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საქართველოსთვის
The European Union for Georgia



აღმავის უფლებების ადვოკატირების
და დემოკრატიის ფონდი
HUMAN RIGHTS ADVOCACY AND DEMOCRACY FUND

ASSOCIATION AGENDA BETWEEN THE EU AND GEORGIA AND DRAFT ACTION PLAN 2017 IMPLEMENTATION REPORT — LABOUR STANDARDS





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Association Agenda between the EU and Georgia and Draft Action Plan 2017 Implementation Report – Labour Standards

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Definition of Terms:

Association Agreement – association agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part.¹

Association Agenda – Association Agenda between the European Union and Georgia 2017-2020.²

Draft action plan of 2017 – national draft action plan of 2017 on implementation of association agreement between Georgia, of the one part, and the European Union and the European Atomic Energy Community and their Member States, of the other part the Association Agenda between Georgia and the European Union.³

ILO - International Labour Organization.

Labour Code – Organic Law of Georgia - Labour Code of Georgia.⁴

1 Available at: <https://matsne.gov.ge/ka/document/view/2496959>

2 Available at: <http://www.parliament.ge/uploads/other/78/78447.pdf>

3 Available at: <http://www.eu-nato.gov.ge/ge/eu/association-agreement>

4 Available at: <https://matsne.gov.ge/ka/document/view/1155567#!>

Preface

This document covers assessment of the implementation of obligations undertaken under Association Agreement between the EU and Georgia in the fields of employment, professional unions, labour, social policy and equal opportunities covering period from 01 January to December 2017. The research also partially covers first quarter of 2018.

The document aims at identifying gaps, on one hand, and attempting to improve the shortcomings by developing relevant recommendations, on the other. The research evaluates dynamics of the implementation of obligations undertaken by Georgia in the fields of employment, professional unions, labour, social policy and equal opportunities, in compliance with the 2017–2020 agenda and national draft action plan of 2017. Taking into account the existing reality and the priorities defined in 2017–2020 agenda of the implementation of the Association between the EU and Georgia and national draft action plan of 2017 of the agenda implementation, topics highlighted in the research are:

- Labour legislation;
- Occupational Safety and Healthcare;
- Development of social partnership opportunities;
- Establishment of a mechanism of labour disputes and its activities.

The project team hopes that the report will support Georgian Parliament and Government, Social Partnership Tripartite Commission and other stakeholder in the working process on the topics mentioned.

Introduction

Since the moment of signing the agreement in 2014, country has implemented many positive changes. Among them, it is worth to mention amendments to the Labour Code in June 2013, resulting into establishment of Tripartite Commission for Social Partnership⁵ and improvement of the standards related to the freedom of association;⁶ as well as Georgian Law on the Labour Safety.⁷ However, unfortunately, the changes mentioned are not enough and several topics still need to be regulated, solving of which is necessary not only in terms of compliance with European standards, but is utmost important for the protection of employees' rights, literally. For example, in spite of adoption of the Law on Labour Safety, efficiency of labour standards monitoring mechanism is still doubtful. Also, despite several recommendations, no relevant amendments have been made to the Labour Code or the relevant norms refined.

The association agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part obliges the country to harmonize its legislation with EU directives and ILO documents. Annex XXX⁸ of the agreement includes the list of directives related to employment, social policy and equal opportunities, to which Georgia should step by step bring its legislation in line with.

However, there is still an impression that the state tries to avoid or manoeuvre between the obligations and activities planned. Unfortunately, activities that are carried out do not respond to international responsibilities: the quality of social partnership dialogue has not improved, labour inspection mechanism is inefficient and legal amendments are not enough; moreover, role of mediation in the labour disputes is low.

Georgia and the EU convergence process unconditionally implies complete fulfilment of the obligations taken under the Association Agreement and relevant agendas and action plans. On the stage given, it is important to fulfil the responsibilities taken under the 2017-2020 implementation agenda of the Association Agreement relevantly and in a timely manner. For better management of the process, it is important to study a real picture, analyse and identify shortcomings and plan and implement the ways or eradicating these shortcomings.

5 Labour Code of Georgia, Chapter XIII - Social Partnership Tripartite Commission, available at: <https://matsne.gov.ge/ka/document/view/1155567>

6 Labour Code of Georgia, Chapter IX¹ - Freedom of association, available at: <https://matsne.gov.ge/ka/document/view/1155567>

7 Law of Georgia on Labour Safety, adopted on 7 March, available at: <https://matsne.gov.ge/ka/document/view/4103880>

8 Annex XXX, available at: <http://www.mfa.gov.ge/ევროპული-და-ევრო-ატლანტიკური-ინტეგრაცია/Association-Agreement.aspx>

Research Methodology

In order to evaluate the implementation of the obligations related to the employment, professional unions, labour, social policy and equal opportunities, taken under the Association Agreement between Georgia and the EU, as well as monitoring implementation of the obligations taken under the draft action plan of the implementation of 2017 agenda, relevant legislation and bylaw normative acts were studied, information retrieved from various state agencies within their competence, interviews recorded with the government representatives as well as independent experts. Different thematic researches and reports were also extracted from open Internet resources.

Obtained information was studied and analysed and relevant recommendations prepared on their basis, with the aim of improving existing situation in the country.

Obligations under the Association Agreement Undertaken by Georgia

Association Agreement is a legally binding document, which includes all aspects of political, social and economic relations of the country and is sort of a guideline for the signing country for gradual convergence to EU standards. By signing Association Agreement, the countries aim to support political association of the parties and process of political integration, enhance cooperation in different fields, experience sharing, strengthening democracy in signing country and its political, economic and institutional stability.⁹ The Agreement has 34 thematic annexes, combining about 300 directives, where the terms of legislative or institutional reforms the state shall undertake is detailed.

Georgia signed Association Agreement in 2014, taking responsibility to establish European values – enhance democracy, measures to protect human rights and fundamental freedoms and rule of law and for this purpose, carry out legislative and institutional changes. When defining its own internal or foreign policy, it should be led by European values and promote their establishment.

Along with many other topics, the Association Agreement also includes supporting employment, social policy and equal opportunities and enhancement of the cooperation,¹⁰ as well as reflecting directives of annex XXX¹¹ of the Association agreement and ILO¹² standards¹³ into Georgian legislation.

