea of a minimum wage is widely supported and there are no significant differences in attitude among socio-demographic groups. The survey shows that the average perceived minimum wage is 854.1 GEL, which is four times the subsistence level in the country at the time when the research was done, and forty times the current minimum wage.[164]

Opponents of minimum wage reform mostly focused on the impact of a possible minimum wage, rather than the proposed amendment to develop a law regulating a minimum wage fixing mechanism. They argued that the introduction of a higher minimum wage runs the risk of encouraging the shadow economy, creating an incentive for employers to rely on informal forms of employment instead of formal employment to bypass regulations.[165] With

158.
159. Darsavelidze D. 2019. Impact of Possible Growth of Minimum Wage in Georgia. Friedrich Ebert Foundation. Available at: http://library.fes.de/pdf-files/bueros/georgien/14971.pdf [Last access: 10.11.21].
160. Sichinava D., Atchaidze M., 2020. Minimum Wage in Georgia. Gauging public opinion. Friedrich Ebert Stiftung, Tbilisi. http://library.fes.de/pdf-files/bueros/georgien/16226.pdf [Last access: 10.11.21].
161. Tchanturidze G., et. al, Assessment of Minimum Wage Policy Compliance in the Perspective of Georgian Social-Economic Development and International Obligations. Georgian Trade Unions Confederation and Public Defender's Office, 2016. Available at: http://gtuc.ge/wp-content/uploads/2018/08/მინიმალური-ხელფასის.pdf [Last access: 10.11.21].
162. Darsavelidze, 2019.
163. Sichinava, Atchaidze.
164. ibid.
165. Makalatia I., 2019. What results the introduction of minimum pay in Georgia may bring. Bm.ge. Available at: https://bm.ge/ka/article/ra-shedegebi-sheidzlebamoitanos-minimaluri-xelfasis-shemogebam-saqartveloshi/43346 [Last access: 10.11.21].

increased minimum wages, they estimate, employment rates may decrease, or consumer prices may increase.[166]

It should be mentioned that the Business Ombudsman of Georgia[167] opposed the introduction of the provision in the Labour Code on minimum wage fixing mechanism and considered that such a general and unforeseeable provision did not allow for discussion of its pros and cons. In their estimation, if the minimum wage established by law was not in line with the actual minimum wage, the regulation would lead to a reduction in the number of employees and an increase in prices.[168] A similar approach was taken by the Young Entrepreneurs Association,[169] which wrote that the proposed provision did not allow for its provisional impact assessment; According to the organization, setting the minimum wage at a low level (less than 350 GEL) would not have a real impact on the condition of employees, and setting a high level (more than 350 GEL) would lead to higher labour costs, which would potentially create a risk of job losses.[170]

During the 2020 Labour Law Reform, the idea of a minimum wage enjoyed particular support from the NGOs working on labour issues. The Social Justice Center[171] noted that jobs are being created in low-paid sectors in Georgia. According to their assessment, the minimum wage will serve as an effective mechanism for the protection of workers only if it answers real needs.[172] The Georgian Young Lawyers' Association[173] supported the idea of setting a minimum wage and called on the Parliament to start working on this issue promptly and with wide public involvement.

Analysis of Interviews

According to representatives of the non-governmental sector working on labour issues, experts, and trade unions, one of the most important issues necessary for the empowerment of employees in Georgia is the minimum wage. According to the respondents, the observation of the Georgian reality does not inspire optimism for the prospect of regulating the minimum wage.

Setting a minimum wage and regulating it is indeed a complex issue. Different parties have different attitudes and expectations regarding the minimum wage. There are also risks, including the extent to which monitoring of the actual implementation of the mini-

166. *Tkeshelashvili Sh., 2019. Price of Minimum Pay. Forbes.ge. Available at: https://forbes.ge/news/7240/minimalurixelfasis-fasi [Last access: 10.11.21].*
167. *Business Ombudsmen of Georgia, 2020.*
168. *Ibid.*
169. *Georgian Young Lawyers Association, 2020. 8-9.*
170. *Ibid.*
171. *Social Justice Center, 2021. Legal Assessment of Agreements of Food Delivery Service in Georgia. Available at: https://socialjustice.org.ge/ka/products/sakartveloshi-mokmedi-mitanis-servisis-kompaniebis-khelshekrulebebis-samartlebrivi-shefaseba [Last access: 10.11.21].*
172. *Ibid.*
173. *Georgian Young Lawyers Association, 2020. 8-9.*

mum wage is enforceable. The employer may use various mechanisms to formally include clauses pertaining to minimum wage, but this will not change the implications for employees, because often the workers are unaware of the terms of their contract. Some of the respondents questioned, to what extent the Labour Inspection Service will be able to monitor the minimum wage with the available resources.

Some respondents consider that it is important to thoroughly conduct a Regulatory Impact Assessment, to determine what benefits and risks may accompany the introduction of a minimum wage in the country.

According to various respondents, the minimum wage, as a stand-alone regulation, is less effective in the absence of a well-functioning social system.

The Ministry of Labour notes that there is an opinion that the minimum wage for medical staff should be included as one of the components in the strategic procurement of the Ministry of Labour. If this initiative is implemented, this may be the first precedent set by the state for the sectoral minimum wage.

> *"We think that the participants in the state strategic procurement should be ethical employers. There is a plan to include a minimum wage for medical staff as one component of strategic procurement. It is very important for doctors, but it is even more relevant for nurses. It is understandable when they say that minimum wages are not easy to determine, but when the state invests so much, it would probably not be bad to set minimum wages."*[174]

Conclusions

The literature review and analysis of stakeholder interviews revealed indicative divergence in positions between employee and employer advocates concerning the need for the introduction of a minimum wage fixing mechanism. On the one hand, the instigation of a minimum wage is considered by employee representatives as one ancillary pertinent instrument to alleviate poverty, although it is noted that without a well-functioning social protection system, a minimum wage alone cannot solve the problem. Employer representatives see risks in imposing a minimum wage, as the regulation of the minimum wage may reduce the employment rate in the formal sector and augment the informal sector.

As noted in the legal review, both the ILO and the European Union view the introduction of a minimum wage as one of the mechanisms for tackling poverty and economic inequality. A new European directive on minimum wage has been initiated within the EU, although a single European standard has not yet been established.

174. *Interview with the Representative of the Ministry of Labour.*

RECOMMENDATIONS

A legislative framework for minimum wage fixing in line with international labour standards should be developed;

The amount of the minimum wage should be determined with the full involvement of the Tripartite Social Partnership Commission;

When calculating the minimum wage, both consumer prices and the subsistence minimum, as well as the average annual monthly income should be taken into account. In the event of a change in these variables, there must be an effective tool for permuting the minimum wage amount;

The amount of the minimum wage should be periodically revised taking into account the economic situation and the growth of consumer prices, and it should be gradually increased from 30% to 60% of the average monthly wage;

Effective enforcement of the minimum wage mechanism should be overseen by the Labour Inspection Service;

Emphasis should be placed on the sectoral work of the Tripartite Social Partnership Commission, which shall set a minimum sectoral remuneration threshold;

Before the initiation of the legislative regulation on the minimum wage, the state must determine the amount of the mandatory minimum wage for those employed in projects implemented under the public procurement framework;

Since, according to employers, legislative regulation of the minimum wage contains risks such as job losses and growth in the informal sector, it is necessary to conduct a Regulatory Impact Assessment (RIA) study to identify socio-economic benefits as well as associated risks.

7

Termination of the employment contract

Legal Review

The question of termination of the employment contract is regulated by Article 47 and Article 48 of the Labour Code. Article 47 defines valid and invalid grounds for contract termination, while Article 48 legislates the rules and procedures thereof. They both follow the basic principles determined under the ILO Termination of Employment Convention, 1982 (No. 158). The employer is obliged to give written notification to the employee thirty calendar days in advance and must pay at least one-month severance compensation within thirty calendar days, with the exception of cases where violation of employment duties constitutes a valid ground for dismissal. Alternatively, the employer is entitled to give a three-day prior written notification to the employee and pay at least two months of severance compensation within thirty calendar days.

The Labour Code provides for an exhaustive list of valid grounds for dismissal which is mostly based on the grounds contained in Article 4 of the Convention No. 158 which reads that "the employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service." As such, in Article 47 the valid reasons for termination are expressed along three dimensions: 1) the operational requirements of the employer (e.g. economic circumstances, and/or technological or organizational changes requiring downsizing; the initiation of liquidation proceedings against an employer who is a legal person); 2) the capacity of the worker (e.g. the incompatibility of an employee's qualifications or professional skills with the position held/work to be performed by the employee; long-term incapacity for work); and 3) the conduct of the worker (e.g. violation by an employee of his/her obligations under an individual employment agreement). However, there is an additional valid ground for contract termination listed in Article 47, which is not derived from the Convention No. 158. According to Article 47(1)(n) of the Labour Code, the grounds for terminating employment agreements also include [...] - other objective circumstances justifying the termination of an employment agreement".

Within the 2020 Labour Law Reform, a new provision was introduced in the Labour Code, aiming to provide some additional guarantees related to Article 47(1)(n) of the Labour Code. Namely, the Labour Code now states that where an employment agreement is terminated on the ground of other objective circumstances justifying the termination of an

employment agreement, an employer shall substantiate in the written notification the objective circumstance justifying a dismissal. In the course of the last 5-7 years, Georgian courts have taken a strict approach towards dismissals based on Article 47(1)(n) of the Labour Code in the sense that employer's will on contract termination undergoes increased scrutiny from the judge, thereby placing on employers a high standard of burden of proof to justify the presence of an objective reason for dismissal.

Although some legislative progress is observed in relation to Article 47(1)(n) and the case law in Georgia pursues the strictest approach towards termination based on the given article, considering that its inclusion in the Labour Code is not in line with relevant ILS, it is recommended to remove the provision allowing for the termination "on other objective circumstances". Its inclusion provides little to no benefit to employers given the strict approach taken by the courts, whereas the provision clearly opens the door for the imposition of unjustified dismissals based on invalid grounds, leading to costly and lengthy court cases.

Literature Review

Issues related to the termination of the employment contract were not identified within the literature review.

Analysis of Interviews

It is often recommended by lawyers and human rights defenders that the grounds for the termination of the contract should be pre-determined for the employee and that the employer should not have the opportunity to dismiss the employee based on "other objective circumstances". The argument is that employers may unlawfully dismiss employees and attribute this dismissal to other objective circumstances, and the employee may not go to court for various reasons, including lack of time and financial resources. In this case, there is only one way to justify unlawful dismissal and request appropriate compensation. It should also be noted that the Labour Inspection Service mandate does not apply to cases of termination of employment.

Employers believe that it is impossible to form an exhaustive list of grounds and reflect it in the law, as there may be specific circumstances, depending on the specifics of different types of work.

Conclusions and recommendations

Conclusions

Some amendments to the termination of the employment agreement were adopted in the Labour Code in the course of the 2020 Labour Law Reform. The employer was obliged to substantiate in writing what objective circumstances became the basis for termination of

the employment agreement with the employee. However, analysis of interviews has shown that the existing norm does not provide solid guarantees, and the basis of the so-called "other objective circumstances" is still often misused to terminate labour relations without a valid reason. Due to the rather long duration of court proceedings, as well as the significant expenses incurred by employees, illegally dismissed employees do not always go to court and the illegal dismissal remains in force. The legal review also identified this issue. The current version of the norm does not comply with the ILO Convention No. 158, creating an opportunity for inconsistent and incorrect application of this norm.

RECOMMENDATIONS

Remove Article 47, paragraph 1, subparagraph "N" of the Labour Code, which stipulates the termination of an employment contract on the basis of "other objective circumstances".

8

Occupational safety and health

Legal Review

According to the EU-Georgia Association Agreement, Georgia has to implement a number of technical regulations in the field of occupational safety and health based on the directives included in the Association Agreement. These directives are:

- Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace;
- Directive 2009/104/EC of the European Parliament and of the Council of 16 September 2009 concerning the minimum safety and health requirements for the use of work equipment by workers at work;
- Council Directive 90/270/EEC of 29 May 1990 on the minimum safety and health requirements for work with display screen equipment (due date 1 September 2019);
- Council Directive 89/656/EEC of 30 November 1989 on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace;
- Council Directive 92/58/EEC of 24 June 1992 on the minimum requirements for the provision of safety and/or health signs at work;
- Council Directive 92/91/EEC of 3 November 1992 concerning the minimum require-

ments for improving the safety and health protection of workers in the mineral-extracting industries through drilling;

- Council Directive 92/104/EEC of 3 December 1992 on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries (due date 1 September 2020);
- Council Directive 92/57/EEC of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites;
- Directive 2002/44/EC of the European Parliament and of the Council of 25 June 2002 on the minimum health and safety requirements regarding the exposure of workers to the risk arising from physical agents (vibration) (due date 1 September 2021);
- Directive 2009/148/EC of the European Parliament and of the Council of 30 November 2009 on the protection of workers from the risks related to exposure to asbestos at work;
- Directive 1999/92/EC of the European Parliament and of the Council of 16 December 1999 on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres;
- Directive 2006/25/EC of the European Parliament and of the Council of 5 April 2006 on the minimum health and safety requirements regarding the exposure of workers to risks arising from physical agents (artificial optical radiation);
- Council Directive 93/103/EC of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels;
- Council Directive 90/269/EEC of 29 May 1990 on the minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers (due date 1 September 2022);
- Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work;
- Directive 2000/54/EC of the European Parliament and of the Council of 18 September 2000 on the protection of workers from risks related to exposure to biological agents at work;
- Council Directive 98/24/EC of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work;
- Directive 2003/10/EC of the European Parliament and of the Council of 6 February 2003 on the minimum health and safety requirements regarding the exposure of workers to the risk arising from physical agents (noise);
- Directive 2004/40/EC of the European Parliament and of the Council of 29 April 2004 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields);
- Commission Directive 91/322/EEC of 29 May 1991 on establishing indicative limit values by implementing Council Directive 80/1107/EEC on the protection of workers from the risks related to exposure to chemical, physical and biological agents at work;

- Commission Directive 2000/39/EC of 8 June 2000 establishing a first list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC on the protection of the health and safety of workers from the risks related to chemical agents at work;
- Commission Directive 2006/15/EC of 7 February 2006 establishing a second list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC;
- Commission Directive 2009/161/EU of 17 December 2009 establishing a third list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC;
- Council Directive 2010/32/EU of 10 May 2010 implementing the Framework Agreement on prevention from sharp injuries in the hospital and healthcare sector concluded by HOSPEEM and EPSU (due date 1 September 2023).

This international commitment of Georgia, under the EU-Georgia Association Agreement, is transposed into the Organic Law on Labour Safety setting the obligation of the government of Georgia to adopt technical regulations. However, these technical regulations have not been adopted so far. Therefore, the government of Georgia should regulate the following issues:

- the minimum requirements for health and security when working with the equipment with monitors (due date 1 September 2019 under the Organic Law on Labour Safety);
- the minimum requirements of safety and health while using individual protection measures at the workplace (due date 1 September 2020 under the Organic Law on Labour Safety);
- minimum requirements when installing signs related to occupational safety and health at the workplace (due date 1 September 2020 under the Organic Law on Labour Safety);
- minimum requirements of the protection of safety and health when using work equipment at the workplace (due date 1 September 2021 under the Organic Law on Labour Safety);
- minimum requirements of safety and health when working with temporary or mobile construction sites (due date 1 September 2021 under the Organic Law on Labour Safety);
- minimum requirements of safety and health of the employee from potential risks of physical (vibration) agents (due date 1 September 2021 under the Organic Law on Labour Safety);
- the protection of the employees from the risks related to the impact of asbestos at the workplace (due date 1 September 2022 under the Organic Law on Labour Safety);

- the minimum requirements of safety and health of the employee from risks associated with the physical agents (artificial optical radiation) (due date 1 September 2022 under the Organic Law on Labour Safety);
- the minimum requirements of improving safety and health conditions of the employees facing the risk of an explosive environment (due date 1 September 2022 under the Organic Law on Labour Safety);
- the minimum requirements of safety and health of the employee manually lifting heavy weight (due date 1 September 2022 under the Organic Law on Labour Safety);
- the minimum requirements for protecting employees from the risks of carcinogens and mutagens, and biological agents at workplace (due date 1 September 2023 under the Organic Law on Labour Safety);
- the minimum requirements for protection of safety and health of the employee from the potential risks associated with the physical agents (electromagnetic field, noise) (due date 1 September 2023 under the Organic Law on Labour Safety);
- to protect the employees form the risks associated with the chemical, physical and biological agents at workplace, as well as with the chemical agents and substances (due date 1 September 2023 under the Organic Law on Labour Safety);
- the protection of health and safety of employees working over and under the ground, also in the industries extracting minerals through drilling (due date 1 September 2023 under the Organic Law on Labour Safety).

Literature Review

Changes in the occupational safety system began in 2015 when the state program for monitoring working conditions was approved by a Decree of the Government of Georgia. According to the Public Defender,[175] this could not be considered an effective monitoring mechanism, as only those enterprises that expressed their willingness to do so could be inspected under the program. In addition, monitors could only issue non-binding recommendations. The only exceptions to this rule were inspections related to the detection of forced labour and labour exploitation. According to the Georgian Trade Union Confederation,[176] the existence of the department could not be considered as an effective mechanism for the protection of labour safety. Several voluntary inspections were carried out after the establishment of the department. However, the rate of injuries and fatalities at the workplace was not reduced.[177]

175. Public Defender, 2015. The Situation in Human Rights and Freedoms in Georgia. 573, Available at: https://drive.google.com/file/d/1_VN-AwGDBAc-ocqskoTm0OSPXcrb9Cup/view [Last access: 10.11.21].
176. Georgian Trade Unions Confederation, 2017. The Government has not taken effective steps towards the creation of labour inspection. Gtuc.ge. Available at: https://gtuc.ge/%E1%83%AE%E1%83%94%E1%83%9A%E1%83%98%E1%83%A1%E1%83%A3%E1%83%A4%E1%83%9A%E1%83%94%E1%83%91%E1%83%90%E1%83%A1-%E1%83%A8%E1%83%A0%E1%83%9D%E1%83%9B%E1%83%98%E1%83%A1-%E1%83%98%E1%83%9C%E1%83%A1%E1%83%9E/ [Last access: 10.11.21].
177. Ghvinianidze L., 2018. Deficiencies of the Current Labor Safety Reform in Georgia. Open Society Georgia Foundation, 3. Available at: https://osgf.ge/wp-content/uploads/2018/03/Labour_ENG.pdf [Last access: 10.11.21].

In 2018, after the adoption of the Organic Law on Labour Safety of Georgia, the supervisory body was granted the right to impose sanctions on employers. However, according to the Public Defender, this reform did not provide full, adequate protection of safety. In its 2018 Annual Report, the Public Defender wrote that the law only applied to heavy, harmful, and hazardous work and that the supervisory body still did not have a mandate for unconditional admission to the workplace.[178] In their assessment, the lack of an effective supervisory body to monitor labour safety remained a major challenge.[179] According to the Human Rights Education and Monitoring Center,[180] limiting the application of the law to only heavy, harmful, and hazardous work unequivocally promoted inequality and were discriminatory against different types of work.

Frequent violations of labour safety norms were discussed by workers in various fields in a study prepared by the Georgian Trade Union Confederation.[181] According to another study by trade unions, it was pertinent for the state to establish an effective mechanism for monitoring labour safety, which, if necessary, would penalize employers.[182] The US Department of State's 2018 report on Georgia spoke about the essential shortcomings of labour safety control.[183] The U.S. Department of State concluded that the government was unable to effectively control occupational safety and that inspections, in most cases, were conducted with the prior consent of employers. The U.S. Department of State indicated that the fines, imposed due to violation of labour conditions, were not sufficient to deter violations.[184]

In the framework of the 2019 labour safety reform, obligations related to safety standards were extended to all areas of economic activity, and restrictions on the access of labour inspectors to places of employment were removed. Although this change was welcomed by the Public Defender,[185] in their assessment, the main problem regarding the limited mandate of the supervisory body remained, as it did not have the capacity to assess the protection of labour rights, including working hours, overtime pay, prohibition of discrimination. According to Human Rights Watch, the notion of occupational safety that neglects the importance of regulating working hours, overtime, and breaks, while protecting occupational safety, fails to ensure the protection of human life and health at the workplace. It should be noted that a special report prepared by the same organization, which studies labour safety in the field of the extraction industry in Georgia, noted that the separation of

178. Public Defender, 2018: 194-195.
179. Ibid, 194.
180. Human Rights Education and Monitoring Center, 2017.
181. Tchanturidze, 2019.
182. Gongadze, Jokhadze, Egriselashvili, Dolaberidze, 2019. 28.
183. U.S. Department of State, 2017. 2016 Country Reports on Human Rights Practices – Georgia. Refworld.org. Available at: https://www.refworld.org/publisher,USDOS,,GEO,532845,0.html [Last access: 10.11.21].
184. U.S. Department of State, 2019. 2018 Country Reports on Human Rights Practices – Georgia. Available at: https://www.state.gov/wp-content/uploads/2020/03/GEORGIA-2019-HUMAN-RIGHTS-REPORT.pdf [Last access: 10.11.21].
185. Public Defender, 2019. The Situation in Human Rights and Freedoms in Georgia. Available at: https://www.ombudsman.ge/res/docs/2020040215365449134.pdf [Last access: 10.11.21].

labour rights and labour safety issues endangered employees and violated internationally recognized labour rights.[186]

Employers opposed the adoption of the Organic Law on Labour Safety in 2019. The Georgian Business Association considered the application of labour safety legislation to all spheres of economic activity and companies of any size as an alarming and extremely dangerous initiative for business. The Business Association estimated that if the law were to pass, the entrepreneurial sector would have to spend several hundred million GEL to bring their actions in line with business regulations; This would place a particularly heavy burden on small and micro-businesses.[187] According to the Georgian Employers' Association,[188] the tightening of the labour safety law would have a particularly severe impact on regions where there is a shortage of labour safety personnel and companies would not even know what new requirements the law would impose on them. The Georgian Business Ombudsman[189] was also critical of the reform, estimating that the amount and combination of sanctions imposed under labour safety legislation should be proportionate and adequate and should not impose a heavy burden on business. According to him, the business sector should have been awarded a reasonable period of time to comply with the new regulations, and the employer should not be held liable in case of a culpable result of the employees.[190]

According to the Human Rights Education and Monitoring Center, the state has enforced significant and necessary reforms in the field of occupational safety since 2015. It considers that the significant reduction in the number of deaths and injuries in the workplace is largely attributed to this reform.[191] During that time period, the Labour Inspection Service was institutionally strengthened, with the increased number of employees. As for the 2020 Labour Laws Reform, the issue of labour safety was not the main topic of discussion. The issue also was not directly addressed in the reform assessment reports prepared by various organizations. In the field of occupational safety, the problem remains that the relevant agencies have not yet adopted by-laws, under which safety standards should be defined in more detail.

186. Human Rights Watch, 2019.
187. Business Media Group, 2018. 2018. BAG is against the draft law on Labour Safety with its current form. Available at: https://bm.ge/ka/article/bag-shromis-usafrtxoebis-shesaxeb-kanonproeqtis-arsebuli-formit-migebas-ewinaagmdegeba/27973 [Last access: 10.11.21].
188. Employer Association, 2019. Employers Association: Toughening the Law on Occupational Safety will negatively affect regions. Available at: https://bm.ge/ka/article/damsaqmebelta-asociacia-shromis-usafrtxoebis-kanonis-gamkacreba-mdzimed-aisaxeba-regionebze-/37185 [Last access: 10.11.21].
189. on.ge, 2018. Business ombudsman about the Law on Labour Safety: big amount of sanctions shall result big burden for business, Available at: https://on.ge/story/18417-ბიზნესომბუდსმენი-შრომის-უსაფრთხოების-კანონზე-სანქციების-ოდენობა-დიდ-ტვირთს-არ-უნდა-აკისრებდეს-ბიზნესს [Last access: 10.11.21].
190. Ibid.
191. Gvritishvili E., 2020. Fragmented Labour Inspection – Labour Rights Left without Oversight. Human Rights Education and Monitoring Center. Available at: https://socialjustice.org.ge/ka/products/shromis-fragmentuli-inspektireba-zedamkhedvelobis-gareshe-darchenili-shromiti-uflebebi [Last access: 10.11.21].

Analysis of Interviews

Organic Law on Labour Safety is seen as an important step forward in advancing labour standards. Representatives of both employers and employees, as well as the state organs, believe that the labour safety standard is the minimum that all enterprises are required to adhere to, and therefore everyone agrees on the positive impact and consequences of labour safety law. Representatives of the Labour Inspection Service note that the statistics of injuries and deaths in the workplace are characterized by positive dynamics, which is related to the introduction of the said legislation. For example, according to last year's statistics, the death rate at work is reduced by 64% compared to previous years. It was also mentioned that since 2018 the form and rule of production of these statistics have also changed. Currently, all enterprises have an obligation to notify the Labour Inspection Service of any industrial accident on their territory, unlike in the previous period, when cases were reported only to the Ministry of Internal Affairs if an investigation was launched under the Criminal Code.

It should also be noted that some time has passed since the adoption of the Law of Labour Safety, which is necessary for businesses to adapt to the new regulations. Representatives of employers and business associations point out that there were some challenges in the first phase of the enforcement of the regulations as there was a shortage of knowledge in the area of occupational safety. There were almost no occupational safety specialists in Georgia for years, and there had been no culture and experience in occupational safety assessment and prevention. Due to such a lack of knowledge, some respondents think that the business was somewhat unprepared for the reform. Over time, there has been a gradual adaptation, understanding of the requirements set by the law, and planning of responsive actions. As the representative of the Association of Infrastructure Builders notes: "*Today, the sector views this not as a business cost, but rather as an investment, to some extent, in its security, including financial security.*"

In the field of labour safety, general problems related to the lack of labour safety specialists and sectoral qualifications were identified in the country. The fact that the notion of labour safety as such has not existed in the country for years, neither at the legislative nor at the executive level, contributed to the qualification deficit. The representative of the Center for International Solidarity spoke about the need to elaborate a state strategy, coordinated by the Ministry of Education and the Ministry of Labour, outlining a plan to ensure that the education system is developed in a way to ensure that the existing gaps related to the qualification requirements are filled, which will also help popularize the profession of the occupational safety specialist and prepare qualified personnel for the Labour Inspection and Business Organizations.

Assessment of the obligation to hire an occupational safety specialist at all types of organizations

Different practices of hiring a labour safety specialist have been established in different types of companies. Office-type and small-sized enterprises undertake the outsourcing practice, as they hire companies to perform the task, while large enterprises with hard, harmful, and dangerous work environments can either hire additional staff or direct their employees to obtain certification. There are also less common hybrid practices - for example, companies working on infrastructure and construction projects in some cases hire a company that assesses risks and develops instructions for labour safety, and additionally a particular construction project has a specific occupational safety specialist to oversee the day-to-day processes, under the directions of the outsourcing company.

With regard to the occupational safety specialist, it is important to note that employers criticize the law, as they believe that extending the obligation to hire an occupational safety specialist to all types of organizations is completely redundant and associated with unnecessary costs for the business. It was also noted that in small organizations, sometimes lawyers, office managers, or even HR personnel are obliged by employers to be responsible for monitoring labour safety, which, in turn, violates the rights of these employees and, at the same time, makes the process completely perfunctory. Business organizations believe that it is necessary to properly assess occupational safety risk at the narrow, sectoral, level and to impose tailored requirements. It should be noted that the Georgian Trade Unions Confederation also supports the differentiated approach and believes that for micro and small organizations where the safety risk is minimal, the obligation to hire a specialist or train an employee may be associated with significant costs.

The Labour Inspection Service strongly disagrees with the view of business representatives that there are no risks associated with occupational safety in several jobs, including office work. It is also noted that there is a differentiated approach to the periodicity of risk assessment.

> *"I do not know why the opinion was developed that there is no risk of industrial accidents during office-type activities. For example, the service sector includes hotels and when it comes to traumatic incidents, it is one of the riskiest sectors in the world, although this is not visible at first glance and needs to be assessed by specialists. I, therefore, cannot agree with the logic that safety specialists are not needed in all sectors. But here too we have differentiated approaches, at the initiative of the Labour Inspectorate, an order was issued by the Minister, which determined which sector would be required to assess the risk at what intervals."*[192]

192. Interview with the Representative of the LEPL Labour Inspection Service._

The representative of the trade union, Guild, on the other hand, speaks about the need for differentiation and separate analysis according to the areas of occupational safety risks, because employees face rather high risks related to occupational safety in sectors where the hazard is not easily recognizable at first glance, such as, for instance in the field of construction. Therefore, it is necessary to extend the obligation to retain an occupational safety specialist to all types of workplaces and not only that, to create specific frameworks for employees with narrow specialization:

> *"Who can talk about the difficult, harmful and dangerous work of a ballet dancer?" Ballet dance meets all three categories. Also, a consultant in the field of services who suffers from psychological and physical diseases caused by standing all the time. We have cases when the employees of a supermarket or other institutions become victims of certain physical confrontations because, for example, the security service does not protect them from a drunk customer at night, etc. All sectors have specific challenges in the field of safety and medical health and these issues need to be studied and analysed by competent people. In addition to the industrial sector, the issue of labour safety should be seen in the service and other sectors as well. Then we will be able to say that labour safety is a universal right."*[193]

The issue of spending on occupational safety for construction companies

Challenges are primarily faced by those business organizations where the fulfilment of labour safety standards is associated with additional costs, which increase the total cost of their product or service. This applies especially to those companies that carry out infrastructure, construction, and development projects. When participating in state tenders, they do not have the opportunity to separately calculate the cost of labour safety and thus they have to convert these costs into the overhead expense defined by the Resolution N55 of the Government of Georgia,[194] the upper limit of which has been set at 10% since 2012. As for the consequential problem - during the tender, companies often offer discounts at the expense of the reduction of overhead costs and profits, and then try to save money by reducing the quality of the means needed to protect labour safety. According to the Infrastructure Construction Companies Association, the state should determine the percentage of labour safety costs involved in various projects, and when participating in tenders, companies should be able to submit a special category of expenses related to labour safety costs. This, on the one hand, would create an additional control mechanism by the state for a competent oversight of labour safety standards on each state project, and on the other hand, would encourage the introduction of this culture in private sector projects as well, since these projects often replicate the approaches from state tenders.

193. Interview with the Representative Trade Union of Culture and Media - Guild.
194. Resolution №55 of the Government of Georgia of January 14, 2014 on the approval of the technical regulation - "Rules for determining overhead costs and estimated profit during the state procurement of construction works".

The position of the Ministry of Labour is also noteworthy in this regard. According to the Ministry representative, any organization has an obligation under the law to comply with labour safety norms. However, they welcome the introduction of a labour safety component in state projects on a mandatory basis not because companies will be required to comply with labour safety norms (as this is already a requirement) but because this will initiate additional leverage for state supervision, in addition to the mandate of the Labour Inspection Service. In such a case, the proper implementation of labour safety norms will be supervised by the State Supervision Service, which is responsible for monitoring the fulfilment of the tender obligations of a state-commissioned company under a specific project.

Labour safety in the agricultural sector

During the research, problems related to labour safety norms in the agricultural sector were identified. According to the representative of the Georgian Farmers' Association, awareness of labour safety requirements in various enterprises in the regions is low. Although the use of pesticides and other substances is common in this sector and these enterprises may fall under the category of heavy, harmful, and hazardous jobs, employers not only deliberately avoid setting safety standards but often are not even aware of what the law requires of them. The Farmers' Association provides information to various enterprises on labour safety requirements, although this is not enough. The second issue is that even when the information is available, business owners do not perceive the severity of the problem and the pressing need to comply with regulations.

An increase in the regional expansion of the inspection is expected to have a positive impact, although at present farmers either do not understand or are unaware of the risk of imposed sanctions in the event of breaches of labour safety conditions. The actions of Farmers' Associations and civil society play an important role in this process.

A critical challenge is that there is no incentive mechanism in the country for farmers who adhere to the standard of labour safety and, consequently, carry the increased costs of production. Such incentives include, for example, the introduction of a component of labour safety standards in state tenders (e.g., purchasing products for kindergartens), state subsidy programs (e.g.,e.g., grape subsidies), and agricultural programs (e.g. "Implement the Future"). In addition, a certification system may be introduced, which will be a marker that labour safety was observed during the production and processing of products, and which can be perceived as a competitive advantage by consumers.

The issue of accreditation of occupational safety specialists

When the Organic Law on Labour Safety came into force, the regulations only applied to heavy, harmful, and hazardous work. Later, certain types of responsibilities were imposed on all types of organizations in the field of labour safety. For example, every business op-

erator has been required to retain a labour safety specialist, retrain any employee, or hire an external expert, or outsource this function to a service company. This has increased demand for occupational safety managers, while supply is limited on the market. For some time after 2019, organizations, and colleges with market-based training programs for occupational safety specialists appeared on the market, upon the completion of which the students would receive a certificate and would be able to start working as occupational safety specialists. However, there was a problem - the quality of training of these organizations was not subject to state control, due to which the state temporarily suspended certification programs and the Labour Inspection Service began working with the Ministry of Education to regulate the accreditation process. Since the unification of this process, the graduates of the certification program will have to pass the state exam to get accreditation. According to the Chief Labour Inspector, the state certification program is necessary for the quality of training of labour safety specialists to be high.

Employers and businesses alike believe that the rapid organization of the certification programs, as a result of the growth in demand, had made the quality of the preparation of the certified professionals questionable and therefore they shared the need for increased attention to this process but argued that the certification process should have begun before the law went into effect and the state should have ensured that the market was ready to meet the increased demand.

According to the business representatives, the problem lies in the timing of the accreditation process, which in turn is a difficult task and requires the involvement of various state structures. However, according to the Labour Inspection Service, the certification process will be available to interested parties in a short time.[195] Under the new system, both the trainer and the trainee will receive a 3-year certificate of qualification, carrying the right to conduct the training or safety monitoring after the completion of the state exam. It is also noteworthy that delays in the process were conditioned by the pandemic, which hampered the standard, routine work of the Labour Inspection Service, as significant resources were diverted to the monitoring of the enforcement of Covid regulations.

The shortage of occupational safety specialists has further affected companies with heavy, harmful, and hazardous working conditions, such as construction companies, as occupational safety specialists are interested in employment in organizations with relatively simple and less specific work processes. In addition, it should be noted that in the absence of healthy competition, occupational safety specialists do not try to develop their knowledge

195. After the completion of the research fieldwork, the Ministerial Order on the Accreditation Program for Occupational Safety Specialists was issued on 13 September 2021 and entered into force on 10 October 2021. (Order of the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia № 01-81 / N. 13 September 2021. On Amendment to the October 13, 2018 Order of the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia №01-25 / N on Approval of the Volume, Procedure and Conditions of Accredited Program of the Occupational Safety Specialist)

and skills, and therefore their level of qualification does not increase. The problem of human resources is especially acute in the regions.

Employer representatives criticize the state for not preparing the ground for the preparation of human resources before the regulations came into force, and at the same time delaying the accreditation process.

The Ministry of Labour and the Labour Inspection Service acknowledge the criticism, to a certain extent, in this regard, although they believe that the need for the certification process was revealed at an early stage of the enactment of the law when certified specialists with questionable qualifications emerged on the market. As for the delays in the process, in addition to the COVID-19 pandemic, the reasoning was also the complexity of the issue, as it was necessary to collate and verify the accreditation mechanism with the Ministry of Education.

By-laws and related issues

As already discussed in the legal review, the issue of the adoption of relevant by-laws remains outstanding. The Ministry of Labour has already issued technical regulations, for example, on labour safety standards for different types of construction projects, although work on various types of regulations continues. Several problems have been identified in this regard:

1. The deadlines for the development and issuance of new technical regulations were denominated as less acute, but still problematic. No specific regulations have been prepared for the various sectors yet, although the Labour Inspection Service notes that the work is ongoing and that the documents will be issued in stages.

2. According to some respondents, there should be different regulations for different types of work, as the same standard should not apply to all office-type services. There are office-type works where hazardous gases or various substances are used, in which case, additional safety standards are required.

3. According to the representatives of business organizations, there are some inaccuracies in the existing technical regulations, which may be revised and thus make it easier for enterprises to comply with the technical regulations. An example of this was one of the requirements of the City Hall Supervision Service for the work at height standard, which provides for a 50-centimeter distance between the railing poles. It was noted that the durability of the railing can be achieved not only by the distance between the poles, but also, for example, by providing a railing of a material that can withstand a specific load and, in the case of 90 kg weight, tilt the weight at not more than 10 cm. Consequently, if the goal is durability and not directly the norms of construction, then it is possible to achieve the goal without further complications.

4. Other issues were identified, for example, related to the obligation to inspect the scaffolding. The problem is that there are no state-accredited experts or organizations on the market which could make credible conclusions and would render the inspection reliable. Therefore, it is important for the state to thoroughly examine the specific details and shortcomings of how realistic it is to impose compliance with the requirements of the imposed technical regulations, given the current market situation.

The issue of ineffectiveness of insurance packages

The regulation obliging the purchase of a private health insurance package for those working in heavy, harmful, and hazardous jobs warranted criticism. As the representatives of the business sector point out, this norm was adopted in a hasty manner and there was no analysis of the insurance market or a preliminary assessment of the impact of the regulation. According to their observations, there are frequent cases where companies formally adhere to this requirement – by buying, for example, a 1 GEL insurance package with a 100 GEL pay-out limit, which cannot bring real benefits. It is necessary to study the issue thoroughly, and enact certain conditions - what standards should insurance meet? Specifically, what types of employees should be covered by this insurance?