In this regard, Georgia is obliged to gradually converge its legislation to European standards, in order to create relevant labour conditions. For this purpose, it is necessary to elaborate relevant labour policy, labour safety norms and anti-discriminative and social protection mechanisms.¹⁴ It is the State obligation to ensure promotion of the social dialogue, development of mediation and creation of efficient labour inspection mechanism, which, apart from legislative changes, requires mobilization of additional resources and institutional enhancement.

9 Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part.

10 Ibid; Title 6, chapter 14, Employment, Social Policy and Equal Opportunities.

11 Annex XXX, Available at: <http://www.mfa.gov.ge/ევროპული-და-ევრო-ატლანტიკური-ინტეგრაცია/Association-Agreement.aspx>

12 Georgia is ILO member state since 1993 http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11110:0::NO::P11110_ISO_CODE:GEO.

13 Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part; Title 4, Chapter 13, Trade and Sustainable Development.

14 Guidelines on the Association Agreement between the EU and Georgia, p.16, Available at: <http://www.parliament.ge/uploads/other/22/22585.pdf>

Article 348 of the Association Agreement calls on the parties to contribute to the promotion of more and better jobs, poverty reduction, enhanced social cohesion, sustainable development and improved quality of life. With this aim, they will ensure to strengthen their dialogue and cooperation on promoting the Decent Work Agenda, employment policy, health and safety at work, social dialogue, social protection, social inclusion, gender equality and anti-discrimination, and corporate social responsibility.

Within the frameworks of Association Agreement, cooperation may cover a selected number of issues, the following among them: poverty reduction and the enhancement of social cohesion, employment policy, promoting active labour market measures and efficient employment services, equal opportunities and anti-discrimination, social policy, promoting health and safety at work and awareness and dialogue in the field of corporate social responsibility.¹⁵

In the context given, **Article 229 of the Association Agreement** is also noteworthy, according to which 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. Particular emphasis is made on the principles and rights enhanced in eight ILO “fundamental” conventions. In particular: the freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation. At the same time, 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.

¹⁵ Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part; Article 349.

The International Labour Organization (ILO) was founded in 1919 as part of the Treaty of Versailles. In 1946, it became a specialized agency of the United Nations. ILO sets minimum standards of core labour rights and reflects them in different conventions and recommendations. The organization mainly provides technical support in the fields of employment policy, labour administration, labour legislation and entrepreneur relations, working conditions, cooperatives, social safety, labour statistics and labour protection, migration, fight against compulsory work and human trafficking.

Information available at: <http://www.ungeorgia.ge/>

Since 1919, the International Labour Organization has maintained and developed a system of international labour standards aimed at promoting opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and dignity. In today's globalized economy, international labour standards are an essential component in the international framework for ensuring that the growth of the global economy provides benefits to all.

Rules of the Game. A brief introduction to International Labour Standards, p. 7, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_226313.pdf

According to the Association Agenda of 2017–2020, 2014–2016 Agenda was revised and priorities for the period of 2017–2020 identified. Short-term priorities were highlighted – which should be reached, or significant progress made already by the end of 2018 and medium-term priorities which should be reached, or significant progress made already by the end of 2020.¹⁶

According to the Agenda short-term priorities in the fields of the employment, social policy and equal opportunities were defined to be the following:

- Prepare for the approximation and implementation of the EU acquis in the areas of health and safety at work, labour law and working conditions, and gender equality and antidiscrimination as mentioned in the relevant annexes to the Agreement, and in particular to establish an appropriate law enforcement and supervision system in line with EU approaches (starting with the Occupational Health and Safety area) and to build capacity of social partners (e.g. training on EU health and safety legislation and standards and EU legislation and standards regarding labour law);
- Monitor the ongoing implementation of the New Service Model for public employment services;

¹⁶ Association Agenda between the EU and Georgia 2017 –2020, p. 5, available at: <http://www.parliament.ge/uploads/other/78/78447.pdf>

- Complement the legal framework necessary to establish an effective labour inspection system;
- Further improve capacities of social services and of the Ministry of Labour, Health and Social Affairs in order to strengthen the capacities of the administration in charge of developing and implementing employment and social policies respecting the equal opportunities principles.

And the following were defined as medium-term priorities:

- Roll out the newly defined public employment services with adequate capacities and in line with requirements of the European public employment services;
- Continue establishing an effective labour inspection system in line with ILO standards in order to ensure administrative and enforcement capacities in the areas of health and safety at work and labour law, and strengthen relevant judiciary bodies;
- Develop a strategic approach to employment, aiming at more and better jobs with decent working conditions, better matching of skills and jobs in the labour market and promoting active labour market measures and efficient employment services, with a particular focus on youth;
- Ensure well-functioning social dialogue through the effective functioning of the Tripartite Social Partnership Commission and capacity-building of social partners.¹⁷

In the context of comprehensive study of the issues selected for the survey, short and long-term priorities in terms of trade union rights and core labour standards are also worth mentioning.

¹⁷ Association Agenda between the EU and Georgia 2017 –2020, p. 46-47, available at: <http://www.parliament.ge/uploads/other/78/78447.pdf>

Short-term priorities were defined to be the following:

- Adopt the legal framework defining the supervision functions of the Labour Inspection system in the Occupational Health and Safety area, and remove restrictions to the powers of inspectors in existing legislation in accordance with International Labour Organisation (ILO) standards.

And the following were defined as medium-term priorities:

- Implement the Labour Code (adopted in June 2013) and bring it as well as other relevant legislation further in line with the ILO standards. Underpin the Labour Code with procedures for resolving labour disputes and developing a negotiation culture by approving a roster of mediators.
- Continue to work on establishing an effective Labour Inspection system with adequate competences and capacities for the inspections of all working conditions and labour relations according to ILO standards;
- Ensure the effective functioning of the Tripartite Social Partnership Commission and continue to improve social dialogue through cooperation with the ILO.¹⁸

In the National Draft Action Plan of 2017 of Implementation of the Association Agreement Agenda,¹⁹ the main priorities of 2017 towards the selected topics for the report were identified to be harmonization of the labour legislation with international standards, gradual convergence of Georgian legislation to EU legislation and international legal tools related to labour safety, strengthening of the Labour Conditions Monitoring Department, expansion of the action scope and development of a proper legal base for granting free access to workplace, enhancement of the social dialogue and social partnership, establishment of Regional Social Partnership Tripartite Commission, approval of the Mediator Registry, development of mediation mechanism for labour disputes.

¹⁸ Association Agenda between the EU and Georgia 2017 –2020, p. 22, available at: <http://www.parliament.ge/uploads/other/78/78447.pdf>

¹⁹ National Draft Action Plan of 2017 of Implementation of the Association Agreement Agenda is available at: <http://www.eu-nato.gov.ge/ge/eu/association-agreement>

Actions taken by the State

2017 was the first year when Georgian Government should have fulfilled three directive statements of the Annex XXX of the Association Agreement and reflected them to the state legislation. These Directives are committed to ensure no discrimination and gender equality. At the same time, it should also be mentioned that the directives set minimum standards and calls on the states to implement positive actions.

No legislative changes ensuring significant improvement of the situation were made in 2017.

The mentioned directives are:

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;¹

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;²

Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services.³

¹ Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000L0043&from=EN>

² Available at: <http://www.equalrightstrust.org/ertdocumentbank//Employment%20Framework%20Directive.pdf>

³ Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0113&from=EN>

According to the National Draft Action Plan of 2017 Georgian Government should have evaluated statements of the Georgian Labour Code, develop recommendations, discuss with social partners and, taking into account the terms of European Directives, develop a package of changes aiming at harmonization of labour legislation with international standards (sub-point 23.1). Also, support convergence of Georgian legislation to the following legal tools of labour justice, non-discrimination and gender equality fields: 1. Directive 91/533/EEC; 2. Directive 1999/70/EC; 3. Directive 97/81/EC; 4. Directive 2002/14/EC; 5. Directive 2006/54/EC; 6. Directive 2004/113/EC; 7. Directive 92/85/EEC; 8. Directive 79/7/EEC; 9. Directives 2000/43/EC and 2000/78/EC aiming at harmonization of Georgian legislation with international standards on labour justice, non-discrimination and gender equality, introduction of the principle of equal treatment of men and women with the purpose of availing goods and services, in order to converge Georgian legislation to international standards on labour justice, non-discrimination and gender equality (sub-point 197.1–2; 198.1).

Actions Taken by the State

According to information provided by the Ministry of Labour, Health and Social Affairs of Georgia,²⁰ relevant package of changes, which shall ensure reflection of Council Directive 2000/43/EC of 29 June 2000, Council Directive 2000/78/EC of 27 November 2000 and Council Directive 2004/113/EC of 13 December 2004 into legislation, was prepared and send to the Parliament for discussion in December 2017, which ***is already late and inadequate action in the process of fulfilling undertaken obligations.***

Package of legal changes covered the following Acts:

- Organic Law of Georgia Labour Code of Georgia;
- Law of Georgia on Elimination of All Forms of Discrimination;
- Law of Georgia on Public Service;
- Law of Georgia on Gender equality.

According to the same letter, changes include protection of the principle of equal rights of persons in labour and pre-contractual relations, in the field of education, social protection and healthcare. Prohibits discrimination against third party in case of giving a reference to a person. As information provided by the Ministry states, the changes provide a liability of an employer to protect the principle of equal rights of not only in labour contractual relations, but in pre-contractual as well, meaning non-discrimination during publishing of vacancy announcement and interviews; also provision and access to all kind of goods or services without gender discrimination.

According to information received from the Parliament of Georgia, as of 13 March 2018, legislative amendments initiated by the government were under discussion process in the corresponding Parliamentary Committees.²¹

On 22 December, 2017 the Parliament also adopted the Law on Labour Remuneration in Public Institutions,²² which aims to regulate the fragmented and vaguely regulated labour remuneration issues.²³

It should also be mentioned that still in 2013, before signing the Association Agreement between Georgia and the EU, amendments were made to the

20 Letter #01/15119 of 15 March 2018 of the Ministry of Labour, Health and Social Affairs of Georgia.

21 Letter #2799/2–4 of March 13, 2018 of the Parliament of Georgia.

22 Law on Labour Remuneration in Public Institutions, text available at: <https://matsne.gov.ge/ka/document/view/3971683>, last seen on June 15, 2018.

23 Letter #3657/4–7 of the European Integration Committee of the Parliament of Georgia of 5 April 2018.

Labour Code, creating platform for improvement of freedom of association standards²⁴ and creation of Social Partnership Tripartite Committee.²⁵ Duration of vacation due to pregnancy, childbirth and child care has also increased. It is complimentary, that as a result of the amendments, in case of a court dispute due to termination of the employment agreement by an employer, if the employer does not justify the termination in written, the burden of proof on the factual circumstances of the dispute shall be imposed upon the employer.

Evaluation of the measures taken towards the existing reality

Equality in Employment Relations

ILO recognizes freedom from discrimination as one of the fundamental rights of a person, essential for workers to choose their employment freely, to develop their potential to the full and to reap economic rewards on the basis of merit.

Rules of the Game. A brief introduction to International Labour Standards, p. 34, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_226313.pdf

By signing the Association Agreement, Georgia committed to respecting, promoting and realising in their law and practice the internationally recognised core labour standards, as embodied in the fundamental ILO convention,²⁶ implement annexes to the Association Agreement; The country acknowledged and declared its aspiration to the European values, which obliges him to give priority to establishing European standards in terms of employment, social policy and equal opportunities.²⁷

Unfortunately, existing legislative basis cannot ensure realization of equal opportunities for the employees or job seekers. The vague nature of existing norms, along with the stereotypical approaches in the country, leads to the existence of facts on discriminatory treatment. Most often the right of equality is restricted to women, persons with disabilities, children and representatives of different vulnerable groups (LGBT Community and religious minorities). The field where the most frequent incidents of alleged discrimina-

24 Labour Code of Georgia, Chapter XIII – Social Partnership, Tripartite Committee, available at: <https://matsne.gov.ge/ka/document/view/1155567>; last seen on June 15, 2018.

25 Labour Code of Georgia, Chapter IX¹ – Freedom of Association, available at: <https://matsne.gov.ge/ka/document/view/1155567>, last seen on June 15, 2018.

26 Association Agreement, Article 229.

27 Interview with the labour justice expert Zakaria Shvelidze, Tbilisi, 29.03.2018.

tion are precedent and labour and pre-contractual relations.²⁸ Facts of asking personal questions during the interviews, not related to the qualification of the respondent, are frequent.²⁹ Such cases contain risk of discrimination. Particularly, in case of women, when during the interview they are asked about their personal and family life. This contradicts the principle of equality and international standards.