According to the Labour Inspection Service, to prevent the practice of 1 GEL insurance packages, a specific provision was introduced in the Organic Law on Labour Safety that the Ministry of Labour should set the terms of the minimum insurance package. As of writing, the Ministry of Labour is considering the matter in a broader context, and it is planned that this issue will be included in the Social Code.

Neglecting other aspects of occupational safety

When it comes to employee safety at work, the focus is mainly on eliminating the dangers in the workplace that can lead to physical injury and/or occupational diseases, endangering the health of the employees. The interviews revealed the opinion that psychosocial aspects must also be taken into account in occupational safety, which can be no less dangerous for the employee.

The need to raise employee awareness to adhere to occupational safety standards

The parties see the non-use of personal protective equipment by the employees themselves, which may have various reasons – as a problem. This may be caused by a problematic work ethic, complete disregard for labour safety standards for years, etc. However, the fact is that there is a need to raise awareness among employees in this regard. trade unions and various organizations, including business associations, often organize training for employees, although representatives of both employers and employees think that additional efforts are needed from the state side in this regard.

Conclusions

Virtually all international norms and practices were taken into account in the course of the adoption of labour safety legislation and its subsequent reform process, in 2018-2019. As highlighted in the study, the Organic Law on Labour Safety does not appear to contain any significant shortcomings at this time, and the main deficiencies in this area concern the enforcement of the legislation.

As featured in the legal review, the technical regulations and protocols, the issuance of which were envisaged in the Organic Law of Georgia on Labour Safety and provided for in the Association Agreement, have not yet been developed and initiated. This normative vacuum, on the one hand, hinders the effective enforcement of the law itself in certain areas. On the other hand, the absence of by-laws and technical regulations obscures some of the norms of the law itself. In particular, both employer and employee representatives do not see the need to extend the obligation, concerning the retention of occupational safety specialists, to all types of workplaces, including the ones that they do not consider to entail any significant risks, considering that the mandatory safety regulations/protocol is yet to be defined. Consequently, the activities of the specialized companies working on occupation safety consultancy and those of individual specialists hired by these entities have become merely perfunctory. However, at the same time, it is clear that health risks exist in all workplaces, and therefore it is not sufficient for occupational safety standards to apply to heavy, harmful, and hazardous work alone. For employers to understand these risks more distinctly, it is pertinent to elaborate on the above-mentioned by-laws and ensure proactive communication with employers in this process.

Analysis of interviews has shown that the existing technical regulations in certain areas do not always correspond to the existing problems and need to be updated periodically, with the involvement of specialists in the field and taking into account new technological opportunities.

Significant attention needs to be paid to the field of agriculture, where, as the study found, there is a particularly low level of awareness, both among employees and employers in the field, about labour safety standards. Also, due to their specificities, there are jobs in this field that contain significant risks to the health and safety of the employees.

The parties interviewed in the study mentioned the shortage of labour safety specialists in the country and the problem of the insufficiency in qualifications of the existing specialists. This is due to the lack of relevant regulations in this area over the years, which has led to a scarcity of specialists in the field, and the shortcomings of the accreditation system established as a result of the new regulations. To solve the latter, the state suspended the initial accreditation system, and the updated system could not be introduced and implemented in due time, which slowed down the processes and created a shortage

of occupational safety specialists on the market. It should be noted that the accreditation system is now operational.

The study identified a significant problem in regard to the neglect of labour safety norms by employees, which significantly complicates the introduction of labour safety norms in organizations and companies. The reason for this predicament is the disregard, by all actors of labour safety norms over the years, and the lack of appropriate labour ethics and culture among the employees themselves. Awareness-raising campaigns by various organizations are not yielding enough results and the parties have voiced the need to further intensify the role of the state in this regard.

Analysis of interviews has shown that the obligation to provide insurance against accidents under the Organic Law on Labour Safety does not function in practice. The Ministry of Labour has not yet established the rules and procedures for accident insurance. Consequently, companies only comply with the requirements of this norm by employing fictitious, minimal insurance packages.

Analysis of interviews has also shown that in the case of public procurement, especially in infrastructure projects, tender discounts are often executed at the expense of reducing the overhead costs, which should cover the cost of labour safety. This approach in the field of public procurement also influences the situation in the private sector.

RECOMMENDATIONS

Elaborate and issue all the technical regulations provided by the Organic Law of Georgia on Labour Safety;

Safety regulations should be developed for all types of activities. For hard, harmful, and hazardous as well as less risky operations, the focus should also be on seemingly invisible threats such as psychosocial aspects;

Before the initiation of any reform of the social protection system, it is pertinent to develop the standards of the accident insurance package for hard, harmful, and hazardous work, in line with the Organic Law on Labour Safety of Georgia, to eliminate existing harmful practices;

Both the new technical regulations and the existing norms should be updated with the participation of specialists in the field, to ensure that these norms are implemented more effectively and that they are adapted to the real environment;

The Labour Inspections Service should systematically and proactively inform employers about the requirements of the current regulations, as well as the adoption of new regula-

tions and norms, for which the rs.ge platform of the Revenue Service could be used;

Within the framework of the state procurement, special attention should be paid to the observance of labour safety norms by the companies participating in the tender throughout the course of the tender procedures and by ensuring rigorous supervision over the observance of labour safety norms and labour rights by the winning company;

Create a registry of companies, where enterprises shall be categorized according to their degree of the protection of labour rights and labour safety norms and/or violations. In the public procurement framework, preference should be given to companies with a positive rating (should be reflected in public procurement rules);

In higher and vocational schools, in all areas related to professions involving hard, harmful, and hazardous work, a special study course should be prepared and added as a compulsory subject in curricula and study programs;

The Ministry of Labour, in cooperation with the Ministry of Education and other relevant agencies, and in collaboration with international partners, should develop medium- and long-term strategies for the gradual training, retraining, and certification of all employees in a hard, harmful, and hazardous line of work.

9

Workplace information and consultation, labour disputes, mediation

Legal Review

Within the 2020 Labour Law Reform, new provisions were introduced in the Labour Code on collective redundancies and transfer of undertakings, based on EU Directives 98/59/EC and 2001/23EC respectively. Based on Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, a new section on information and consultation in the workplace was introduced into the Labour Code.

With regard to the effectiveness of provisions governing mediation of collective disputes, it can be noted that over the years there were examples where employers refused to re-

spect and/or implement the agreements reached during a collective labour dispute mediation. Within the 2020 Labour Law Reform, mechanisms were introduced in the Labour Code and Civil Procedure Code of Georgia related to enforcement of agreements reached as a result of collective labour mediation. The court now is authorized to order enforcement of a labour mediation agreement based on the application of the trade unions.

Therefore, good legislative progress has been achieved in relation to establishing a legal framework for workplace dialogue and consultation, information sharing and concerning enforcement of mediation agreement on collective labour disputes. It should be mentioned that the ILO has provided different analyses and reports on improvement of collective labour mediation mechanisms over few years. To ensure the optimal interplay between the different compliance and dispute resolution mechanisms (consultation of workers, labour inspection, the courts, etc.) it is now critically important that the institution of collective labour mediation is further improved. The role of the Ministry of Labour and the need for engagement of social partners in this process should be specifically underlined.

Literature Review

In relation to provisions regulating workplace information and consultation, the Assessment Document of the 2020 Labour Law Reform, prepared under a EU project indicated that key issues were in line with the principles of the Directive 2002/14/EC, although some aspects were identified that was not included in the Labour Code[196]:

– According to the draft reform package, an employer, who regularly employs at least 50 persons, has an information obligation. The Assessment Document advised the authors of the reform to include in the legislation foreseeable criteria for counting the number of employees, for example, by referring to the average number of employees in the last 6 months. In addition, the report indicated that the obligation to inform and consult should be extended to both part-time and full-time contract workers. This recommendation has not been taken into account;[197]

– According to the draft reform package, the employee representative who received the information from the employer is obliged to maintain confidentiality and not disclose the information to other employees and third parties. The Assessment Document indicated that the directive, conversely, allowed employee representatives to share the received information with other employees with the reservation that they would also be required to maintain confidentiality. This recommendation was not shared taken into account the position of businesses during consultations stages of the reform package.[198]

196. Toman, Palik, Sudder, Proos, Balenovic.
197. See Article 70 of the Labour Code.
198. See Article 72 of the Labour Code.

Issues pertaining to information and consultation in the context of the 2020 labour law reform have not provoked wide public-political discussion. This issue is also not found in the reform assessment reports prepared by other organizations and experts.

The Labour Code of Georgia provides conciliation mechanisms for individual labour disputes entailing direct negotiations between employer and employee. Parties may refer the dispute to arbitration.[199] It is interesting to note that parties prefer referring disputes to the courts. According to 2020 data, the number of labour disputes in the system of common courts of Georgia has been increasing in recent years: from 2013 to 2018, on average, 1244 labour law claims were registered, while before 2012 the number was about 600.[200] It can be argued that the increase in labour lawsuits is linked to legislative changes in 2013. It should be also underlined that court decisions involve in-depth deliberations on labour norms and judges often apply international labour standards.[201] However, in this regard, the main problem remains the protracted time required by the court to resolve the case, which is supported by recent reports of the Public Defender that indicate that courts often take a disproportionately long time when deliberating on civil cases.[202] For example, according to 2020 data, out of the 1156 complaints registered with the Chamber for Civil Cases in the Tbilisi Court of Appeals, only 10.5% were completed within the two months prescribed by law, and only 24% within a five months period.[203]

According to one of the research, in 2013-2017s, a total of 32 processes of collective labour mediation took place and in all these cases the initiator of the appointment of mediation was either a group of employees or trade unions.[204] It was also revealed that one of its main problems for an institution is the non-fulfilment of the agreements reached as a result of the mediation process. The relevant department at the Ministry of Labour does not keep statistics on the implementation of the agreements reached. However, the fact that 30% of mediation cases are repeat cases indicates that the agreement is often not fulfilled;[205] This problem is also discussed by the parties involved in mediation.[206] The study also shows that despite the non-compliance of employers with the mediation agreement, employees and trade unions usually do not make use of the opportunity to go to court to enforce the agreement - this is due to the delayed court proceedings and lack of needed financial resources.[207] As the analysis of the requested public information shows, the city

199. See Article 62 of the Labour Code.
200. Shvelidze Z., 2020. Court Case-Law on Labour Disputes (Case Reports). German Corporation for International Cooperation. Tbilisi, 5. Available at: http://www.library.court.ge/upload/2020giz-ge-shromit_davebze_praqtika.pdf [Last access: 10.11.21].
201. Ibid.
202. Public Defender, 2018; 2019, 2020.
203. Public Defender, 2020: 136.
204. Tsintsabadze A., Keburia T., 2019. Legal and Social Research. Human Rights Education and Monitoring Center, 24-25. Available at: https://socialjustice.org.ge/ka/products/shromiti-mediatsiis-samartlebrivi-da-sotsiologiuri-kvleva [Last access: 10.11.21].
205. Ibid, 91.
206. Ibid, 41.
207. Ibid, 42.

courts of Tbilisi, Zestaponi, Poti, Gori, Rustavi, and Kutaisi have not considered a single case on this issue.[208]

According to a study prepared with the support of Friedrich-Ebert-Stiftung, mediation, in its 6 years of operation, has failed to create the conditions for a peaceful resolution of labour disputes and has not met public expectations.[209] This can be due to many reasons, including the lack of a negotiating culture and the hierarchical attitude of employers towards employees.[210] According to a study by the Human Rights Education and Monitoring Center, it is essential for the development of the institution of mediation to create effective mechanisms for the enforcement of the mediation agreement, taking into account the views of the parties to the dispute (as of now, the mediator is appointed by the Labour Minister), etc.[211]

The shortcomings of the mediation system are discussed in a report prepared under the auspices of the ILO, according to which it takes, on average, more than nine days to appoint the mediator, and a specific mediator in the case is not selected based on their experience[212], but rather on a first-come first-served basis, i.e., the case is presented to all mediators and the first person who accepts the case will be selected as a mediator. According to the report, such an approach is detrimental because it violates the necessary condition that the most relevant mediator is appointed to a particular case.[213] The report recommends the establishment of a mediation service in the Department of Labour and Employment of the Ministry of Labour and the revision of the list of mediators, which should include two full-time and four part-time mediators. According to the report, this would create a free commune and a stable team of mediators. Moreover, for the legitimacy of dispute resolution, the report recommends that mediators, the Ministry of Labour, and the Tripartite Social Partnership Commission develop a code of ethics for mediators and that they have access to continued professional training.[214]

The rules regulating strikes are also directly related to the issue of mediation because employees do not have the right to strike without undergoing prior, mandatory mediation.[215] This is a particularly important problem for trade unions, as they are obliged to engage in a 21-day mediation before exercising their right to strike. According to the social partners - says a study prepared under the auspices of the Friedrich Ebert Foundation - in fact, the mediation process acts as a deterrent to the exercise of strikes.[216] A study by the Human

208. Ibid.
209. Beltadze, 2020, 8.
210. Ibid.
211. Tsintsabadze, Keburia, 2019, 49-52.
212. Lessard J., 2018. Assessing and Improving the Labour Mediation Machinery, Mission Report, ILO.
213. Ibid.
214. Ibid.
215. A similar regulation exists in the case of a lockout. See Article 64 of the Labour Code of Georgia.
216. Beltadze, 2020, 8.

Rights Education and Monitoring Center also speaks to the need to find a balance between these two issues. According to the Center, the state is obliged to ensure, the reality and effectiveness of mediation, and, the enforceability of the right to strike, so that the requirement to use the mediation mechanism does not become an obstacle to exercising the right to strike.[217]

As mentioned in the legal review part above, as a result of the 2020 Labour Law Reform, the Labour Code and the Civil Procedure Code now provide mechanisms for enforcement of the mediation agreement. These amendments were hailed by the Human Rights Education and Monitoring Center as an important step forward, although the organization noted other issues needed to be addressed through further reforms. These include: (1) In collective disputes, the views of the parties are not taken into account in the selection process of mediators; This does not ensure the appointment of a mediator trusted by the social partners; (2) The mediator must have access to the financial information of the enterprise (while maintaining confidentiality); and (3) It is important that the respective department of the Ministry of Labour engages in analytical activities and elaborates corresponding legislative changes.[218]

Analysis of Interviews

The research revealed that the amendments made to the Labour Code in relation to the workplace, said information and consultation are not known to many stakeholders. More specifically, the outcome of these provisions is blurry, although several respondents do consider the presented clauses as pivotal amendments. According to the representative of the Solidarity Center, for the first time in the history of Georgia, the first real opportunity to start a social dialogue at the operative level has emerged. A GIPA representative also expressed the view that the change would contribute to the development of employee self-organization mechanisms.

According to the representative of the Georgian Employers' Association, the entry in the Labour Code in this regard is still vague for employers, as there is no indication that this is, for example, a specific dispute resolution mechanism and there is no indication of the purpose of enacting these mechanisms. There is a perception that the employer in any case is under the obligation to inform the employees about the enterprise's financial situation, which is perceived as a significant problem by the employers.

According to a representative of the HR Professionals Association, "*the reform of the Labour Code has brought about a system of internal dialogue and various benefits, which have not yet been translated into operations, not enough time has passed*".

217. Tsintsabadze, Keburia, 2019, 49.
218. Human Rights Education and Monitoring Center, 2020.

Conclusions

The realization of the right to strike is directly related to the effective operation of the mediation system. Changes in the framework of 2020 Labour Law Reform in this direction are considered a significant step forward, although the mechanism is still not functioning effectively. As the literature review and analysis of the stakeholders' interviews illustrated, in recent years there has been no public awareness of the use of the mediation mechanism and no proper culture has been formed in this regard. This is largely due to the malfunction of the structure of the mediation service within the system of the Ministry of Labour, the insufficient number of mediators and the non-acceptance of the appointed mediator in specific cases by either party and distrust towards them.

There are new legislative norms pertaining to the enforcement of mediation results, which are positively assessed by the employee and employer representatives and are also evaluated positively in the legal review. However, according to the new norm, in case of non-compliance with any mediation agreement, the court needs to be involved, which delays the process and entails an additional financial burden for employees.

As the literature review has shown, due to low trust in the mediation service and structural deficiencies, this important public service in some cases does not serve to resolve labour disputes and is used by some employers to delay the process, meanwhile attempting to neutralize the strikes and disintegrate the organized groups of employees.

The study identified shortcomings in the mediation system, such as the shortage of mediators, which in turn leads to problems such as delayed appointments or appointments without the consent of the parties; The mediators are not selected based on their experience in a particular sector. Mediators do not have access to the financial information of the enterprise/organization, and do not necessarily carry out analytical activities. The Code of ethics for mediators is not elaborated.

The study cited regulations on the provision of information to employees in the workplace and consultation between the parties as significant changes made as part of the 2020 Labour Law Reform. Qualitative research has shown that these mechanisms, which are reflected in the legislation in line with EU Directive 2002/14 / EC and aim to establish labour relations based on cooperation and mutual trust between the parties, have not yet been put into practice.

The study also revealed that the existing legal regulations for consultations and information provision need to be further refined and expanded in order to bring the norms in full compliance with European standards.

RECOMMENDATIONS

The Ministry of Labour, in cooperation with the social partners, should carry out the administrative reform of the mediation service and provide the necessary human and material-technical resources;

The number of mediators should be increased and at the same time, staff units of full-time and part-time mediators should be created, to the extent necessary to ensure that the mediation service operates smoothly. The mediators should be provided with continued professional training;

The Ministry of Labour should ensure that a mediator with relevant experience and qualifications is appointed in each case; When selecting a mediator, the Ministry of Labour should consider the views of the mediation parties on the candidacies of mediators;

The Ministry of Labour, in consultation with the Tripartite Social Partnership Commission, should develop a Code of Ethics for Mediation;

The legislature should ensure that appropriate measures are taken within the framework of judicial reform to ensure that labour disputes in courts are considered within a short period of time.

The state, in cooperation with the social partners, should inform employees and employers about the provision of information and consultations at the workplace, as well as about the essence and the importance of new regulations on the mediation mechanism.

To exchange information in the workplace, refine the consultation mechanism, and bring it closer to European standards, the legislation should be further revised, in consultation with the social partners, and the existing norms should be gradually developed in line with the so-called “work councils” model.