Unfortunately, measures taken are not enough and efficient for the fulfilment of the obligations undertaken by the country. Changes submitted by the Ministry to the Parliament are still only on the stage of initiative,³⁰ however the changes offered³¹ are not enough or efficient mechanism to improve existing situation. At the same time, it is still unknown how they will be adopted or reflected in the legislation. Another concern is the practice established in the process of implementing European standards, in particular, requirements of the directives are more or less reflected in the Law of Georgia on Public Service, but they are not taken into account or integrated in the Labour Code, also dealing with existing labour relations in the private sector. The above mentioned establishes unequal approaches towards persons employed in private and public sectors.³²

In the light of non-discrimination norms already existing in various normative acts, being unable to properly provide equal conditions and opportunities, it is especially important for the state to timely refine existing legislative basis and develop efficient mechanism for the prevention, identification and responding on the cases of discriminative treatment. In order to eliminate discrimination, timely, complex and comprehensive changes – more harmonization of the legislation with international standards are necessary. This, as minimum, implies **necessity for the state to correctly assess the aim of the changes in the process of implementing the directives, the initiatives to not only remain formal and serve the improvement of existing reality.**

In order to refine the legislation and harmonize it with international standards, it is necessary to timely implement legislative changes, towards a number of norms. Among them, we would like to highlight the following:

28 Report of the Public Defender of Georgia to the Parliament of Georgia 2017, p.125, available at: <http://www.ombudsman.ge/uploads/other/5/5139.pdf>

29 Research Report on Gender Discrimination on Labour Market in Georgia, available at: <https://article42.ge/media/1001447/2017/09/11/6c0cb0d69764bea21f32052f5abce8ce.pdf>

30 Letter #2799/2–4 of the Parliament of Georgia, 13 March 2018.

31 Available at: <https://info.parliament.ge/#law-drafting/14956>

32 “Employees’ Rights, International Approaches, Obligations under Association Agreement, Reality in Georgia, Reforms, Approaches Towards Europe”, Author: Ekaterine Kardava.

- The list of discrimination signs in the Labour Code is incomplete and gives the possibility to manoeuvre, leaving risks of possible discriminative treatment. Unfortunately, eradication of this shortcoming is not taken into account with the new legislative amendments package either;
- Although, employer shall bear the burden of proof in case of terminating the agreement on the basis of discrimination, and/or discriminative treatment during the pre-contractual period,³³ because, according to existing Labour Code, the employer is not responsible to justify the reason of rejecting the employment,³⁴ this may interrupt identification of discriminative cases on the stage of pre-contractual relations.³⁵ Moreover, it is important that, in case a candidate request so, he/she shall be provided with the justification of the rejection. This should be regulated by the legislation.
- General statement of the Labour Code contains risk of discrimination, while stating that the employer has right to sign agreement for up to one year *there are other objective circumstances* justifying conclusion of a fixed-term agreement.³⁶ According to information of GTUC, there were cases when employers signed short-term contracts, as the means of discrimination on the grounds of gender, political views and trade unions membership.³⁷

Discrimination on the grounds of gender still remains a serious problem:

- **Equal remuneration** – according to the Global Gender Gap Index 2017, Georgia is on the 75th place among 144 countries with the indicator of economic participation and possibilities, and on the 45th place with the indicator of equal remuneration for equal labour.³⁸ With these indicators, Georgia is behind its neighbour Azerbaijan,³⁹ as well as Armenia.⁴⁰

33 Organic Law of Georgia, Labour Code of Georgia, Article 40², point 3, available at: <https://matsne.gov.ge/ka/document/view/1155567#!> last seen on 15 June 2018.

34 Ibid., Article 5, point 8.

35 International Labour Organization, Georgia, available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:13100:0::NO::P13100_COMMENT_ID:3342182

36 Organic Law of Georgia, Labour Code of Georgia, Article 6, point 1², sub-point “e”, available at: <https://matsne.gov.ge/ka/document/view/1155567>, last seen on 15 June 2018.

37 ILO, Georgia, Direct Request (CEACR) - adopted 2017, published 107th ILC session (2018), available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:13100:0::NO::P13100_COMMENT_ID:3342186

38 Information available at: <http://reports.weforum.org/global-gender-gap-report-2017/dataexplorer/#economy=GEO>

39 Information available at: <http://reports.weforum.org/global-gender-gap-report-2017/dataexplorer/#economy=AZ>

40 Information available at: <http://reports.weforum.org/global-gender-gap-report-2017/dataexplorer/#economy=ARM>

Thus, regulating the issue of equal remuneration for equal work is problematic.⁴¹ Accordingly, it is important to mention adoption of the Law of Georgia on the Remuneration in Public Service in 2017, defining that remuneration system stands on the principles of equality and transparency, which means receiving equal remuneration by observing established rules for the equal work, taking into account functional load of a position.⁴² However, it should be also mentioned that the scope of the law is quite limited and covers only specific persons employed in public agencies,⁴³ which, of course is not enough to regulate equal remuneration issue. Despite above mentioned, we hope mentioned legislative act will support formation of the right practice and will be a step forward. Also, with the statement #7 of 11 January, 2018, Georgian Government approved the rule for determining the equivalent functional load of positions assigned to each hierarchical rank of professional public officials of the positions of public institutions, defined by points 1 and 2 of Article 25 of the Law of Georgia on Remuneration in Public Service.⁴⁴ We hope that general characteristic of the factors and sub-factors determined by annex to the statement will not become the basis of discriminative interpretation and will promote establishment of the practice in line with ILO standards.

- **Access for pregnant and nursing mothers to work** - there is a risk that prohibition of entering into labour contract with a pregnant or nursing woman for hard, harmful and hazardous work⁴⁵ may restrict access to work for women, as an employer in a private sector is not responsible for offering a woman another workplace.
- According to the law, a private employer is not obliged to transfer pregnant woman to a part-time job, unlike to women employed in public sector, who enjoy the right to work part-time during their pregnancy.⁴⁶ In public sector, even remunerating the hours of being absent from work due to medical examination for a pregnant woman relies on the gender sensitivity of an employer.⁴⁷

41 ILO, Georgia, Observation (CEACR) - adopted 2017, published 107th ILC session (2018); information available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0:::P13100_COMMENT_ID:3342175

42 Law of Georgia on Remuneration in Public Service, Article 3, available at: <https://matsne.gov.ge/ka/document/view/3971683>; last seen on 15 June 2018.

43 Ibid., Article 1.

44 Statement available at: <https://matsne.gov.ge/ka/document/view/3998748>, last seen on 15 June 2018.

45 Georgian Organic Law - Labour Code of Georgia, Article 4, Point 5, available at: <https://matsne.gov.ge/ka/document/view/1155567>, last seen on 15 June 2018.