10

Tripartite Social Partnership Commission

Legal Review

Social dialogue and tripartism are fundamental values of the ILO. Almost all ILO Conventions and Recommendations promote tripartite social dialogue as a mechanism to address a wide variety of issues. In this respect, it should be noted that Georgia ratified the ILO Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) in 2018 and that under the EU-Georgia Association Georgia committed to strengthening its dialogue and cooperation with the EU on promoting the decent work agenda, social dialogue, and social inclusion.[219]

The Labour Code includes a separate section on the Tripartite Social Partnership Commission. It is a consultative body accountable to the Chairperson of the Tripartite Commission, the Prime Minister of Georgia. According to the Labour Code,

> "the functions of the Tripartite Commission shall be to: a) facilitate the development of social partnership and social dialogue at all levels in Georgia between employees, employers and the Government of Georgia, and to encourage agreement and consensus among the members of the Tripartite Commission; b) hold consultations with the Government of Georgia on issues of common interest related to labour, economic and social policy (including reforms and legislative changes related to the State Budget of Georgia, minimum wages and other issues that might affect the interests of employers and employees); c) draft proposals and recommendations on other issues related to labour and social policy that are important for the members of the Tripartite Commission, and to submit them to the Government of Georgia."

With extensive support from the ILO, in 2018 the first-ever regional Tripartite Social Partnership Commission was established in the autonomous republic of Adjaria, although its functioning is also limited. Under the Law on Labour Inspection, a so-called tripartite advisory council was created. The advisory council is a consultative body advising on strategy, functioning, and activities of the labour inspection service. The advisory council consists of 7 members: two business representatives; two workers representatives; two members of parliament and a representative of the public defender's office.

219. See Article 348 of the EU-Georgia Association Agreement.

Some good progress has been made during recent years in terms of establishing the legal framework for the promotion of social dialogue in the country. However, more efforts should be made by the government for enhancing the effectiveness of the Tripartite Social Partnership Commission, especially in light of the ratification of ILO Convention No. 144 and the commitments made under the EU-Georgia Association Georgia to strengthen its dialogue and cooperation with the EU on promoting the decent work agenda, social dialogue, and social inclusion.[220] The EU-Georgia Association Agreement underlines that through joint commitments for cooperation the EU and Georgia need to contribute to the promotion of more and better jobs, poverty reduction, enhanced social cohesion, sustainable development, and improved quality of life. It is further specified that cooperation, which should be based on the exchange of information and best practices, may cover enhancing the participation of social partners and promoting social dialogue, including through the strengthening of the capacity of all relevant stakeholders.[221]

Whereas the improved functioning of the Tripartite Social Partnership Commission appears to be mostly one of political commitment and an investment in institutional support for the Tripartite Social Partnership Commission, it may nevertheless be useful to see how the clarification of some of the relevant provisions in the Labour Code and Resolution No. 258 of the Government of Georgia on Approval of the Regulation of Tripartite Social Partnership Commission (dated 7 October 2013) may be helpful in revitalizing the Tripartite Social Partnership Commission. For instance, Article 82(4) of the Labour Code and Article 2 of the Regulation of Tripartite Social Partnership Commission, underline the need for sectoral and territorial diversity in employer and worker representation. The Tripartite Social Partnership Commission may therefore wish to consider whether it would be useful to amend the Labour Code to specifically incorporate the concept of the "most representative" employers and workers organizations, both from a numerical and a sectoral and territorial diversity point of view.

In this respect, it should be noted that Article 1 of Convention No. 144 specifically states that "[i}n this Convention the term ***representative organisations*** mean the most representative organisations of employers and workers enjoying the right of freedom of association". In addition, the Committee on Freedom of Association has considered that "[p] re-established, precise and objective criteria for the determination of the representativity of workers' and employers' organizations should exist in the legislation and such a determination should not be left to the discretion of governments".[222] When considering the introduction of such criteria, the Tripartite Social Partnership Commission should take

220. See Article 348 of the EU-Georgia Association Agreement.
221. See Article 349 of the EU-Georgia Association Agreement.
222. Freedom of Association, Compilation of decisions of the Committee on Freedom of Association, Sixth edition (2018), International Labour Office, Geneva, paragraph 530.

into account the views of the ILO supervisory bodies concerning the concept of "most representative" employers and workers organizations.[223]

Literature Review

The development of social dialogue does not have a long history in Georgia and, in this respect, the experience is characterized by non-systematization and eclecticism[224]. The Tripartite Social Partnership Commission was established in Georgia in 2009 with the support of international organizations, mainly the EU and the technical assistance of the ILO,[225] its first meeting was held in 2010. Studies suggest that, despite the efforts of international organizations, the Commission has not yet proven to be an effective consultation institution.[226] In 2013, the antagonistic attitude by the government towards trade unions changed[227] and the Tripartite Social Partnership Commission was re-established, this time as a result of an amendment to the Labour Code. In this case, too, the activation of the issue of social dialogue was part of the policy of rapprochement with the EU: the Action Plan for the Association Agenda of Georgia for 2014-2016 provided for the systematic work of the Tripartite Commission for Social Dialogue. The re-formation of the commission created an expectation in the society that the policy of promoting and strengthening social dialogue in Georgia would gradually commence.[228] However, this expectation was not fulfilled this time either - from 2013 to 2016 the commission managed to meet only twice.[229]

According to a study prepared with the support of the Friedrich-Ebert-Stiftung, the Tripartite Social Partnership Commission has not yet emerged as a strong institution for promoting healthy labour relations and creating an effective alternative to a peaceful resolution of collective labour disputes.[230] The study also points out that the government's attitude towards the Tripartite Commission is perfunctory and illusory, which is reflected in the lack of meetings of the Commission and the inconsistent attitude towards the issues needed to be discussed.[231] The inclusion of social dialogue in the legislation, the study concludes, did not reflect the bilateral cooperation of the social partners - employers

223. See for instance, General Survey concerning the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) and the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152), International Labour Conference 88th Session 2000 Report III (Part 1B), Third item on the agenda Information and reports on the application of Conventions and Recommendations, paragraphs 32-34; Freedom of association, Compilation of decisions of the Committee on Freedom of Association, ILO, Geneva, Sixth edition, 2018, paragraphs 529-530, 538, 540, 543, 1537, 1543, 1548, and 1550.

224. Beltadze, 2020.

225. Bagnardi F., 2015. The Changing Pattern of Social Dialogue in Europe and the Influence of ILO and EU Georgian Tripartism. Caucasus Social Science Review vol. 2 (2015).

226. Tordinava T., Özbakkaloglu E., 2013. Social Dialogue in Georgia and the EU (2009-2012). EU Integration Issues – Visegrad Countries and South Caucasus. Available at: https://dspace.nplg.gov.ge/bitstream/1234/26460/1/EvroIntegraciebis_Sakitxebi.pdf [Last access: 10.11.21]; Muskhelishvili M., 2011. Social Dialogue in Georgia. Friedrich Ebert Foundation, Tbilisi.

227. Beltadze, 2020, 5.

228. Ibid.

229. Elbakidze N., Nadareishvili T., 2016. Social Partnership without Governmental Support. Open Society Georgia Foundation, 1. Available at: http://www.osgf.ge/files/2016/EU%20publication/Angarishi_A4_Labour_ENG_Cor_(1).pdf [Last access: 10.11.21].

230. Beltadze, 2020, 27.

231. Ibid.

and employees - at the sectoral, regional, and industry levels. To demonstrate this, the study refers to an increasing number of ongoing strikes in Georgia in recent years, their origin, course of conduct, and the consequences.[232] Underdevelopment of social dialogue is evidenced in the fact that from 2013 to 2020, instead of increasing, the number of collective agreements decreased dramatically - in 2011 there were 165 collective agreements in Georgia, by 2020 this figure has dropped to 54.[233]

Despite their criticism of the social dialogue and, in particular, of the Tripartite Commission and its members - representatives of the government, employers, and trade unions - recognize the pivotal and significant purpose of social dialogue in improving industrial relations and resolving collective and individual disputes through negotiations.[234] On the other hand, the New Association of Trade Unions, for the last two years, has requested to be given one place in the six-member quota allocated to the representatives of the employees (employees' union) in the tripartite commission. A paper published by this trade union states that according to international and local standards, they fully meet the criteria for membership of the Tripartite Commission. At the same time, the document mentions that Georgian legislation and the standards of the ILO allow the participation of several different organizations of employees in the National Tripartite Commission. This conclusion, in their words, also confirms that the Georgian Tripartite Commission has several employers' unions, while the employees are represented by members of only one trade union organization[235].

In the context of the 2020 Labour Law Reform, the issue of social dialogue has not been the subject of public and political debate, which may once again confirm the findings of a study, supported by the Friedrich Ebert Foundation, which found that social dialogue could not become an effective institution proving the need of further reform and increased commitment from the government.

Analysis of Interviews

The vast majority of respondents shared the view that the work of the Tripartite Social Partnership Commission in the country is not effective and sufficiently intensive as it fails to ensure effective decision-making and enforcement. Their work model is also focused on assembling to discuss a specific case and is not based on regular work. One of the respondents (Solidarity Center) cites as an example that even the initiation of reforms and amendments to the Labour Code, in the best-case scenario, should be done by a tripartite

232. Ibid, 26.
233. Ibid, 27.
234. Ibid, 24.
235. New Association of Trade Unions, 2021, Arguments Supporting Membership of New Association of Trade Unions in Tripartite Social Partnership Commission. Available at: https://shroma.ge/wp-content/uploads/2022/01/Tripartism-and-New-Conf_Final_2021-2.pdf [Last access: 10.11.21]

commission, and, today, this practice is largely nominal. Some parties, including the Georgian Trade Union Confederation, believe that the state can increase the effectiveness of the tripartite commission by using this format in its policy planning and production processes and transforming the centralized form of decision-making.

Some of the respondents think that it is necessary to expand the tripartite commission, on the one hand, by increasing the representation of employees, on the other hand, by including various business entities in the commission. They, to some extent, question the real representativeness of the members of the tripartite commission, how well they express the position of the business sector and a large part of the citizens. The expansion of the commission turned out to be an especially important issue for the trade unions that are not members of the Georgian Trade Unions Confederation - Guild, Solidarity Network.

> *"For the tripartite commission to be effective, expansion is needed. Competition must also arise internally ... because the Tripartite Commission, as a solution, was not created in this way, it is a kind of platform for specific parties. The state does not have clear regulations in the terms of the tripartite commission - what is this tripartite commission, how is it composed, how is it elected, by what representative criteria? To what extent does it provide representation? I represent a trade union, I am not a member of any confederation, how should I enter the commission, where can I apply?"*[236]

> *"The group of stakeholders should be expanded. These documents are produced so fast that the organizations that are represented in the tripartite commission do not have the capacity to do a quick follow-up. And secondly, they must be representative and represent different business sectors. If you need to consider industry expertise, then we should ask industry experts and not just business associations."*[237]

The Georgian Trade Unions Confederation considers that there is no need to expand the Tripartite Commission today, and, on the contrary, it is unacceptable to involve other parties in the work of the Commission, who *"have no accountability in relation to the proceedings"*.

One of the challenges of the Tripartite Commission was that the decisions made by them in some cases are subject to additional scrutiny beyond the Commission, which calls into question the degree of its legitimacy. In addition, the representative of the Ministry of Labour notes that the state actively cooperates with both business and employee representatives, and this cooperation, in addition to the tripartite commission, has a variety of alternative formats, which, to some extent, reduces the functionality of the tripartite

236. Interview with the Representative of the Trade Union of Culture and Media - Guild.
237. Interview with the Representative of HR Professionals Association.

commission. The involvement of the ILO and their recommendations for the further development of the Tripartite Commission are considered important for the Ministry of Labour.

An advisory council to the Labour Inspection Service, which includes various stakeholders, including the Public Defender and Parliament, is considered to be a kind of micro-model of the Tripartite Commission. The advisory council is considered by the parties to be quite effective and a successful precedent.

In general, all parties agree that the country needs to raise the standards of social dialogue at the organizational as well as national and regional levels and to diversify and promote dialogue mechanisms. The fact that employee strikes have been frequent in Georgia indicates a lack of culture and mechanisms for social dialogue, as well as a lack of internal procedures and neglect of dialogue in organizations in case of disputes.

> *"In developed countries, the source of the primary response to a dispute over a violated right is within the enterprise itself and then the issue may reach the labour inspectorate, the mediator, the court ... but we do not have the mechanisms for social dialogue at the organizational level. Obviously, I am not saying that this should be determined at the legislative level, but a lot needs to be done by the business associations, trade unions, the state ... to compare, for example, what have those organizations where strikes are infrequent have achieved in the process of increasing productivity, exploring new markets, gaining more economic benefits, precisely thanks to the existence of such relationships and mechanisms based on such mutual respect, and also what losses were incurred by the enterprises and companies where the strikes took place."*[238]

As for the regional representation of the Tripartite Commission, the Ministry of Labour noted that the main challenge on the agenda is to increase the efficiency of the national Tripartite Commission, after which the emphasis should be on regional representation, taking into account the regional specifications and relevant contexts.

> *"We are always ready for cooperation, but this is not a one-sided process on the part of the government. We should all be equally motivated to eliminate problems. We always have initiatives and we are always ready to be involved, however, for some reason, the agreement cannot be reached among the three sectors. A push is needed, probably first of all from the government."*[239]

238. Interview with the Representative of the Solidarity Center.
239. Interview with the Representative of the Georgian Employers' Association.

Conclusions

The role of the Tripartite Social Partnership Commission is crucial in the development and subsequent implementation of a balanced and concerted labour policy. The study revealed that the current dynamics of social dialogue do not meet existing needs and are, in practice, largely ineffective, despite the fact that the legal review recognizes the significant progress in terms of the establishment of the legislative and institutional framework.

The member organizations of the Tripartite Social Partnership Commission link the ineffective actions of the commission to the lack of involvement and motivation on the part of the government, as well as to removing specific topics that concern labour issues from the mandate of the commission, holding committee meetings in an unsystematic manner, etc.

At the same time, some of the organizations defending the interests of employees and employers find the representation of the formal composition of the commission and, in some cases, their insufficient knowledge problematic. They see the need to expand the composition of the commission by increasing the representation of both employers and employees. These considerations bring to the fore the necessity to consider the concept of the "most representative" employers and workers organizations, as contained in numerous ILO Conventions, including Convention No. 144.

Naturally, stakeholders' assessments of the work of the Social Partnership Commission differ. However, it is important that virtually all parties (both commission members and non-member organizations) emphasize the importance of social partnership in the field and at the same time note the inefficiency of the commission.

RECOMMENDATIONS

Include in relevant provisions of the Labour Code the concept of the "most representative" employers and workers organizations, both from a numerical and a sectoral and territorial diversity point of view.

Due to the complexity of the field of labour rights and occupational safety, as well as the sectoral and regional peculiarities of issues in this field, regional and thematic/sectoral formats/working groups of the Tripartite Social Partnership Commission should be established, the agenda of which will be more specific to the regional and sectoral particularities, including concluding collective labour agreements within the sector; setting the sectoral minimum wage; development of sectoral regulations and technical protocols, etc. In this respect, linkages should be ensured with territorial tripartite commissions where they exist, such as the Tripartite Social Partnership Commission in the autonomous republic of Adjara, or that may be established in other regions in the future.

11

Enforcement

Legal Review

Within the 2020 Labour Law Reform, the Law on Labour Inspection was approved introducing the establishment of a fully-fledged labour inspection service in Georgia. The Law on Labour Inspection is based on the ILO strategic compliance concept. According to the ILO Approach to Strategic Compliance Planning for Labour Inspectorates, the traditional enforcement model (with reactive and routine inspections) is no longer sufficient to achieve effective and efficient enforcement and sustained compliance with labour legislation. The traditional enforcement model solely focuses on enforcement (and enforcement does not necessarily achieve compliance with labour laws). On the contrary, the strategic compliance model mainly involves a proactive, targeted, and tailored approach aiming to identify diagnoses for causing non-compliance. Enforcement is one of the elements of the strategic compliance approach where it also combines education, promotion, and communication with more a systematic endeavor from the labour inspection service. The idea of strategic compliance requires the involvement of different stakeholders – labour inspection and other government institutions, workers and their organization, employers and their organizations, non-governmental organizations, media, and any and all other institutions who can influence compliance.[240]

The Law on Labour Inspection focuses on the strategic compliance approach and this concept is developed through different mechanisms pursued in the law. According to the Law, the purpose of the Labour Inspection Service is to ensure the effective application of the labour legislation. To achieve this purpose, the Labour Inspection Service shall, among others, use the following mechanisms: a) the provision of information and/or consultations related to fulfilment of labour provisions, per employers' request; b) raising awareness and provision of information to society to promote respect for labour legislation in Georgia, through campaigns and other means considered effective; c) receiving and resolving complaints related to alleged violations of labour legislation; d) inspection; e) developing recommendations for improving labour legislation and the application thereof. The Law on Labour Inspection further specifies that in performing its activities, the Labour Inspection Service must use the powers under the given law in a manner that ensures the greatest possible impact on the effective application of the labour legislation. Another example of the strategic compliance approach is the fact that there are three types of

240. ILO Approach to Strategic Compliance Planning for Labour Inspectorates, Brief 2, December 2017, https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication/wcms_606471.pdf.

sanctions defined for violation of labour law regulations: warning, monetary fine, and workplace suspension. In case of labour law violations, labour inspection may, at the first stage, issue a warning to address the material basis for violations, whereas a monetary fine is used at a later stage – where the warning has not achieved its goal. In some cases, the labour inspection may directly issue a monetary fine against an employer. Only in exceptional situations, the Labour Inspection Service may exercise authority to suspend the working process in case of trafficking, labour exploitation, child labour or critical OSH non-compliance (defined as non-compliance creating a considerable threat to human life and/or health and which has to be redressed immediately). The Law on Labour Safety also includes a mechanism for the involvement of consultations and participation of employees on the issues of occupational safety and health. Employers themselves are obliged to have occupational safety and health specialists prioritizing prevention and risk assessment. As was already mentioned, under the Law on Labour Inspection, the advisory council is created, which is a consultative body advising on strategy, functioning, and the activities of the labour inspection service.

Considering the development and improvements of labour inspection system in Georgia, further progress is expected from the government aiming to enhance the functioning of the labour inspection service. For example, there is a clear need to increase the number of labour inspectors and to put in place an internal mechanism to train and re-train inspectors. The physical infrastructure (software and hardware, transportation means, etc.) also needs to be improved. In this respect, the Labour Inspection Convention, 1947 (No. 81) states that,

> "The number of labour inspectors shall be sufficient to secure the effective discharge of the duties of the inspectorate and shall be determined with due regard for: (a) the importance of the duties which inspectors have to perform, in particular-- (i) the number, nature, size and situation of the workplaces liable to inspection; (ii) the number and classes of workers employed in such workplaces; and (iii) the number and complexity of the legal provisions to be enforced; (b) the material means placed at the disposal of the inspectors; and (c) the practical conditions under which visits of inspection must be carried out in order to be effective."

Considering factors such as the size of the informal sector, the large segment of the workforce engaged in agriculture, the absence of clarity on the number of occupational illnesses and accidents, the absence of a minimum wage system, and that labour inspection services in Georgia have only recently been established, it is necessary for the government to further invest in its development.

Literature Review

In 2006, after the abolition of the Labour Inspections Service, the issue of the labour su-

pervisory body became one of the main topics on the agenda of the local trade unions and labour organizations. The abolition of the inspection was followed by an alarming increase in the number of deaths and injuries at work. According to a study by Friedrich-Ebert-Stiftung, based on data from the Ministry of Internal Affairs, the Ministry of Labour, and the Georgian Trade Union Confederation, fatalities at work have risen by 74% since the abolition of the Labour Inspections Service. According to the same study, the average number of deaths at work in 2007-2017 was 41 per year, while in 2002-2005 – when the Labour Inspections Service was operational - the figure stood at 24. In 2014, there were 5.5 deaths per 100,000 workers in Georgia, which was three times higher than the corresponding figure for the same year in the European Union.[241] It is also noteworthy that in the 2018 report, the Labour Inspectorate acknowledged that there are so-called unreported incidents of death and injury in the workplace. According to the report of the Labour Conditions Inspection Department,[242] if the fact of death is not recorded directly at the workplace, it is not officially registered as a fatality due to an industrial accident and, consequently, is not included in the statistics. In most cases, there is no record of a failed accident, i.e., an incident that could have harmed the health of the employee.[243]

According to a study by the Caucasus Research Resource Center,[244] 64% of the Georgian population believed that labour safety norms were violated in the workplace. After the abolition of the labour inspection service in 2006, the issue of establishing a labour supervisory body was raised again in 2015, when the state program for monitoring the working conditions was approved by a Resolution of the Government of Georgia. According to the Public Defender,[245] this could not be considered an effective monitoring mechanism, as only those enterprises that had expressed a desire to be subjected to inspection could be inspected under the program. Moreover, the inspectors could only make non-binding recommendations.[246] The voluntary nature of inspections was considered by the US Department of State to be one of the shortcomings of the system.[247] At the same time, the establishment of an effective labour inspectorate was a top priority set by the Association Agenda between Georgia and the EU. According to the Public Defender,[248] the Association Agreement obliged Georgia to reflect and implement the conventions of the ILO, an integral part of which is an effective labour inspection system.

241. Tchanturidze G., 2018. Abolition of Labour Inspection in Georgia: Consequences for Workers and the Economy. Friedrich Ebert Stiftung, Tbilisi. Available at: https://library.fes.de/pdf-files/bueros/georgien/14675.pdf [Last access: 10.11.21].
242. 2018 Report of the Labour Conditions Inspection Department of the Ministry of Internally Displaced Persons from Occupied Territories, Labour, Health and Social Affairs of Georgia, 38. Available at: https://www.moh.gov.ge/uploads/files/2019/Failebi/27.06.2019-13.pdf [Last access: 10.11.21].
243. Ibid.
244. Caucasus Research Resource Center, 2019.
245. Public Defender, 2015, 573.
246. The only exceptions to this rule were involuntary inspections carried out to detect forced labour and labour exploitation. Ibid.
247. U.S. Department of State, 2017.
248. Public Defender, 2017. The Situation in Human Rights and Freedoms in Georgia, 194. Available at: https://www.ombudsman.ge/geo/saparlamento-angarishebi [Last access: 10.11.21].

The next stage of the labour inspection reform took place in 2018 with the adoption of the Law of Georgia on Labour Safety. This time, the Labour Conditions Inspection Department was given the right to sanction employers, although its mandate extended only to hard, harmful, and hazardous work. According to human rights organizations, even this wave of reform was not enough to protect the safety of workers in the workplace.[249] Thus, the next wave of reform was the adoption of the Organic Law of Georgia on Labour Safety in 2019, under which the obligation to comply with labour safety norms was extended to all areas of economic activity, and labour inspectors were allowed access to all workplaces and were granted authority to sanction employers.

The 2019 labour safety reform, unlike the amendments of previous years, has substantially improved the conditions of employees. According to the Human Rights Education and Monitoring Center, this reform has created an important legislative and institutional framework to protect the occupational safety of employees; The organization links the 2019 changes and the expansion of the powers of the Labour Conditions Inspection Department to a reduction in the number of deaths and injuries at work.[250] Nevertheless, the main systemic shortcoming of the labour conditions monitoring organ was the lack of oversight on labour rights, which has been reflected in the reports of various international organizations over the years.

For instance, a report prepared by the European Committee of Social Rights in 2018 on the protection of labour rights in Georgia indicated that national labour legislation did not comply with the requirements of the European Social Charter. According to the Committee, the Labour Conditions Inspection Department did not oversee the compliance of employers with the rules governing daily and weekly working hours, which was a violation of the requirements of the European Social Charter ratified by Georgia.[251] The status of labour rights has also become part of the US Department of State's 2018 and 2019 Human Rights Report on Georgia. In their assessment, the government failed to provide effective oversight of the minimum wage, working hours, and other labour rights.[252] According to the official statement of the UN Working Group on Business and Human Rights, even after 2019, Georgian labour legislation did not correspond to the existing challenges, as state oversight did not encompass all aspects of labour rights.[253] For its part, according to a special report by the Human Rights Watch, the labour monitoring organ should be able to

249. Public Defender, 2018; Human Rights Training and Monitoring Center, 2017; Georgian Trade Unions Confederation, 2017. The Government has not taken effective steps towards the creation of labour inspection. Available at: https://gtuc.ge/%E1%83%AE%E1%83%94%E1%83%9A%E1%83%98%E1%83%A1%E1%83%A3%E1%83%A4%E1%83%9A%E1%83%94%E1%83%91%E1%83%90%E1%83%A1-%E1%83%A8%E1%83%A0%E1%83%9D%E1%83%9B%E1%83%98%E1%83%A1-%E1%83%98%E1%83%9C%E1%83%A1%E1%83%9E/ [Last access: 10.11.21].

250. Gvritishvili, 2020

251. European Committee of Social Rights, 2018.

252. U.S. Department of State, 2019.

253. United Nations Working Group on Business and Human Rights. 2019. A Statement at the end of visit to Georgia by the United Nations Working Group on Business and Human Rights. Available at: https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24474&LangID=E [Last access: 10.11.21].

systematically check for any workplace hazards, including (and not limited to) risks related to working hours, fatigue, and adequate rest and pressures related to productivity.[254]

The issue of state oversight on labour rights became a major theme of the 2020 Labour Law Reform package. In general, the reform provided for the establishment of a Labour Inspection Service under the Ministry of Labour, as a legal entity under public law, which would have the authority to oversee all aspects of labour rights protection, be it labour safety, working hours, or protection of employees against discrimination. Moreover, as a result of the reform, the Labour Inspection Service was empowered to inspect any workplace or workspace on its initiative or on the basis of a complaint filed by an interested person, without prior notice.

The granting of a labour rights oversight mandate to the Labour Inspection Service was opposed by employers and their advocacy organizations. According to the Business Ombudsman of Georgia,[255] among other changes, the granting of broad powers to the Labour Inspection Service would have a significant impact on the business environment in Georgia and would be linked to an increase in the financial liability of employers. The business ombudsman believed that this would place a heavy burden on small- and medium-sized businesses. According to him, the proposed changes would create barriers to the free development of business and lead to the establishment of informal labour relations, which would complicate the monitoring of labour conditions by the Labour Inspections Service.[256] Another recommendation of the Business Ombudsman[257] was that only the employee, and no other interested party, should have a right to file a complaint with the Labour Inspections Service, otherwise this will result in an unjustified restriction on the employers' legitimate entrepreneurial rights. To prevent unjustified interference with entrepreneurial activities, the Business Ombudsman[258] also indicated that the Labour Inspections Service should not have the right to enter the workplace or summon a person for questioning without the prior consent of the court; They also advocated setting a precise time period for conducting the inspection. The Georgian Chamber of Commerce and Industry[259], the Georgian Business Association[260], and the Young Businessmen's Association[261] had almost similar positions.

Unlike business organizations, Public Defender's Office, trade unions, and labour rights NGOs supported the expansion of the Labour Inspection Service's mandate and capacity.[262]

254. Human Rights Watch, 2019.
255. Business Ombudsmen of Georgia, 2020.
256. Business Ombudsman of Georgia, 2020a.
257. Ibid.
258. Ibid.
259. Business Media Group, 2019.
260. Business Association of Georgia, 2019.
261. Association of Young Businessmen, 2020.
262. See Public Defender, 2020; Georgian Young Lawyers Association, 2020; Human Rights Watch, 2020; Human Rights Education and Monitoring Center, 2019.

Towards the end of the reform process, before the final vote by the Parliament, the Open Society Foundation Georgia and other organizations pointed out that labour inspection reform was in jeopardy due to pressure coming from the business sector. In their assessment, the most important amendment, among the initiated reforms, was the expansion of the Labour Inspection Service's mandate. The current mandate, which extends to labour safety, is limited and is not an effective mechanism for protecting workers' rights, they suggested. According to these organizations, the narrow mandate and capacity of the Labour Inspections Service, before the adoption of the reform, did not comply with Georgia's international obligations, the European Social Charter, and the ILO conventions.[263] The Legislative Package adopted by the Parliament of Georgia in September 2020, which, inter alia, provided for the expansion of the inspection mandate and powers, was called a historic reform by the ILO.[264]

Research shows that after the 2020 Labour Law Reform, the labour inspection regulatory norms appear to be substantially in line with the international standards developed by the ILO.

Analysis of Interviews

According to the stakeholders, the effectiveness of the work of the Labour Inspection Service is directly related to the human and financial resources of the entity. In their view, it is necessary to strengthen this aspect of the inspection service. According to one of the respondents, the lack of human resources determines the low number of follow-up inspections conducted by the entity, while the monitoring of the enterprises is pivotal after the initial inspection.

The problem of resources explains the frequent criticism of the inspection for the non-observance of deadlines and delays in the inspection and re-inspection.

During the research period, the Labour Inspection Service had only a limited, 5-6 months of practice in monitoring labour rights. Only 5 inspectors were in charge of monitoring labour rights, at the time of writing this research. The inspection had conducted about 200 inspections during these months, and most of them were carried out based on complaints. The stakeholders participating in the interviews noted problems with regard to the intensity and scarcity of labour rights monitoring.

The problem of human resources is also admitted by the Labour Inspections Service. It was noted that in recent years it was not possible to select staff for the announced va-

263. Open Society Foundation and Others. 2020. Georgia Fair Labor Platform: Labor inspection reform delayed. Available at: https://shroma.ge/en/news-en/georgia-fair-labor-platform-labor-inspection-reform-delayed/ [Last access: 10.11.21]
264. Georgia's Parliament adopts historic labour law reform package, https://www.ilo.org/moscow/news/WCMS_758336/lang--en/index.htm.

cancies because, in general, there was a problem with education and qualifications in the field of labour safety in the country. However, since the introduction of the labour safety monitoring, and as it became necessary to retain staff in this field in various companies, many people became interested in the issue and acquired relevant knowledge. The Labour Inspection Service representative notes that currently the competition of vacancies is quite high and the problem of finding qualified experts is less acute, as compared to previous years. During the research period, the Labour Inspection Service worked intensively to staff Tbilisi and regional offices (Batumi, Kutaisi), which is considered an important step forward in terms of increasing human resources and ensuring regional coverage. For the moment, mentioned regional offices already operate. At the same time, the human resource of labour rights monitoring specialists is significantly increasing. Next year, the Labour Inspection Service plans to expand its regional coverage and establish local offices in Kakheti and Gori.

Throughout the research, a clear need was identified for the Labour Inspection Service to develop explanatory guidelines and manuals for relevant laws, as there is ambiguity for employers concerning certain laws and by-laws. Further clarification is needed on the practice of the labour inspection, specifically what types of violations and standards are covered by the specifics of the articles of the law, non-compliance with which will result in monetary sanctions for the organization, and so on. By the same token, it would be preferable that the Labour Inspection Service, based on gained practical experience, issues explanations regarding the established practices in exceptional cases. All this will create coherent standards in the future and reduce ambiguity, and questions regarding the definition of specific norms.

It is important to highlight the directive issued by the Labour Inspections Service on the prohibition of joint liability, which is one of the most acute problems for employees in supermarkets. In particular, this refers to the deduction by the employer of the employee wages, for the incurred damages, based on the principle of joint liability. The Labour Inspection Service has recognized such practices as unlawful, and it is believed that this decision improves the working conditions of employees.

Undoubtably a positive aspect of the Labour Inspection Service is the openness of the entity, the absence of communication problems, and its cooperation with various associations and trade unions. Public information is also provided without any hindrances. In this regard, the Labour Inspection Service cooperates with the non-governmental sector, which ensures the processing and publication of data on the inspections carried out so that statistical information is easily accessible to interested citizens.[265]

Additionally, the Ministry of Labour notes that the process of digitalization is actively car-

265. https://shroma.ge/monitor/dashboard/?lang=ka

ried out, which will make the work of the Labour Inspection Service, in the field of labour safety, even more transparent. It was also highlighted that the inspectors are equipped with body cameras, ensuring all the inspections are being video recorded, which additionally ensures the quality of the inspection work and eliminates errors and risks of biased inspections.

As for communication with a wider audience, the parties consider that more proactive public campaigns are needed, on the one hand, to promote public awareness about the functions of the Labour Inspection Service and, on the other hand, to ensure that the rights and responsibilities of employees and employers are known to the wider public. Representatives of the inspection, including the inspectors themselves, see the need to increase public awareness regarding the entity. This will make their work easier and give them more legitimacy among both employers and employees. It should also be noted that the Labour Inspection Service actively cooperates with the non-governmental sector in initiating joint campaigns,[266] although the issue of raising public awareness, especially that of small and medium-sized businesses, may go beyond the capacity of the Labour Inspection Service. The interviews conducted also revealed that in the view of the stakeholders, it is the responsibility of the state to inform businesses and citizens about the planned changes, before their enforcement so that the country is prepared for the new regulations. For example, according to the HR Professionals Association, before the obligation to register the working hours came into force, it was necessary to run a campaign that would introduce new requirements to businesses (especially small- and medium-sized ones) and allow them time to streamline business processes accordingly.

The openness of the Labour Inspection Service is also ensured by the advisory board, which aims to ensure the involvement of the interested parties in the inspection activities. The acting chairperson of the board is the head of the Georgian Trade Unions Confederation. The Ministry of Labour and the Labour Inspection Service view the advisory board as an effective and flexible mechanism to facilitate a rapid, coordinated response to specific challenges.

The stakeholders positively assess the flexible, rational approach of the Labour Inspection Service. They point out that the Labour Inspection Service focuses on cooperating with all parties, advising and consulting the business, and does not prioritize punitive actions, which is extremely important for the newly formed structure, at the initial stage of introducing new standards and regulations.

The quality of substantiation of the recommendations developed by the Labour Inspection Service is also positively assessed. It was noted that the Labour Inspection Service fully explains why the notice was issued and often the inspectors themselves point out the

266. For example, see: https://www.facebook.com/LabourDictionary/about/?ref=page_internal

ways of implementing the recommendation. Concerning the issue of inspectors' qualifications, it was noted that they do not have specialized knowledge of occupational safety in concrete, job-specific areas that require different approaches in terms of risk assessment.

Challenges within labour inspection

As mentioned, the Labour Inspection Service itself considers the issue of human resources a challenge, especially in the field of labour rights monitoring specialists, although work to address this issue is ongoing. The Labour Inspection Service has already allocated 110 staff posts for inspectors, and the staff increase is further planned. The Labour Inspection Service believes that this number will be sufficient for a full inspection, as their goal is not to cover all business operators and put pressure on the business process by scrutinizing as many companies as possible, but to focus on implementing a balanced, preventive policy.

Another challenge is that employers and employees are often uninformed about labour inspection activities, especially with regard to the monitoring of labour rights. Consequently, when inspecting different companies, employees are not ready to cooperate with the Labour Inspection Service. The fact that individual interviews with employees are recorded by inspectors via body cameras causes confusion and inconvenience. This demotivates employees to speak openly, as they are unsure that their conversation will not be heard by the employer.

According to one of the inspectors in the field of labour rights, one issue is that employees are not well informed about how to file a comprehensive complaint, and why it is necessary to submit a document proving work in a particular organization along with the complaint. There is still a fear of breach of privacy. Consequently, there is a need to better inform the public.

The Labour Inspection Service notes that their mandate allows for full-fledged monitoring and indeed inspection capacity has increased, although they also note that they have received complaints regarding unlawful dismissals which they do not have the leverage to monitor. They can respond only if the grounds for dismissal were discriminatory treatment, otherwise, the Labour Inspection Service has no authority to determine the validity of the termination of the employment contract and has to refer the citizen to court. The problem arises if an employee is fired because of their cooperation with the Labour Inspection Service. The inspection has no leverage, avoiding the long road to the court, to oblige the employer to reinstate the employee.

Despite the standardized inspection methodology, one of the issues mentioned by the representative of the Ministry of Labour was that, due to the scarcity of technical regulations in the country, in some cases, the result of the inspection to some extent depends on the subjective perception of the inspector. However, these cases are few and, as already

mentioned, technical regulations are constantly being created and developed with the help of various international organizations and the involvement of European experts.

The labour rights inspection methodology and entry/inspection rules are being developed, which will help establish uniform rules for monitoring. The document is being elaborated in cooperation with the ILO.

Assessment of sanctioning mechanisms and their impact on the safety standards and the prevention of labour rights violations

Representatives of both businesses and employers believe that the existing penalty sanctions, as well as the rule of their determination, are acceptable and in line with the purpose of the sanction. In addition, there is a warning mechanism that allows companies to rectify deficiencies promptly even without a financial penalty. The strictest measure of sanction for a Labour Inspection Service is to suspend the activities of an enterprise, which is most cautionary for different types of enterprises, because even a one-day suspension may be much more severe financially than a fine.

In addition to Labour Inspection Service, the Tbilisi Supervision Service has monitoring and sanctioning capacity in the field of labour safety, covering the authority to impose a rather large fine, which makes labour safety issues more relevant throughout Tbilisi.

Overall, it was noted that labour safety penalties ensure the prevention of violations and over time, a culture of occupational safety risk assessment and preventive measures is established in companies. According to the Labour Inspection Service, from 2017 a positive trend is observed in using personal and collective protective equipment.

One of the respondents (GYLA representative) notes that in terms of prevention, it is important that the labour inspection's methodology for selecting companies for scheduled inspections is sound. This methodology should be revised periodically, taking into account current challenges and needs. Most importantly, the methodology should create the perception that any enterprise, at any time, can be selected for inspection. This ensures that the inspection has a positive, preventive impact on the operations of enterprises.

As for sanctions in the field of labour rights, in monetary terms, they are relatively insignificant, although the Labour Inspection Service believes that, in addition to financial penalties, mechanisms have been put in place that are effective leverages for labour inspection. Firstly, the payment of the fine does not release the organization from the obligation to eliminate the violation, and secondly, as mentioned, the Labour Inspection Service also has the leverage to suspend the work process.