46 Law of Georgia on Public Service, Article 61, Point 4, available at: <https://matsne.gov.ge/ka/document/view/3031098>, last seen on 15 June 2018.

47 Ibid., Article 64, Point 5, available at: <https://matsne.gov.ge/ka/document/view/3031098>, last seen on 15 June 2018.

- It is worth to pay attention that Georgian legislation provides vacation of 730 calendar days for the pregnancy, child birth and child care. 183 days out of them are remunerated.⁴⁸ However, unfortunately, only women employed in public sector are able to fully enjoy this right, whose vacations are remunerated from the institutional budget in accordance with the salary and ranking additive of an official. Those, employed in the private sector are given the aid of the amount of no more than 1000 Gel.⁴⁹

In addition, it is also noteworthy, that for the economic strengthening of women, it is necessary to encourage the usage of maternity leave by both parents. Existing regulations are vague and giving a leave and/or remuneration to a father for a childcare is actually upon gender sensitivity of an employer;⁵⁰

- It should also be mentioned that the initiative, according to which, since 2017, together with other grounds of terminating employment agreement, termination towards women due to violence or transfer to the shelter for the victim of domestic violence or crisis centre has been also defined, in case an employee is not able to perform her duties, but not exceeding 30 calendar days per year.⁵¹ However, it should be taken into account that the term given – 30 calendar days, is short. Moreover, as set by the Labour Code, remuneration responsibility for the period is upon the will of the employer, actually not mitigating the condition of domestic violence victims.

Sexual Harassment

Existence of an efficient mechanism for responding on sexual harassment cases at work is also problematic. Clear definition and prohibition of sexual harassment by the Labour Code is important,⁵² unfortunately not envisaged by the legislative amendments package submitted to the parliament either.

48 Georgian Organic Law - Labour Code of Georgia, Article 27, Law of Georgia on Public Service, Article 64, parts 1, 2 and 3, available at: <https://matsne.gov.ge/ka/document/view/1155567#!>

49 Decree # 231/6 of 30 August 2006 of the Minister of Labour, Health and Social Affairs, available at: <https://matsne.gov.ge/ka/document/view/66208>, last seen on 15 June 2018.

50 Ibid, Article 9, point 7.

51 Organic Law of Georgia – Labour Code of Georgia, Article 36; Law of Georgia on Public Service, article 55.

52 ILO, Georgia, information available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3342182

Apart from the above mentioned shortcomings, which are directly related to the topics containing risk of discrimination in labour relations, a list of legislative gaps shall also be highlighted, staying actual from year to year and regulating of which is crucial for harmonization of the legislation with international standards and for creation of respectful labour conditions:

➤ ***Working hours and overtimes:***

- The Labour Code still does not determine maximum daily or overtime working hours and working hours per week. The employer has right to define the shift schedule himself, “taking into account characteristics of the job”; Also, according to the Code, a procedure for summing up working time may be introduced, if observing the duration of daily or weekly working time based on working conditions is impossible.⁵³ Eradication of this shortcoming is not envisaged by the initiated draft law either.
- As stated by the Labour Code, duration of working time, other than specific exceptions, shall not exceed 40 hours a week, however duration of working time in enterprises with specific operating conditions may be 48 hours a week.⁵⁴ With such calculation, a person working for 48 hours per week spend 60 days more at work annually⁵⁵ without any additional remuneration, compared to those, working for 40 hours per week. List of the enterprises with specific operating conditions is determined by the Government of Georgia⁵⁶ and includes spheres such as hotels, restaurants, trade, real estate operations and providing service to the customers. The only condition set by the Labour Code is duration of rest between working shifts, which must be at least 12 hours.⁵⁷

➤ ***Justification for dismissal from work:***

Existing Labour Code does not provide a comprehensive list of the grounds of dismissal from the position and enables an employer to terminate labour agreement “upon existing other objective circumstances”, justifying termination of the labour agreement.⁵⁸

53 Organic Law of Georgia – Labour Code of Georgia, Articles 15, 16, available at: <https://matsne.gov.ge/ka/document/view/1155567#!>

54 Ibid, Article 14.

55 Implementation of the Political Part of Association Agreement – the First Year Assessing, p. 88, available at: http://www.osgf.ge/files/2015/2015/publication/Book_GEO_WEB.pdf

56 Decree #329 of the Georgian Government of 11 December 2013, on approving the list of specific field of work, available at: <https://matsne.gov.ge/ka/document/view/2118778#DOCUMENT:1>, last seen on 15 June 2018.

57 Organic Law of Georgia – Labour Code of Georgia, Article 14, point 2.

58 Ibid., article 37.

➤ ***Pension Assurance:***

Delayed process of pension reform, already lasting for three years, is still active. Disagreeing positions are the main reasons of this problem not being solved yet.⁵⁹

➤ ***Minimum Wage:***

Rule of determination of minimum wages. Amount of a minimum wage is determined by the Presidential Decree still in force since 1999 and is 20 Gel,⁶⁰ which obviously does not correspond to the reality of 2018.

It is obvious that existing legislation needs refinement, requiring implementation of timely and relevant legislation amendments from the state. For maximum converge of Georgian legislation with existing international standards, implementation of relevant legislative changes is necessary. The state must also manage awareness raising campaigns and establish equal approaches in private and public sectors.

Occupational Safety and Healthcare at Work

Obligation Taken by the State:

Association Agenda of 2014 – 2016 highlighted importance to focus on improving safety at work and create a mechanism and institution with adequate capacities for the inspections of working conditions in the spirit of the new law and International Labour Organisation (ILO) standards; formation of efficient labour inspection, in line with ILO standards.¹

However, despite existing hard reality and some legislative amendments, no efficient labour inspection mechanism has been established yet.

¹Association Agenda of 2014 – 2016, available at: <https://aa-monitoring.ge/site/#/ge/page/10041>

⁵⁹ Interview with Deputy Head of the Georgian Trade Unions Confederation Raisa Liparteliani, 23 April 2018, Tbilisi

⁶⁰ Decree #351 of the President of Georgia on 4 June, 1999 on Minimum Wages, available at: <https://matsne.gov.ge/ka/document/view/112786>, last seen on 15 June 2018.

With the 2017 Draft Action Plan, Georgia undertook obligation to transfer Labour Inspection Department into an efficient mechanism, through institutional and administrative strengthening and increasing its competences, in line with ILO standards, meaning expansion of the scope of work and ensuring free access to the inspection of labour safety and healthcare components (Sub-point 23.2). Additionally, gradual convergence of Georgian legislation with EU legislation and international legal instruments related to the labour safety; development/adoption of Georgian Law on Labour Safety and Healthcare. (Sub-point 196.1).