All parties agree that it is too early to assess the real impact of the 2020 Labour Law Reform on the working conditions of employees, as it requires several years of intensive

work of Labour Inspection Service, precedent-setting, and effective enforcement mechanisms that will gradually change the culture of labour relations in the companies and Labour Inspection Service activities will take a preventive form.

Conclusions

One of the main achievements of the 2017-2020 Labour Law Reform Package is the creation of an independent and fully mandated Labour Inspection Service, whose main function, along with conducting inspections, was to create a new, modern culture of labour relations through cooperation with employees and employers.

Based on the presented legal review and literature review, it can be argued that the current legal framework concerning labour inspection is essentially in line with international labour standards and there are no significant gaps or a need for the introduction of additional legal mechanisms, at this stage.

The assessment of stakeholders on the activities of the Labour Inspection Service is mainly positive, despite the fact that the main burden of regulatory control over the pandemic shifted to the Labour Inspection Service and, consequently, the dynamics of their work in terms of labour safety and protection of labour rights was significantly reduced. The sheer volume of inspections regarding compliance with pandemic regulations has given the Labour Inspection Service significant experience and contributed to the formation of its professional and institutional reputation.

A comprehensive assessment of the Labour Inspection Service's capacity in protecting labour rights is not possible, since, at the time of writing, only a few months had elapsed since the Labour Inspection Service was awarded full authority. However, the representatives of employers and employees highlight the constructive, rather than repressive, approaches exercised by the Labour Inspection Service and its representatives.

The study found that the inspection is gradually developing and strengthening its human resources, attracting more qualified staff, and opening regional offices. However, the parties note that the inspection still requires organizational-structural strengthening, training of the qualified staff, and their periodic re-training.

The research reveals the lack of public awareness about the new norms and regulations. Employees in the workplace often do not perceive Labour Inspection Service as a defender of their rights and there are cases when they altogether avoid cooperating with the entity even during the inspection process. On the other hand, there is a problem of awareness among employers (especially small and medium-sized enterprises), which can be considered as one of the main obstacles to the introduction of new labour protection and labour safety regulations.

Employers find the ambiguity of certain norms of the law problematic and require from the Labour Inspection Service practical recommendations and guidelines, in what form and how to implement this or that norm.

Delays in court proceedings are one of the important problems identified by the inspectors themselves. On the one hand, this causes a problem in the performance of inspections when it becomes difficult to eliminate violations during ongoing court processes, and on the other hand, it produces a problem when determining the validity of contract termination takes an excessive amount of time. Especially if the contract is terminated because of the employee's cooperation with the inspection, the Labour Inspection Service is unable to intervene and must rely on a court judgment, which might take several months.

RECOMMENDATION

In order to successfully execute the strategic compliance approach, the Labour Inspection Service, in collaboration with social partners and other stakeholders, should:

- Develop a long-term development strategy and action plan for the Labour Inspection Service based on local needs and experiences as well as international best practices;
- Develop a long-term strategic communication plan for the Labour Inspection Service to effectively and extensively inform the public about labour rights and occupational safety;
- Conduct a public awareness campaign to educate companies and employees on labour rights, workplace safety standards, new rules, and other legal requirements;
- Use the rs.ge platform and introduce a mandatory information sharing system for systematic information provision to employers;
- Ensure the creation of an appropriate structural unit for information provision-consulting activities. Based on the analysis of questions and complaints, develop relevant recommendations and guidelines for employers and employees;

It is advisable that, in parallel with the relevant state structures, representatives of the civil sector monitor the activities of the Labour Inspection Service and, based on the analysis, develop recommendations for further revision of the activities of Labour Inspection Service.

12

Work in the informal economy

Legal review

The Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) of the ILO, recalls that "...decent work deficits – the denial of rights at work, the absence of sufficient opportunities for quality employment, inadequate social protection and the absence of social dialogue – are most pronounced in the informal economy". In this respect, it is clear that many of the amendments introduced during the 2020 Labour Law Reform, as well as the establishment of a full-fledged labour inspection service contribute to Georgia's transition to the formal economy, as they address the denial of rights at work. However, as this research highlights, further steps are required to ensure that the law is clear, gaps are filled and is applied to all workers.

ILO Recommendation No. 204 also clearly spells out, however, that ensuring the transition to the formal economy requires the development and implementation of a range of measures, not just reform of the labour law.[267] Few efforts seem to be made by the government at this time to take such a holistic approach in addressing informality, even though it could be argued that doing so would be one of the most important strategies the government could adopt to ensure the inclusive and sustainable development of Georgia.

Literature Review

According to a study by the International Monetary Fund, the share of the informal economy in Georgia is 64.9% and Georgia ranks third among 158 countries in terms of the size of the informal economy.[268] It is noteworthy that informal employment is not limited to employment in the informal economy: informal employment is also found in the formal sector. A UN Women report shows that almost every second worker in Georgia is informally employed and this figure is almost identical for women and men. [269]

The term 'informal economy', according to the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) of the ILO, refers to all economic activities by

267. See Article 11 of Recommendation R204 - Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) (ilo.org)

268. Medina L., Schneider F., 2018. Shadow Economies Around the World: What Did We Learn Over the Last 20 Years? IMF Working Paper WP/18/17. International Monetary Fund, 23. Available at: https://www.imf.org/en/Publications/WP/Issues/2018/01/25/Shadow-Economies-Around-the-World-What-Did-We-Learn-Over-the-Last-20-Years-45583 [Last access: 10.11.21]23.

269. UN Women. 2018. Women's Economic Inactivity and Engagement in the Informal Sector in Georgia. Tbilisi, 8, 28. Available at: https://georgia.unwomen.org/en/digital-library/publications/2018/12/womens-economic-inactivity-and-engagement-in-the-informal-sector-in-georgia [Last access: 10.11.21].

workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements. This is an important problem insofar as informally employed persons are usually not protected by labour and social protection laws. A UN Women report confirms this general pattern in the case of Georgia as well, noting that informal employment harms both the economic situation and the quality of life.[270] According to the same report, informally employed women in Georgia earn 42% less than women employed in the formal sector.[271] The report also provides quantitative data: 54% of informally employed people believe that formalization of employment would have a positive impact on them.[272]

According to the ILO, a significant share of informal employment falls on people employed in domestic labour.[273] The issue of domestic workers is addressed in another paper produced by UN Women, which lists the risk factors for informal employment in the family, including inadequate and ineffective legal protection; a lack of bargaining power in negotiations; informality of activities; and a lack of awareness of their civil and labour rights as employees.[274]

UN Women also draws attention to the fact that the Georgian legislative system does not clarify the concept of domestic workers and indicates that amendments in the law are needed in this regard.[275] According to the report, there is no consensus among legal experts on whether family/domestic employment meets the criteria of labour relations set by the Labour Code. In the context of the 2020 Labour Law Reform, the report noted that new regulations (e.g., on working and leisure time) may not apply to informal employment.[276] According to the report, although the 2020 Labour Law Reform package expands the mandate of the Labour Inspection Service and allows any employee to address the Inspectorate, without a clear regulatory framework and recognition of domestic work, it still cannot be considered an effective tool for protecting domestic workers.[277]

A related issue concerning the classification of informal occupations is employment in the so-called gig economy. Examples of this, in the Georgian context, are delivery workers working on digital platforms, taxi drivers, and babysitters. Persons working in the gig economy, although their work activities are not qualitatively different from those in a formal employment relationship, often have the status of an independent contractor. They work on the basis of a formal, service contract and not an employment agreement. This pre-

270. Ibid, 29
271. Ibid.
272. Ibid, 30
273. Human Rights Education and Monitoring Center, 2020.
274. Pigniatti N., Chitanava M., Lobzhanidze M., Tsulukidze M., 2021. Regulatory Impact Assessment of C189 – Domestic Workers Convention. Unwomen.org. Available at: https://georgia.unwomen.org/ka/digital-library/publications/2021/05/regulatory-impact-assessment-of-ilo-c189-domestic-workers-convention [Last access: 10.11.21].
275. Ibid, 16.
276. Ibid, 12.
277. Ibid 16.

cludes those working in the gig economy from enjoying the guarantees provided by labour laws. Hence, the ILO addresses this issue in the context of disguised employment.[278]

According to a study by the Social Justice Center,[279] the growth of the food delivery industry in Georgia is characterized by the practice of labour rights violations of the couriers and infringement of their occupational safety. According to the Center, the employment relationship between food delivery companies and couriers is deliberately disguised as a service contract and various legal mechanisms are utilized to this end.[280] Recently, the Public Defender of Georgia[281] also had to study this issue and, based on the analysis of the contract of one of the courier companies, concluded that this was indeed an employment relationship and couriers should be granted the rights established by labour law.

The 2020 Labour Law Reform did not provide for the regulation of employment in the informal and gig economy. The Human Rights Education and Monitoring Center[282] indicated during the reform that informal employment meant the absence of fixed working time, the right to rest and a break, paid leave, insurance, and other social leverage. The assessment published by the Center states that state recognition of informal employees and formalizing their work is a precondition for establishing decent labour in the country. According to the Center, this will be possible with new legislative and institutional reforms.[283]

Analysis of Interviews

According to the official data of the National Statistics Office of Georgia (Labour Force Survey), the share of informal employment among non-agricultural employees, according to 2020 data, is 31.7%. They do not enjoy the guarantees that apply to formal employees: They are not involved in the accumulative pension system, cannot receive the state benefits of up to 1000 GEL for maternity leave, and their working hours and overtime work, etc. are not controlled. The problem of informal employment was particularly acute during the COVID-19 pandemic. Those who were unable to prove their employment were unable to access one-time financial assistance from the state.

Informal employment is a significant problem for the representatives of the parties and carries other economic dimensions besides employment. The fact that the state does not have information about the forms of their employment, the amount of remuneration, and the social status is also problematic. Consequently, it is difficult to produce a proper

278. De Stefano V., 2016. The Rise of The "Just-In-Time Workforce": On-demand work, Crowdwork, and Labour Protection in the "gig-economy". Geneva, International Labour Office.
279. Social Justice Center, 2021.
280. Ibid.
281. Public Defender, 2021. Recommendation on Establishing Direct Discrimination in Labour Relations. Available at: https://www.ombudsman.ge/res/docs/2021061423015589955.pdf [Last access: 10.11.21].
282. Human Rights Education and Monitoring Center, 2020.
283. Ibid.

employment policy. Even in a pandemic, the state cannot determine exactly how many people have lost their income.

Informal employment is especially problematic in the agricultural sector, where due to the informal nature of employment, it is impossible to monitor the protection of labour rights, including the control of overtime work, etc. According to the representative of the Georgian Farmers' Association, in the agricultural sector often the right to decent labour is violated, the enforcement of the rights is not monitored, and the mechanisms for monitoring the protection of rights are unclear due to the informal nature of the work.

> *"The situation on the farms is very difficult, and this is not only about labour safety. Often, even the restrooms are not available, and people cannot wash their hands. Very often there has been a case where, for example, there is an empty field, there are strawberries cultivated, a farmer brings 20-30 women to work every day, and these people, imagine where they go to relieve their bladder, and also to eat they have to sit on the ground. There is no cover from the sun, and they work in such conditions."*[284]

According to the same respondents, the problem in the informal sector of agriculture is that accidents and industrial injuries are not reported. Especially when there is no information on what chronic and occupational diseases can be caused by performing a specific type of work over a long period.

Labour Inspection Service monitoring in the informal sector is completely impossible in terms of enforcement of the Labour Code. However, in the field of occupational safety, the Labour Inspection Service has a certain, indirect monitoring mechanism, as the Law of Georgia on Labour Safety the employer to ensure the safety of both the employee and any third party in the workplace. Consequently, if, for example, a construction worker is not formally employed, the Labour Inspection Service can still monitor their safety.

An important challenge in addition to informal employment is the forms of non-standard labour, such as the gig economy and the citizens employed there (people who perform work as individual contractors through online platforms). The recent strikes by employees of various courier services also indicate that the labour rights of employees in the gig economy are being grossly violated, although employers are not obliged to comply with the requirements of the Labour Code in their conduct with their contractors. Long working hours, the practice of unilaterally changing the contract by the company, etc. were identified as serious problems in this sector.

As for the monitoring of occupational safety in the case of platform-based gigs, for ex-

284. Interview with the Representative of the Georgian Farmers' Association.

ample in courier services where the job is not done in one specific location, but official contractors receive an order/assignment from the company and operate independently, it is problematic to justify their responsibility to the employer. There was the case when the Labour Inspection Service fined the company after the courier had a car accident. However, "Glovo" was fined on a different ground, in particular for not informing the Labour Inspection Service about the accident. "Glovo" appealed the sanction in court, because according to them, the company has no responsibility for the contractor and their work operations. Georgian court practice in this regard will be important to consider.

Conclusions

A large portion of informality in the labour market is characterized by particular problems in the field of labour safety and the protection of labour rights. Almost half of Georgia's workforce is involved in the informal economy. Also, against the background of the growing dynamics of non-standard forms of labour in recent years, the protection of labour rights and labour safety of persons employed in this segment has become a significant problem.

Third-party reports and stakeholder views research revealed that informal work is considered a problem of special importance by all stakeholders. Labour rights and labour safety standards and other social benefits are practically not applicable to this group.

As part of the labour law reforms in 2017-2020, the current situation in the country, pertaining to informal employment, was taken into account and several of these concerns were reflected in the legislation. In particular, labour safety norms apply not only to the employee per se, but also to third parties at the workplace, and, consequently, to any person physically present at the place of work. Also, the Labour Code permitted the conclusion of short-term verbal agreements and awarded the Labour Inspection Service the mandate to inspect private spaces in accordance with a court order in case of reasonable suspicion of labour exploitation and/or child labour.

These mechanisms make up bare minimum guarantees with regard to the protection of labour rights and labour safety in the informal sector. However, in practical terms, they do not meet the existing needs and, it can be argued that employees in the informal sector, in practice, do not enjoy even the minimum standards of labour rights and labour safety.

The situation in the so-called gig economy, with regard to the protection of labour rights and labour safety norms, is also problematic. However, in this case, a particular challenge is the contractual legal status of those employed in this field, as highlighted in the third-party reports and stakeholder views studies, as in most cases, the framework of these labour relations is presented as a service contract. The ILO characterizes this agreement as a disguised labour relationship.

RECOMMENDATIONS

The Government of Georgia should develop a long-term strategy to ensure the transition from the informal to the formal economy. In this respect, the government should establish a special commission, including employers and workers' organizations, organizations that represent informal economy workers and employers, other civil society organizations, the ILO and other relevant UN agencies, and International Financial Institutions. This commission should develop a road map for Georgia's transition to the formal economy considering all relevant measures that may be relevant, in this respect, including taxation, the regulatory framework for small and medium enterprises, social security, education, and vocational training, and labour rights.

The Labour Inspection Service, based on the ILO Employment Relationship No. 198 Recommendation and international experience, should develop principles for distinguishing labour relations from other forms of employment, to be able to determine the employment status and rights/responsibilities of employees in non-standard/informal jobs.

13

Ratification of key ILO instruments

Legal Review

According to paragraph of Article 229 of the EU-Georgia Association Agreement,

> "the Parties recognise full and productive employment and decent work for all as key elements for managing globalisation and reaffirm their commitment to promote the development of international trade in a way that is conducive to full and productive employment and decent work for all. In this context, the Parties commit to consulting and cooperating as appropriate on trade-related labour issues of mutual interest."

Paragraph two of Article 229 further states that

> "in accordance with their obligations as members of the ILO and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in 1998, the Parties commit to respecting, promoting and realising in their law and practice and in their whole territory the internationally recognised core labour standards, as embodied in the

> fundamental ILO conventions, and in particular: (a) the freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation."

Paragraphs three and four of the same Article additionally define that

> "the Parties reaffirm their commitment to effectively implement in their law and practice the fundamental, the priority and other ILO conventions ratified by Georgia and the Member States respectively. The Parties will also consider the ratification of the remaining priority and other conventions that are classified as up to date by the ILO. The Parties shall regularly exchange information on their respective situation and developments in this regard."

Out of ten fundamental Conventions of the ILO, Georgia has ratified eight fundamental Conventions. Therefore, the two remaining the ILO fundamental Conventions need to be ratified: Occupational Safety and Health Convention, 1981 (No. 155) and Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). Georgia has ratified two governance (priority) Conventions: the Employment Policy Convention, 1964 (No. 122) and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). The obligation to consider ratifying the two remaining priority conventions (Labour Inspection Convention, 1947 (No. 81); Labour Inspection (Agriculture) Convention, 1969 (No. 129)), is derived from Article 229(4) of the Association Agreement referred to above. The same provision calls upon Georgia to consider the ratification of other conventions that are classified as up to date by the ILO. Considering the national context of Georgia, such an instrument can be Protocol of 2014 to the Forced Labour Convention; Maternity Protection Convention, 2000 (No. 183) and Violence and Harassment Convention, 2019 (No. 190). Moreover, Social Security (Minimum Standards) Convention, 1952 (No. 102) is noteworthy taking into account challenges and needs in the sphere of a social security system. So taking into account Georgia's national context, the priorities identified by the social partners, as well as to guide sound legislative development in key areas in Georgia, it is recommended that Georgia ratifies the following ILO instruments:

- Protocol of 2014 to the Forced Labour Convention;
- Labour Inspection Convention, 1947 (No. 81) and Labour Inspection (Agriculture) Convention, 1969 (No. 129);
- Social Security (Minimum Standards) Convention, 1952 (No. 102);
- Occupational Safety and Health Convention, 1981 (No. 155);
- Maternity Protection Convention, 2000 (No. 183);
- Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187);

- Domestic Workers Convention, 2011 (No. 189);
- Violence and Harassment Convention, 2019 (No. 190).

Literature Review

Research prepared by UN Women emphasizes the importance of the ratification of two ILO conventions: Maternity Protection Convention, 2000 (No. 183) and Domestic Workers Convention, 2011 (No. 189).[285]

Analysis of Interviews

While interviewing the stakeholders, the issue of ratification of ILO instruments was not raised.

Conclusions

Ratification of the ILO conventions and bringing Georgian legislation into line with international labour standards are international commitments under the Association Agreement, and, at the same time, these adaptations correspond to the current situation and the needs of society. As the legal review highlights, Georgia has ratified eight fundamental conventions of the ILO and two governance instruments. Therefore, it is required to ratify the remaining two fundamental and two governance Conventions. Furthermore, the latest conventions adopted by the ILO have not been ratified yet.

RECOMMENDATIONS

Georgia should ratify the following ILO instruments:

- Protocol of 2014 to the Forced Labour Convention;
- Labour Inspection Convention, 1947 (No. 81);
- Labour Inspection (Agriculture) Convention, 1969 (No. 129);
- Social Security (Minimum Standards) Convention, 1952 (No. 102);
- Occupational Safety and Health Convention, 1981 (No. 155);
- Maternity Protection Convention, 2000 (No. 183);
- Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187);
- Domestic Workers Convention, 2011 (No. 189);
- Violence and Harassment Convention, 2019 (No. 190).

285. Pigniatti, Chitanava, Lonzhanidze, Tsulukidze, 2021; Babych, Mzhavanadze, Keshelava, 2021.

14

List of recommendations

In light of the issues raised within the survey and main findings of the research, recommendations of the survey are compiled and summarized below

1. Freedom of Association and Collective Bargaining (right to strike)

1. The Labour Code should allow sympathy (solidarity) strikes;
2. Article 65 of the Labour Code (the right to strike and lockout), which regulates the procedures related to strike, should be amended and envisage an additional paragraph 9 with the following wording: "the above paragraphs to a right strike [regulating legal basis for organizing strike] do not apply to strikes in support of a primary strike organized by other workers and strike action in support of employee associations' positions concerning major social and economic policy issues which have a direct impact on their members and on employees in general. In the case of such strikes, employees' association must notify the employer and the Minister in writing about the time, place, and type of a strike at least three calendar days before the strike."
3. Municipal cleaning services should be excluded from the list of critical services;
4. Organizers of strikes declared illegal by the court should not be held criminally liable for the mere fact of organizing a strike.

2. Prohibition of Employment Discrimination

1. The Labour Inspection Service should pay particular attention to training the inspectors on employment discrimination issues, including periodically holding roundtables, seminars, and discussions at local and international levels, with the participation of inspectors;
2. The Labour Inspection Service and the Public Defender' Office should actively cooperate with each other so as to ensure that optimal use is made of their combined expertise, experience, and financial and human resources in monitoring and/or enforcing the prohibition of employment discrimination. In this respect, the swift signing of the Memorandum of Understanding that was developed between the two parties some time ago, would be an important symbolic and practical step towards ensuring such cooperation;
3. Establish a format of periodic meetings and cooperation between the Public Defender' Office and the Labour Inspection Service on issues of discrimination and harassment, within which the institutions will exchange information and knowl-

edge, discuss challenges and issues in the field, and plan strategies for adequate use of their resources;

4. The Labour Inspection Service should pay special attention to cooperation with relevant local and international non-governmental organizations on issues of discrimination and harassment;
5. The Labour Inspection Service should develop and issue advisory instructions/ guidelines to ensure effective enforcement of the reasonable accommodation;
6. Amend the Labour Code and the Law on Civil Service, and establish the principle of equal pay for work of equal value in accordance with ILO Convention No.100;
7. Develop and approve a methodology for calculating the equal value of work in cooperation with interested and competent international organizations and expert groups, as well as in consultation with the social partners;
8. Clarify the definition of sexual harassment in the legislation by including the quid pro quo principle. Recommended draft provision:

   "sexual harassment shall be prohibited. Sexual harassment is any sex-based behaviour, including unwanted verbal, non-verbal or physical behaviour of a sexual nature that is unwelcome, unreasonable, and offensive to its recipient. Sexual harassment may take two forms: a) Quid pro quo, when the basis for a decision which affects that person's job, is made conditional, explicitly or implicitly, on the victim acceding to demands to engage in some form of sexual behaviour; or b) hostile work environment in which the behaviour creates conditions that are intimidating, hostile or humiliating for the victim";
9. The Labour Inspection Service should develop and issue advisory instructions/ guidelines to ensure the prevention of sexual harassment in the workplace;
10. The Labour Inspection Service, along with international and local partner organizations, should organize an information campaign to raise public awareness about sexual harassment.

3. Employment contract

1. The legislation should ensure that all work-based learning is regulated in a comprehensive manner across all relevant legislative and policy frameworks, including the civil service, higher and vocational education, and employment;
2. The legislation should ensure the gradual restriction of unpaid internships and set standards for internship pay;
3. Regulate fixed-term contracts to ensure they can only be concluded for specific, clearly defined purposes;
4. Abolish exceptions made for start-up business with regard to the use of fixed-term contracts, and equally apply the restrictions to any and all employers;
5. Ensure that the principle of proportionality (pro-rata temporis) applies to the working conditions and benefits of part-time workers, in line with relevant international

labour standards. However, at the same time, the Government and social partners must, to the extent possible, ensure that part-time workers who work multiple part-time jobs are in a position, in practice, to fully enjoy the benefits they are entitled to under all part-time jobs they hold.

4. Working hours

1. Limit maximum working hours to 48 hours, in line with EU Directive 2003/88/EC, in general, and in particular limited list of specific work regime sectors should be approved to exclude extension of normal working hours in sectors where such extension is not genuinely required by the nature of the work undertaken in the sector;
2. Ensure the Labour Code contains a clear limit on maximum daily working hours; regular working hours should be limited to eight hours a day;
3. Include a reference period in the Labour Code for the purpose of calculating average normal daily or weekly working hours. This reference period, after analyzing objective necessity, should be determined in full consultation with the social partners;
4. In line with the international labour standards, set a maximum daily limit of overtime work in the amount of 2 hours;
5. Include a minimum overtime pay rate of 125% of normal wages into the Labour Code. Before the relevant legislative changes, in accordance with the case law and the requirements of international conventions, the Labour Inspection Service should issue a recommendation on a 125% overtime pay rate.
6. Ensure the Labour Code contains a clear limit on maximum daily shift work and 12-hour daily limit of shift work should be determined. Abolish the special working time regime for the mining industry and extend the common standard of shift work to them;
7. Amend the Labour Code to ensure that the limit of 8 hours for night work hours are regulated for all workers;
8. Ensure guarantees and protective mechanisms for night workers are included in the legislation (e.g., financial compensation for night work or increased rate of pay for work at night, transportation support or other logistical benefits, provision of different work schedules).
9. Following a process of consultation with the social partners, all stakeholders and experts, a new and revised form of recording working hours should be prepared. Meanwhile, in line with the recent increase in remote work practices, the Labour Inspection Service should develop additional recommendations regarding the recording of remote working hours.

5. Maternity, paternity, and parental leave

1. Revise the maternity leave system, which would clearly define maternity, paternity, and parental leave, their terms, and funding rules;

2. The legislation should provide minimum of 14 days of maternity leave before giving birth;
3. A working mother shall take a minimum of 26 weeks of maternity leave after giving birth (the period of 26 weeks is the 6-month exclusive breastfeeding period recommended by WHO and UNICEF);
4. Paternity leave should be defined as a 14-day period given to a child's father from the first day of the child's birth (or adoption) and which may be used in conjunction with the maternity leave;
5. The period after the 26-week leave should be defined as parental leave, which both parents will be entitled to use, but not simultaneously;
6. In order to encourage fathers to take paternity leave, an additional paid period (after 26 weeks) should be defined within the parental leave, which parents will be able to use only if the child's father takes advantage of this leave;
7. The system of maternity leave, both in terms of pay and length, should be implemented equally for both public and private sector employees;
8. In the case of women employed in hard, harmful, or hazardous work, for whom it is impossible to take other specific jobs in case of pregnancy, a special assistance package should be provided within the social protection system;
9. The issue related to remunerating the maternity leave should be resolved within the framework of the reform of the unified social system, as a result of which remuneration during the maternity leave and other material benefits will be covered by the state through unified social programs and/or funds;
10. The maternity pay should ensure that a woman can maintain proper health conditions for herself and as well as for her child and create an adequate standard of living;
11. The ILO Social Security (Minimum Standards) Convention, 1952 (No. 102) should be used to guide the reform of the social protection system, with the following areas to be considered as a priority in order to promote family well-being:
    - Child and family benefits;
    - Pregnancy benefits;
    - Sickness benefits;
    - Short-term and long-term unemployment benefits;
    - Benefits related to occupational injuries;
    - Incapacity benefit;
    - Benefit related to the death of the breadwinner.

6. Minimum wage

1. A legislative framework for minimum wage fixing in line with international labour standards should be developed;
2. The amount of the minimum wage should be determined with the full involvement of the Tripartite Social Partnership Commission;

3. When calculating the minimum wage, both consumer prices and the subsistence minimum, as well as the average annual monthly income should be taken into account. In the event of a change in these variables, there must be an effective tool for permuting the minimum wage amount;
4. The amount of the minimum wage should be periodically revised taking into account the economic situation and the growth of consumer prices, and it should be gradually increased from 30% to 60% of the average monthly wage;
5. Effective enforcement of the minimum wage mechanism should be overseen by the Labour Inspection Service;
6. Emphasis should be placed on the sectoral work of the Tripartite Social Partnership Commission, which shall set a minimum sectoral remuneration threshold;
7. Before the initiation of the legislative regulation on the minimum wage, the state must determine the amount of the mandatory minimum wage for those employed in projects implemented under the public procurement framework;
8. Since, according to employers, legislative regulation of the minimum wage contains risks such as job losses and growth in the informal sector, it is necessary to conduct a Regulatory Impact Assessment (RIA) study to identify socio-economic benefits as well as associated risks.

7. Termination of the employment contract

Remove Article 47, paragraph 1, subparagraph "N" of the Labour Code, which stipulates the termination of an employment contract on the basis of "other objective circumstances".

8. Occupational safety and health

1. Elaborate and issue all the technical regulations provided by the Organic Law of Georgia on Labour Safety;
2. Safety regulations should be developed for all types of activities. For hard, harmful, and hazardous as well as less risky operations, the focus should be on seemingly invisible threats such as psychosocial aspects;
3. Before the initiation of any reform of the social protection system, it is pertinent to develop the standards of the accident insurance package for hard, harmful, and hazardous work, in line with the Organic Law on Labour Safety of Georgia, to eliminate the existing harmful practices;
4. Both the new technical regulations and the existing norms should be updated with the participation of specialists in the field, to ensure that these norms are implemented more effectively and that they are adapted to the real environment;
5. The Labour Inspections Service should systematically and proactively inform employers about the requirements of the current regulations, as well as the adoption of new regulations and norms, for which the rs.ge platform of the Revenue Service could be used;

6. Within the framework of the state procurement, special attention should be paid to the observance of labour safety norms by the companies participating in the tender throughout the course of the tender procedures and by ensuring rigorous supervision over the observance of labour safety norms and labour rights by the winning company;
7. Create a registry of companies, where enterprises shall be categorized according to their degree of the protection of labour rights and labour safety norms and/or violations. In the public procurement framework, preference should be given to companies with a positive rating (should be reflected in public procurement rules);
8. In higher and vocational schools, in all areas related to professions involving hard, harmful, and hazardous work, a special study course should be prepared and added as a compulsory subject in curricula and study programs;
9. The Ministry of Labour, in cooperation with the Ministry of Education and other relevant agencies, in collaboration with international partners, should develop a medium- and long-term strategy for the gradual training, retraining, and certification of all employees in a hard, harmful, and hazardous line of work.

9. Workplace information and consultation, labour disputes, mediation

1. The Ministry of Labour, in cooperation with the social partners, should carry out the administrative reform of the mediation service and provide the necessary human and material-technical resources;
2. The number of mediators should be increased and at the same time the staff units of full-time and part-time mediators should be created, to the extent necessary to ensure that the mediation service operates smoothly. The mediators should be provided with continued professional training;
3. The Ministry of Labour should ensure that a mediator with relevant experience and qualifications is appointed in each case; When selecting a mediator, the Ministry of Labour should consider the views of the mediation parties on the candidacies of mediators;
4. The Ministry of Labour, in consultation with the Tripartite Social Partnership Commission, should develop a Code of Ethics for Mediation;
5. The legislature should ensure that appropriate measures are taken within the framework of judicial reform to ensure that labour disputes in courts are considered within a short period of time.
6. The state, in cooperation with the social partners, should inform employees and employers about the provision of information and consultations at the workplace, as well as about the essence and the importance of new regulations on the mediation mechanism;
7. To exchange information in the workplace, to refine the consultation mechanism, and to bring it closer to European standards, the legislation should be further re-

vised, in consultation with the social partners, and the existing norms should be gradually developed in line with the so-called “work councils” model.

10. Tripartite Social Partnership Commission

1. Include in relevant provisions of the Labour Code the concept of the “most representative” employers and workers organizations, both from a numerical and a sectoral and territorial diversity point of view;
2. Due to the complexity of the field of labour rights and occupational safety, as well as the sectoral and regional peculiarities of issues in this field, regional and thematic/ sectoral formats / working groups of the Tripartite Social Partnership Commission should be established, the agenda of which will be more specific to the regional and sectoral particularities, including concluding collective labour agreements within the sector; setting the sectoral minimum wage; development of sectoral regulations and technical protocols, etc. In this respect, linkages should be ensured with territorial tripartite commissions where they exist, such as the Tripartite Social Partnership Commission in the autonomous republic of Adjara, or that may be stablished in other regions in the future.

11. Enforcement

1. In order to successfully execute the strategic compliance approach, the Labour Inspection Service, in collaboration with social partners and other stakeholders, should:
   - Develop a long-term development strategy and action plan for the Labour Inspection Service based on local needs and experiences as well as international best practices;
   - Develop a long-term strategic communication plan for the Labour Inspection Service to inform the public effectively and extensively about labour rights and occupational safety;
   - Conduct a public awareness campaign to educate companies and employees on labour rights, workplace safety standards, new rules, and other legal requirements;
   - Use the rs.ge platform and introduce a mandatory information sharing system for systematic information provision to employers;
   - Ensure the creation of an appropriate structural unit for information provision-consulting activities. Based on the analysis of questions and complaints, develop relevant recommendations and guidelines for employers and employees;
2. It is advisable that, in parallel with the relevant state structures, representatives of the civil sector monitor the activities of the Labour Inspection Service and, based on the analysis, develop recommendations for further revision of the activities of Labour Inspection Service.

12. Work in the informal economy

1. The Government of Georgia should develop a long-term strategy to ensure the transition from the informal to the formal economy. In this respect, the government should establish a special commission, including employers and workers' organizations, organizations that represent informal economy workers and employers, other civil society organizations, the ILO and other relevant UN agencies, and International Financial Institutions. This commission should develop a road map for Georgia's transition to the formal economy considering all relevant measures that may be relevant, in this respect, including taxation, the regulatory framework for small and medium enterprises, social security, education and vocational training, and labour rights;
2. The Labour Inspection Service, based on the ILO Employment Relationship No. 198 Recommendation and international experience, should develop principles for distinguishing labour relations from other forms of employment, to be able to determine the employment status and rights/responsibilities of employees in non-standard/informal jobs.

13. Ratification of key ILO instruments

Georgia should ratify the following ILO instruments:

- Protocol of 2014 to the Forced Labour Convention;
- Labour Inspection Convention, 1947 (No. 81);
- Labour Inspection (Agriculture) Convention, 1969 (No. 129);
- Social Security (Minimum Standards) Convention, 1952 (No. 102);
- Occupational Safety and Health Convention, 1981 (No. 155);
- Maternity Protection Convention, 2000 (No. 183);
- Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187);
- Domestic Workers Convention, 2011 (No. 189);
- Violence and Harassment Convention, 2019 (No. 190).

Annex

The list of organizations interviewed

1. Georgian Young Lawyers Association
2. Social Justice Center
3. Human Rights Watch
4. UN Women
5. Georgian Institute of Public Affairs (GIPA)
6. Georgian Business Association
7. Georgian Employers' Association
8. AMCHAM - American Chamber of Commerce
9. Infrastructure Construction Companies Association
10. Association of HR Professionals
11. Georgian Farmers' Association
12. Parliament of Georgia
13. UNDP, Human Rights, Gender Equality and Social Inclusion Program
14. Office of the Public Defender
15. Center for International Solidarity
16. Ministry of IDPs from the Occupied Territories, Labour, Health and Social Affairs of Georgia
17. Labour Inspection Service (4 interviews)
18. Trade Union of Health and Services - Solidarity Network, Workers' Center
19. Trade Union of Culture and Media - Guild
20. Georgian Trade Unions Confederation

Bibliography

Human Rights Education and Monitoring Center, 2020. Notwithstanding positive changes, still there are problems in legislation. Available at: https://socialjustice.org.ge/ka/products/emc-pozitiuri-tsvlile-bebis-miukhedavad-shromis-kanonmdeblobashi-problemebi-rcheba [Last access: 10.11.21]

Human Rights Education and Monitoring Center, 2017. Right to Maternal, Paternal and Parental Leave in the Light of Equality: A Study of National and International Practice. Available at: https://socialjustice.org.ge/ka/products/kvleva-dedobis-mamobis-da-mshoblis-shvebulebis-ufleba-tanastsorobis-shukze [Last access: 10.11.21]

Association of Young Businessmen, 2020. Review of changes to be made to the Labour Code of Georgia and the Law on Labour Inspection, and Assessment of Expected Results. Available at: https://www.aba.com.ge/%E1%83%A1%E1%83%90%E1%83%A5%E1%83%90%E1%83%A0%E1%83%97%E1%83%95%E1%83%94%E1%83%9A%E1%83%9D%E1%83%A1-%E1%83%A8%E1%83%A0%E1%83%9D%E1%83%9B%E1%83-%98%E1%83%A1-%E1%83%99%E1%83%9D%E1%83%93%E1%83%94%E1%83%A5/ [Last access: 10.11.21]

Young Socialists, 2019. Study of Internship Needs. Available at: http://library.fes.de/pdf-files/bueros/georgien/16011.pdf [Last access: 10.11.21]

Babych I., Mzhavanadze G., Keshelava D., 2021. Regulatory Impact Assessment of C183 – Maternity Protection Convention. UN Women. Unwomen.org. Available at: https://georgia.unwomen.org/ka/digital-library/publications/2021/05/regulatory-impact-assessment-of-ilo-c183---maternity-protection-convention [Last access: 10.11.21]

Beltadze P. 2020. Social Dialogue in Georgia. Friedrich Ebert Foundation, Tbilisi. Fes.de. Available at: http://library.fes.de/pdf-files/bueros/georgien/16267.pdf [Last access: 10.11.21]

Business Media Group, 2019. Inspection of an organization any time is an excessive right – GCCI on Amendments to the Labour Code. Bm.ge. Available at: https://bm.ge/ka/article/nebismier-dros-organizaciis-shemowmeba-gadacharbebuli-uflebaa---gcci-shromis-kodeqsshi-cvlilebebze-/56400 [Last access: 10.11.21]

Business Media Group, 2018. 2018. BAG is against the draft law on Labour Safety with its current form. Available at: https://bm.ge/ka/article/bag-shromis-usafrtxoebis-shesaxeb-kanonproeqtis-arsebuli-formit-migebas-ewinaagmdegeba/27973 [Last access: 10.11.21]

UN Women, 2020. The Gender Pay Gap and Gender Inequality in Labor Market in Georgia, Available at: https://www2.unwomen.org/-/media/field%20office%20georgia/attachments/publications/2020/gender%20pay%20gap%20georgia%20geo.pdf?la=ka&vs=4255 [Last access: 10.11.21]

Gvritishvili E., 2020. Fragmented Labour Inspection – Labour Rights Left without Oversight. Human Rights Education and Monitoring Center. Available at: https://socialjustice.org.ge/ka/products/shromis-fragmentuli-inspektireba-zedamkhedvelobis-gareshe-darchenili-shromiti-uflebebi [Last access: 10.11.21]

Gongadze T., Jokhadze L. Egriselashvili L. Dolaberidze N., 2019. The Study of Working Conditions of Fast-Food Workers. Georgian Professional Unions Confederation. Available at: http://gtuc.ge/wp-content/up-

loads/2019/11/kvleva-new.pdf [Last access: 10.11.21]

Employer Association, 2019. Employers Association: Toughening the Law on Occupational Safety will negatively affect regions. Available at: https://bm.ge/ka/article/damsaqmebelta-asociacia-shromis-usafrtxoebis-kanonis-gamkacreba-mdzimed-aisaxeba-regionebze-/37185 [Last access: 10.11.21]

Darsavelidze D. 2019. Impact of Possible Growth of Minimum Wage in Georgia. Friedrich Ebert Foundation. Available at: http://library.fes.de/pdf-files/bueros/georgien/14971.pdf [Last access: 10.11.21]

Tordinava T., Özbakkaloglu *E*., 2013. Social Dialogue in Georgia and the EU (2009-2012). EU Integration Issues – Visegrad Countries and South Caucasus. Available at: https://dspace.nplg.gov.ge/bitstream/1234/26460/1/EvroIntegraciebis_Sakitxebi.pdf [Last access: 10.11.21]

Caucasus Research Resource Center, 2019. Survey on Political and Social Issues. Osgf.ge. Available at:

https://osgf.ge/wp-content/uploads/2019/04/CRRC-research.pdf [Last access: 10.11.21]

Karanadze R., 2021. COVID-19 Pandemic and Price of Nurses Labour. Solidarity Network. Solnet.ge. Available at: https://solnet.ge/publikaciebi/ [Last access: 10.11.21]

Kereselidze T., Analysis of Georgian Labour Legislation – Employment Discrimination based on Sex and its Legal Consequences, Georgian Young Lawyers Association, Tbilisi, 2014.