Measures Taken by the State

According to information obtained from the Ministry of labour, Health and Social Affairs,⁶¹ the term for full transposition of 89/391/EEC Council Directive of 12 June 1989 and covering all sectors of economy is set to be 2019; in 2017 draft Law of Labour Safety, prepared on the basis of the mention Directive, was prepared and submitted to the Parliament of Georgia on June 1. However, the latest edition of the law⁶² still leaves efficiency of the mechanism under suspicion. We will go into more details later below.

Draft technical regulations⁶³ were processed and developed based on the European Directives⁶⁴ and Technical Regulations on Safety Requirements for Work at Heights approved in 2017.⁶⁵

Ministers of economy and sustainable development and Labour, Health and Social Affairs of Georgia created joint monitoring group, assessing compliance of the labour conditions of the people working at hard, harmful and hazardous, as well as increasingly dangerous places with the labour and safety requirements set by Georgian legislation, as well as technically inspecting the sites.⁶⁶ However, the group has not been equipped with any additional rights

61 Letter #01/15119 of the Ministry of labour, Health and Social Affairs, 15 March 2018.

62 On 7 March 2018 Georgian Parliament adopted the law with the third hearing. Text of the law is available at: <https://matsne.gov.ge/ka/document/view/4103880>, last seen on 15 June 2018.

63 E-mail of the Foreign Affairs Ministry of 15 March 2018.

64 1) European 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 (third individual directive within the meaning of Article 16 (1) of Directive 89/391/EEC); 2) 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 (15th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC); 3) Council Directive 92/57/EEC of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites (eighth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC).

65 Decree #477 of the Georgian Government of 27 October 2017, available at: <https://matsne.gov.ge/ka/document/view/3836869>, last seen on 15 June 2018.

66 Letter #01/15119 of the Ministry of Labour, Health and Social Affairs of Georgia, 15 March 2018.

and acts within the mandate they had before.⁶⁷ Therefore, this initiative does not essentially change reality.

In the nearest future, the Ministry plans to increase the number of monitors under the Labour Inspection Department, as well as structural changes to the department and provision of technical equipment. Initiating amendment to the Labour Code is also planned, in order to indicate Inspection Department, as a supervisory body.⁶⁸

Evaluation of the Measures Taken towards Existing Reality

Creation of efficient labour inspection mechanism is under discussion already for several years.^{69, 70} Despite some changes, unfortunately, existing legislation cannot change existing challenges and is not enough for improving hard situation in the country; it does not equip inspection mechanism with relevant rights or adequate mandate, enabling activities of the labour inspection mechanism become effective.

In terms of labour safety and healthcare at work, normative acts such as State Programs for Labour Inspection, as well as the Law on Labour Safety,⁷¹ adopted on 7 March 2018 and not fully in force yet, shall be mentioned.

➤ Labour Inspection State Program

Decree of the Minister of Labour, Health and Social Affairs of Georgia, 21 April 2015 approved the Statement of the Labour Inspection Department,⁷² whose mandate is in force within the frameworks of the State Programs for Labour Inspection.

67 Parliamentary Report 2017 of the Public Defender of Georgia, p. 197 available at: <http://www.ombudsman.ge/uploads/other/5/5139.pdf>

68 Interview with Head of the Labour and Employment Policy Department of the Ministry of Labour, Health and Social Affairs of Georgia Elza Jgerenaia, 28 March 2018, Tbilisi.

69 Urgent Remedy for the Effectiveness of Labour Inspection - Where does Georgia Stand?, Authors: Nino Elbakidze, Tinatin Nadareishvili; available at: http://www.osgf.ge/files/2016/EU%20publication/Angarishi_A4_Labour_Rights_GEO.pdf

70 Creating a Labour Inspectorate, Authors: Nino Elbakidze, Tinatin Nadareishvili; available at: http://www.osgf.ge/files/2015/Publication/EU-Geirgia%20Association%20/Angarishi_A4_5_GEO.pdf

71 Georgian law on Labour Safety, available at: <https://matsne.gov.ge/ka/document/view/4103880>, last seen on 15 June 2018

72 Decree #01–10/6 of the Minister of Labour, Health and Social Affairs of Georgia, 21 April 2015, available at: <https://www.matsne.gov.ge/ka/document/view/2817403>, last seen on 15 June 2018.

Since 2015 the Government of Georgia annually approves State Program for Labour Inspection, however, decision on the involvement in the program still remains upon the goodwill of an employer.⁷³ Target group of the program are employers, who agreed or/and expressed their interest towards involvement in the program and employees working for these employers^{74, 75, 76, 77}. It is also noteworthy, that the conclusion prepared within the labour Inspection Program is recommendatory and is not an obligatory document to be implemented by an employer.

Regulations of the mentioned program do not ensure protection of the employees' interests or improvement of their working conditions, as evidenced by the statistics.

According to information provided by the Ministry of Labour, Health and Social Affairs ¹, within the frames of a specific program, Labour Inspection Department examined 279 sites of 160 companies, 2719 shortcomings were identified in 2017. In the period of 2015–2017 total 586 sites were inspected. Re-monitoring was conducted on 27% of inspected sites. By the time the Ministry provided information, based on the data analysis, 57% of the inspected sites did not take into account recommendations given to them, 27% - partially, and 16% fully took them into account.

In line with the labour inspection state programs, total 4 622 violations were identified on the sites inspected by the labour Inspection Department in 2015–2017.²

¹ Letter #01/16037 of the Ministry of Labour, Health and Social Affairs of Georgia, 20 March 2018.

² Letter #01/25912 of the Ministry of Labour, Health and Social Affairs of Georgia, 4 May 2018.