Lessard J., 2018. Assessing and Improving the Labour Mediation Machinery, Mission Report, ILO.

Liparteliani, R., Kardava, E. 2018. Harmonization of Georgian National Legislation with EU on Women Labour Rights Directives. Friedrich Ebert Foundation, Tbilisi. Fes.de. Available at: http://library.fes.de/pdf-files/bueros/georgien/14997.pdf [Last access: 10.11.21]

Makalatia I., 2019. What results the introduction of minimum pay in Georgia may bring. Bm.ge. Available at: https://bm.ge/ka/article/ra-shedegebi-sheidzlebamoitanos-minimaluri-xelfasis-shemogebam-saqartveloshi/43346 [Last access: 10.11.21]

Markozashvili N., *Charkviani N*., *Antadze G*.,2021, Labour Rights in Georgia, People in Need, Tbilisi.

Muskhelishvili M., 2011. Social Dialogue in Georgia. Friedrich Ebert Foundation, Tbilisi.

Pigniatti N., Chitanava M., Lobzhanidze M., Tsulukidze M., 2021. Regulatory Impact Assessment of C189 – Domestic Workers Convention. Unwomen.org. Available at: https://georgia.unwomen.org/ka/digital-library/publications/2021/05/regulatory-impact-assessment-of-ilo-c189-domestic-workers-convention [Last access: 10.11.21]

New Association of Trade Unions, 2021, Arguments Supporting Membership of New Association of Trade Unions in Triprartite Social Partnership Commission. Available at: https://shroma.ge/wp-content/uploads/2022/01/Tripartism-and-New-Conf_Final_2021-2.pdf [Last access: 10.11.21]

Sartania K., 2021. Behavioral Therapists Labour and Remuneration. Solidarity Network. Solnet.ge. Available at: https://solnet.ge/publikaciebi/ [Last access: 10.11.21]

Georgian Young Lawyers Association, 2020. GYLA submitted its opinion on the package of amendments to the Labour Code to the Parliament of Georgia. Available at: https://gyla.ge/ge/post/saia-m-saqartve-los-parlaments-shromis-kodeqsshi-cvlilebebis-pakettan-dakavshirebit-mosazrebebi-tsarudgina#sthash.wVN5CQHh.DIJls44A.dpbs [Last access: 10.11.21]

Business Association of Georgia, 2019. Amendments to the Labour Code Will Have an Irreparable Negative Impact. Available at: https://bag.ge/ge/advocacy/ongoing-topics?n=1380&i=3&m=&y= [Last access: 10.11.21]

Business Ombudsmen of Georgia, 2020. Comments and proposals of the Business Ombudsmen's Office of Georgia to the draft amendments to the Organic Law of Georgia "Labour Code of Georgia". Available at: https://business n.ge/ka/news/sakartvelos-biznesombudsmenis-aparatis-shenishvnebi-da-tsi-nadadebebi-sakartvelos-organuli-kanonis-sakartvelos-shromis-kodeksi-proekttan-dakavshirebit [Last access: 10.11.21]

Georgian Trade Unions Confederation, 2021. Individual Employment Relations (Information Newsletter). Gtuc.ge. Available at: http://gtuc.ge/wp-content/uploads/2021/06/%E1%83%98%E1%83%9C%E1%83%93.-%E1%83%A8%E1%83%A0.-%E1%83%AE%E1%83%94%E1%83%9A%E1%83%A8.-_-%E1%83%A1%E1%83%90%E1%83%98%E1%83%9C%E1%83%A4.-%E1%83%91%E1%83%98%E1%83%A3%E1%83%9A%E1%83%94%E1%83%A2%E1%83%94%E1%83%9C%E1%83%98.pdf [Last access: 10.11.21]

Georgian Trade Unions Confederation, 2020. Amendments were made to the Labour Code. Available at: http://gtuc.ge/shromis-kodeqsshi-cvlilebebi-shevida/ [Last access: 10.11.21]

Georgian Trade Unions Confederation, 2017. The Government has not taken effective steps towards the creation of labour inspection. Available at: https://gtuc.ge/%E1%83%AE%E1%83%94%E1%83%9A%E1%83%98%E1%83%A1%E1%83%A3%E1%83%A4%E1%83%9A%E1%83%94%E1%83%91%E1%83%90%E1%83%A1-%E1%83%A8%E1%83%A0%E1%83%9D%E1%83%9B%E1%83%98%E1%83%A1-%E1%83%98%E1%83%9C%E1%83%A1%E1%83%9E/ [Last access: 10.11.21]

National Statistics Office of Georgia, 2020. Woman and Man in Georgia. Tbilisi. Available at: https://www.geostat.ge/ka/single-news/2165/kali-da-katsi-sakartveloshi-2020 [Last access: 10.11.21]

Open Society Foundation and Others, 2020. Georgia Fair Labor Platform: Labor inspection reform delayed. Available at: https://shroma.ge/en/news-en/georgia-fair-labor-platform-labor-inspection-reform-de-layed/ [Last access: 10.11.21].

Public Defender, 2021. Recommendation on Establishing Direct Discrimination in Labour Relations. Available at: https://www.ombudsman.ge/res/docs/2021061423015589955.pdf [Last access: 10.11.21]

Public Defender, 2020. The Situation in Human Rights and Freedoms in Georgia. Available at: https://www.ombudsman.ge/res/docs/2021040110573948397.pdf [Last access: 10.11.21]

Public Defender, 2019. The Situation in Human Rights and Freedoms in Georgia. Available at: https://www.ombudsman.ge/res/docs/2020040215365449134.pdf [Last access: 10.11.21]

Public Defender, 2018. The Situation in Human Rights and Freedoms in Georgia. Available at: https://www.ombudsman.ge/res/docs/2019042620571319466.pdf [Last access: 10.11.21]

Public Defender, 2017. The Situation in Human Rights and Freedoms in Georgia. Available at: https://www.ombudsman.ge/geo/saparlamento-angarishebi [Last access: 10.11.21]

Public Defender, 2015. The Situation in Human Rights and Freedoms in Georgia. Available at: https://drive.google.com/file/d/1_VN-AwGDBAc-ocqskoTm0OSPXcrb9Cup/view [Last access: 10.11.21]

Social Justice Center, 2021. Legal Assessment of Agreements of Food Delivery Service in Georgia. Available at: https://socialjustice.org.ge/ka/products/sakartveloshi-mokmedi-mitanis-servisis-kompaniebis-khelshekrulebebis-samartlebrivi-shefaseba [Last access: 10.11.21]

Tkeshelashvili Sh., 2019. Price of Minimum Pay. Forbes.ge. Available at: https://forbes.ge/news/7240/minimalurixelfasis-fasi [Last access: 10.11.21]

Ghvinianidze, L., Kashakashvili, N. 2018. Equality in Employment Relations (Georgian Law in the Light of the EU Directives). Human Rights Education and Monitoring Center. Socialjustice.org.ge. Available at: https://socialjustice.org.ge/ka/products/tanastsoroba-shromit-urtiertobebshi [Last access: 10.11.21]

ILO Approach to Strategic Compliance Planning for Labour Inspectorates, Brief 2, December, https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication/wcms_606471.pdf

Shvelidze Z., 2020. Court Case-Law on Labour Disputes (Case Reports). German Corporation for International Cooperation. Tbilisi. Available at: http://www.library.court.ge/upload/2020giz-ge-shromit_davebze_praqtika.pdf [Last access: 10.11.21]

Shudra T., 2014. Part-time Work. Labour Law (Collection of Article) (ed. Chachava, Zaalishvili). Meridiani Publishers, Tbilisi.

Tsintsabadze A., Keburia T., 2019. Legal and Social Research. Human Rights Education and Monitoring Center. Available at: https://socialjustice.org.ge/ka/products/shromiti-mediatsiis-samartlebrivi-da-sotsiologiuri-kvleva [Last access: 10.11.21]

Tchanturidze G., 2019. Labour Rights Enforcement in Textile and Trade Industries. Georgian Trade Unions Confederation. Available at: http://gtuc.ge/%e1%83%a9%e1%83%95%e1%83%94%e1%83%9c%e1%83%a1-%e1%83%a8%e1%83%94%e1%83%a1%e1%83%90%e1%83%ae%e1%83%94%e1%83%91/publications/ [Last access: 10.11.21]

Tchanturidze G., et. al, Assessment of Minimum Wage Policy Compliance in the Perspective of Georgian Social-Economic Development and International Obligations. Georgian Trade Unions Confederation and Public Defender's Office, 2016. Available at: http://gtuc.ge/wp-content/uploads/2018/08/მინიმალური-ხელფასის.pdf [Last access: 10.11.21].

Chubabria T., Gvishiani L., 2017. Assessment of the Labour Inspection Mechanism and Condition of Labour Rights in Georgia. Human Rights Education and Monitoring Center. Tbilisi.

on.ge, 2018. Business ombudsman about the Law on Labour Safety: big amount of sanctions shall result big burden for business, Available at: https://on.ge/story/18417-ბიზნესომბუდსმენი-შრომის-უსაფრთხოების-კანონზე-სანქციების-ოდენობა-დიდ-ტვირთს-არ-უნდა-აკისრებდეს-ბიზნესს [Last access: 10.11.21].

2018 Report of the Labour Conditions Inspection Department of the Ministry of Internally Displaced Persons from Occupied Territories, Labour, Health and Social Affairs of Georgia, Available at: https://www.moh.gov.ge/uploads/files/2019/Failebi/27.06.2019-13.pdf [Last access: 10.11.21].

ACT, 2017. Human Rights and Justice in Georgia: Public Perceptions and Awareness. Un.org. Available at: https://georgia.un.org/sites/default/files/2020-05/UNDP_GE_DG_Human_Rights_Survey_2017_eng.pdf [Last access: 10.11.21]

Bagnardi F., 2015. The Changing Pattern of Social Dialogue in Europe and the Influence of ILO and EU Georgian Tripartism. Caucasus Social Science Review vol. 2 (2015).

Coalition for Equality, 2020. Report of the Coalition for Equality and other NGOs to the Pre-Sessional Working Group of the United Nations Committee on the Elimination of Discrimination against Women (CEDAW). Available at: http://equalitycoalition.ge/files/shares/Coalition_for_Equality_-_CEDAW_Report_-_June_16__2021.pdf [Last access: 10.11.21]

De Stefano V., 2016. The Rise of The "Just-In-Time Workforce": On-demand work, Crowdwork, and Labour Protection in the "gig-economy". Geneva, International Labour Office.

Direct Request (CEACR) – adopted 2014, published 104th ILC session (2015), https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3191791,102639,Georgia,2014 [Last access: 10.11.21]

Direct Request (CEACR) - adopted 2017, published 107th ILC session (2018) https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3344016,102639,Georgia,2017 [Last access: 10.11.21]

Direct Request (CEACR) – adopted 2020, published 109th ILC session (2021), https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4057599,102639,Georgia,2020 [Last access: 10.11.21]

Elbakidze N., Nadareishvili T., 2016. Social Partnership without Governmental Support. Open Society Georgia Foundation. Available at: http://www.osgf.ge/files/2016/EU%20publication/Angarishi_A4_Labour_ENG_Cor_(1).pdf [Last access: 10.11.21]

European Committee of Social Rights, 2018. Conclusions 2018: Georgia. Available at: https://mycloud.coe.int/s/MN5DMbSANnFZkWM [Last access: 10.11.21]

Freedom of Association, Compilation of decisions of the Committee on Freedom of Association, Sixth edition (2018), International Labour Office, Geneva, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_632659.pdf [Last access: 10.11.21]

General Survey concerning the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) and the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152), International Labour Conference 88th Session 2000 Report III (Part 1B), Third item on the agenda Information and reports on the application of Conventions and Recommendations, https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/tripartite-consultation/WCMS_213639/lang--en/index.htm

General Survey on the Fundamental Conventions Concerning Rights at Work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, "Giving Globalization a Human Face", International Labour Conference, 101st Session, 2012, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_174846.pdf

General Survey of the reports on the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135), „Minimum wage systems", International Labour Conference, 103rd Session, 2014. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_235287.pdf

General Survey concerning working-time instruments, "Ensuring decent working time for the future", International Labour Conference, 107th Session, 2018,

https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_618485.pdf

General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202), „Universal social protection for human dignity, social justice and sustainable development", International Labour Conference, 108th Session, 2019, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_673680.pdf

Ghvinianidze, L. 2018. Deficiencies of the Current Labor Safety Reform in Georgia. Open Society Georgia Foundation. Osgf.ge. Available at: https://osgf.ge/wp-content/uploads/2018/03/Labour_ENG.pdf [Last access: 10.11.21]

Human Rights Watch, 2019. No Year without Deaths. A Decade of Deregulation Puts Georgian Miners at Risk. Hrw.org. Available at: https://www.hrw.org/report/2019/08/22/no-year-without-deaths/decade-deregulation-puts-georgian-miners-risk [Last access: 10.11.21]

Individual Case (CAS) – Discussion: 2018, Publication: 107th ILC session (2018), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3953286 [Last access: 10.11.21]

International Labour Organization. 2020. Georgia's Parliament adopts historic labour law reform package. Ilo.org. Available at: https://www.ilo.org/moscow/news/WCMS_758336/lang--en/index.htm [Last access: 10.11.21]

Medina L., Schneider F., 2018. Shadow Economies Around the World: What Did We Learn Over the Last 20 Years? IMF Working Paper WP/18/17. International Monetary Fund. Available at: https://www.imf.org/en/Publications/WP/Issues/2018/01/25/Shadow-Economies-Around-the-World-What-Did-We-Learn-Over-the-Last-20-Years-45583 [Last access: 10.11.21]

Observation (CEACR) – adopted 2020, published 109th ILC session (2021), https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4057609,102639,Georgia,2020 [Last access: 10.11.21]

Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 103rd Session, 2014, 294-295.

Sichinava D., *Atchaidze M.*, 2020. Minimum Wage in Georgia. Gauging public opinion. Friedrich Ebert Stiftung, Tbilisi. http://library.fes.de/pdf-files/bueros/georgien/16226.pdf [Last access: 10.11.21]

Tchanturidze G., 2018. Abolition of Labour Inspection in Georgia: Consequences for Workers and the Economy. Friedrich Ebert Stiftung, Tbilisi. Available at: https://library.fes.de/pdf-files/bueros/georgien/14675.pdf [Last access: 10.11.21]

Toman J., Palik M., Sudder S., Proos M., Balenovic K., Initial Assessment of the Amendments of the Labour Code of Georgia. Twinning Project "Improving the standards of employment conditions/relations as well as health and safety at work in Georgia, Tbilisi, 2020.

United Nations Working Group on Business and Human Rights. 2019. A Statement at the end of visit to Georgia by the United Nations Working Group on Business and Human Rights. Available at: https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24474&LangID=E [Last access: 10.11.21]

UN Women. 2018. Women's Economic Inactivity and Engagement in the Informal Sector in Georgia. Tbilisi. Available at: https://georgia.unwomen.org/en/digital-library/publications/2018/12/womens-economic-inactivity-and-engagement-in-the-informal-sector-in-georgia [Last access: 10.11.21]

U.S. Department of State, 2019. 2018 Country Reports on Human Rights Practices – Georgia. Available at: https://www.state.gov/wp-content/uploads/2020/03/GEORGIA-2019-HUMAN-RIGHTS-REPORT.pdf [Last access: 10.11.21]

U.S. Department of State, 2017. 2016 Country Reports on Human Rights Practices – Georgia. Refworld.org. Available at: https://www.refworld.org/publisher,USDOS,,GEO,532845,0.html [Last access: 10.11.21]

U.S. Department of State, 2013. 2012 Country Reports on Human Rights Practices – Georgia. Refworld.org Available at: https://www.refworld.org/publisher,USDOS,,GEO,53284adb5,0.html [Last access: 10.11.21]

U.S. Department of State. 2012. 2011 Country Reports on Human Rights Practices – Georgia. Refowrld.org. Available at: https://www.refworld.org/docid/517e6e354.html [Last access: 10.11.21]

World Bank, 2021. Country Gender Assessment Georgia. Available at: https://documents1.worldbank.org/curated/en/407151616738297662/pdf/Georgia-Country-Gender-Assessment.pdf [Last access: 10.11.21]

https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0682 [last accessed: 10.11.21]

https://www.who.int/news-room/fact-sheets/detail/infant-and-young-child-feeding#:~:text=WHO%20and%20UNICEF%20recommend%3A%20early%20initiation%20of%20breastfeeding,up%20to%202%20years%20of%20age%20or%20beyond [last accessed: 10.11.21]

https://shroma.ge/monitor/dashboard/?lang=ka [last accessed: 10.11.21]

http://www.economy.ge/?page=economy&s=74 [last accessed: 10.11.21]