73 Statement #603 of the Government of Georgia on the approval of the state program on Labour Inspection for 2018, 29 December 2017, available at: <https://matsne.gov.ge/ka/document/view/3977116>

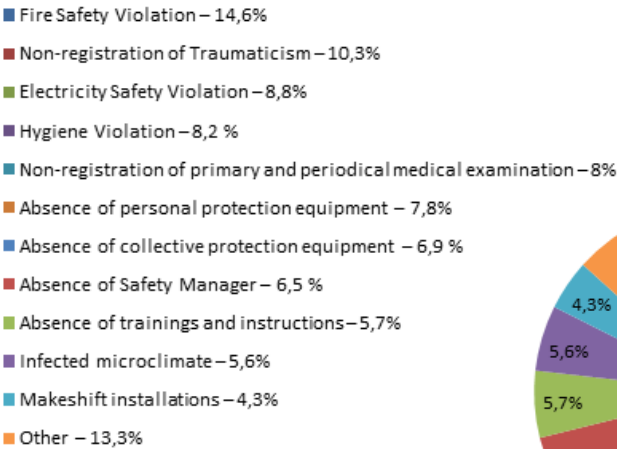
74 Statement #38 of the Government of Georgia on the approval of the state program on Labour Inspection, 5 February 2015, available at: <https://matsne.gov.ge/ka/document/view/2719707>

75 Statement #19 of the Government of Georgia on the approval of the state program on Labour Inspection for 2016, 18 January 2016, available at: <https://matsne.gov.ge/ka/document/view/3165494>

76 Statement #627 of the Government of Georgia on the approval of the state program on Labour Inspection for 2017, 29 December 2016, available at: <https://matsne.gov.ge/ka/document/view/3525727>

77 Statement #603 of the Government of Georgia on the approval of the state program on Labour Inspection for 2018, 29 December 2017, available at: <https://matsne.gov.ge/ka/document/view/3977116>, last seen on 15 June 2018.

Percentage Distribution of the Violations Identified on the Sites Inspected in 2015–2017^{78, 79}



The statistics of the injured/deceased at work are also alarming:⁸⁰
Number of persons injured/deceased at work

Year	Number of Injured	Number of Deceased
2010	102	42
2011	137	54
2012	289	48
2013	111	23
2014	72	45
2015	82	42
2016	85	58
2017	106	47

Source: Ministry of Internal Affairs of Georgia

78 Letter #01/25912 of the Ministry of Labour, Health and Social Affairs, 4 May 2018.
79 Concluding Report 2015–2017 of the Labour Inspection Department, p. 22, available at: <http://www.moh.gov.ge/ka/667/Sromis-pirobebis-inspeqtirebis-departamentis-2015-2017-wlis-Semajamebeli-angariSi>
80 Concluding Report 2015–2017 of the Labour Inspection Department, p. 37, available at: <http://www.moh.gov.ge/ka/667/Sromis-pirobebis-inspeqtirebis-departamentis-2015-2017-wlis-Semajamebeli-angariSi>

The problem becomes more obvious if taking into account that the figures given are only of registered cases. There are frequent cases when industrial traumas or lethal accidents are not brought to public.⁸¹

- ***In the situation given, and with the background of the responsibilities undertaken by the country, the draft Law on Labour Safety of Georgia initiated by the Government of Georgia in June 2017,*** approved by the parliament with the third hearing on 7 March 2018,⁸² became a subject to criticism from the beginning.⁸³ The Law will fully enter into force from January 2019. However, even after fully entering into force, it will not be able to provide controlling body with the relevant mandate. In particular, scope of the law is restricted and covers only the list of increasingly dangerous, hard, harmful and hazardous works, determination of which is a prerogative of the Georgian Government.⁸⁴

The law does not guarantee unconditional access of the Supervising Body to the workplaces. Law of Georgia on labour Safety makes indication⁸⁵ on the Law of Georgia on Controlling Entrepreneurial Activities,⁸⁶ thus giving the right to control entrepreneurial activities to a controlling body only on the basis of the Judicial Decree. Supervising body has right to inspect entrepreneurship without judicial decree only in three cases:

- One year per selective control;
- With the aim of repeated examination within a reasonable time frame;
- With the purpose of accident investigation.

Also, decision of the supervisory body to terminate working process is approved by the Court,⁸⁷ notwithstanding a position of an employer. These restrictions deprive the supervisory body of the opportunity to respond promptly and significantly decrease its efficiency.

81 Assessment of the Labour Inspection Mechanism and Labour Rights of the Employees in Georgia, pp. 27–28, available at: <https://emc.org.ge/ka/products/kvleva-shromis-inspektirebis-mekanizmis-shefaseba-da-dasakmebulta-shromiti-uflebebis-mdgo-mareoba-sakartveloshi>

82 Law of Georgia on Labour Safety, available at: <https://matsne.gov.ge/ka/document/view/4103880>

83 Available at: <http://gtuc.ge/aqcia-saparlamento-mosmenis-parrallelurad/>

84 Law of Georgia on Labour Safety, Article 2, available at: <https://matsne.gov.ge/ka/document/view/4103880>, last seen on 15 June 2018.

85 Ibid, Article 16, Point 5.

86 Law of Georgia on Regulation of Entrepreneurial Activity, Article 3, Point 2, available at: <https://matsne.gov.ge/ka/document/view/15364>, last seen on 15 June 2018.

87 Law of Georgia on Labour Safety, Article 18, Point 12, Sub-point “a”, available at: <https://matsne.gov.ge/ka/document/view/4103880>, last seen on 15 June 2018.

It is complimentary that the law envisages usage of the sanctions and the fact that compared to the draft law,⁸⁸ amount of the fines are significantly increase in the final version, however, it is worth paying attention that the fines are not calculated from the profit, but is linked to the total amount of VAT taxable operations, which may not reflect real situation of a company.

According, the state has to take active steps and make legislative amendment, responding to the challenges and hard situation of the country and ensuring establishment of a labour inspection mechanism.

Development of Social Partnership Opportunities

The ILO is based on the principle of tripartism – dialogue and cooperation between governments, employers, and workers – in the formulation of standards and policies dealing with labour matters. The tripartite approach to adopting standards ensures that they have broad support from all ILO constituents.¹ Social Partnership Tripartite Commission is committed to preventing labour conflicts and establishing social fairness and social freedom. The commission, through social dialogues must ensure close cooperation between the government, employers and employees, which, on its side will promote social unity and freedom, as well as creation of respectful labour conditions.

¹ Rules of the Game. A brief introduction to International Labour Standards, p. 36, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_226313.pdf

Responsibilities Undertaken by the State

With the 2017 Draft Action Plan Project for implementation of Association Agreement and Agenda, Georgia undertook obligation to strengthen Social Partnership Tripartite Committee, through its systemized operation between them, and piloting regional social dialogue (Sub-point 196.6); also through ratification of Tripartite Consultation (International Labour Standards) Convention #144,⁸⁹ 1976 (Sub-point 30.1).

⁸⁸ Draft Law of Georgia on Labour Safety, available at: <https://info.parliament.ge/file/1/BillReviewContent/151184>

⁸⁹ Text available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C144

Measures Taken by the State

According to information provided by the Ministry of Labour, Health and Social Affairs,⁹⁰ as of 15 March 2018, 3 sessions of the Social Partnership Tripartite Committee has been held since its establishment – on 1 May 2014, 11 April 2016 and 10 February 2017, which apart from the fact that is not enough for strengthening social partnership, is the violation of the Committee statement requirements.⁹¹

During the meeting in 2017, The Tripartite Committee has discussed topics such as approval of the labour disputed Mediator Registry/submitted candidates, review of the issue of ratifying non-ratified Articles of the European Social Charter, submitting information on the amendments to be made to Georgian legislation in line with the Euro Directives of Annex XXX of the Association Agreement, review of the initiative of GTUC related to the pension reform, submitting information on the draft Law of Georgia of Labour Safety and Healthcare, etc. Topics such as development of social dialogue on the local level, emerging situation in the LEPL – Georgian Broadcaster and the statement of Georgian Trade Unions of the Republic of Adjara on attributing specific working regime to the specific types of enterprises.⁹²

It should be positively assessed that according to the decision taken, mediator register with 11 independent and unbiased mediators was approved, and the Committee made decision to pilot Social Partnership Tripartite Committee on the regional level in the Autonomous Republic of Adjara.

Decision has been made on ratifying non-ratified Articles/Points of the European Social Charter.⁹³

According to information obtained from the Parliament of Georgia,⁹⁴ the Parliament ratified Tripartite Consultation (International Labour Standards) Convention #144 (#07–2/136, 09.10.2017) on 2 November 2017.

Also, as declared by the Ministry of Labour, Health and Social Affairs of Georgia, apart from the official meetings, Committee members are in regular communication and hold working group format meetings.⁹⁵

90 Letter #01/15119 of the Ministry of Labour, Health and Social Affairs, 15 March 2018.

91 Statement #258 of the Government of Georgia of 7 October 2013, available at: <https://matsne.gov.ge/ka/document/view/2037256>

92 Letter #01/15119 of the Ministry of Labour, Health and Social Affairs, 15 March 2018.

93 Ibid.

94 Letter #2799/2–4 of the Parliament of Georgia of March 13, 2018.

95 Interview with the Head of the Labour and Employment Policy Department of the Ministry of Labour, Health and Social Affairs of Georgia - Elza Jgerenaia; 28 March 2018, Tbilisi.

However, social partnership means more large-scale cooperation in all aspects of labour rights.

Evaluation of the Measures Taken towards Existing Reality

Under the Association Agreement, Georgia undertook responsibility to promote involvement of the social partnership in the process of labour policy development. Even earlier, after the amendments were made to the Labour Code in 2013⁹⁶ legal ground for the formation of Social Partnership Tripartite Committee was created. Again in 2013 Social Partnership Tripartite Committee Statement was approved.⁹⁷ The function of the Committee is to promote social partnership and social dialogue at all levels, also to develop proposals and recommendations on various issues in labour and accompanying relationships.⁹⁸

In order to fulfil its functions, the Committee has right to develop and submit proposals on the topics within its scope to the stakeholders.⁹⁹

In the footsteps of some specific positive decisions and competences, unfortunately activities of the Committee do not respond to existing challenges and hard situation in the country.^{100, 101, 102, 103, 104, 105}. There is an impression that the parties do not appreciate the role and significance of the role of the Committee and social dialogue.

Apart from the above mentioned, making Committee activities more active remains problematic already for several years.¹⁰⁶ Under the action plan, the state undertook responsibility to ensure systemized operation of the Tripartite Committee and set the number of Committee meeting as an indicator of implementation of its activities. At the same time, according to the Commit-

96 Organic Law of Georgia – Labour Code of Georgia, Chapter IV¹.

97 Statement #258 of the Government of Georgia of 7 October 2013, available at: <https://matsne.gov.ge/ka/document/view/2037256>

98 Ibid, Article 4.

99 Ibid, Article 5.

100 <https://bpn.ge/finanssebi/34149-tyibulis-shakhtashi-ubeduri-shemthkhveva-mokhda.html?lang=ka-GE>

101 <https://on.ge/story/7421-რუსთავის-აზოტის-გათავისუფლებული-მუშეების-პროტესტი-და-ადმინისტრაციის-პასუხი>

102 <http://www.maestro.ge/kontakti/siakhleebi/article/49342-tragikuli-shemthkhveva-tyibulshi-ra-meqanizmi-icavs-mshromeltha-usafthkhoebas>

103 <https://emc.org.ge/uploads/products/pdf/შრომის-ინსპექტირების-მექანიზმის-შეფასება-და-დასაქმებულთა-შრომითი-უფლებები.pdf>

104 <http://liberali.ge/news/view/34699/agaris-shaqris-mushebis-aqtsia--tu-motkhovna-ar-shesruldeba-3-gza-gvaqvs-darchenili>

105 <http://reginfo.ge/people/item/6161-tyibulis-shaxtashi-6-adamiani-daigupa,-3-dashavda>

106 Implementation of the Political Part of Association Agreement – Assessing the First Year, p. 96, available at: http://www.osgf.ge/files/2015/2015/publication/Book_GEO_WEB.pdf

tee Statement, it is responsible to gather once in a quarter.¹⁰⁷ Despite this, Committee held only one meeting in 2017, thus obviously is not enough to handle existing problems, prevent labour conflicts or establish social fairness of social freedom.¹⁰⁸

Establishment of a Labour Dispute Mediation Mechanism and its Activities

Mediation is one of the ways of dispute resolution, which considers reaching the consensus between the parties with the involvement of the third, neutral person – mediator.¹ Mediation mechanism is view as an alternative to expensive and long-term court process, which at the same time does not require obligatory execution of the decision made, as the decision is reached upon the agreement between the parties and expresses their kind will. Mediation process is cheap, fast and procedurally easy mechanism to effectively solve the problem.

“The main privilege of the labour mediation here is that it improves the mood of an employee, promotes awareness rising among employees on the existence of the dispute resolution procedure. Accordingly, it contributes to improving reputation and culture of an organization, decreasing expected tension at work and improving speed of attracting new joiners”.²

¹ Alternative Dispute Resolution, p. 7, 2013, available at: http://ncadr.tsu.ge/admin/upload/1946ADR_2013.pdf

² Prospects of Legal Regulation of Mediation in Georgia, 2013, p. 101, available at: <http://ncadr.tsu.ge/admin/upload/7706Edited-Final-Version-final.pdf>

Responsibilities Undertaken by the Country

With the 2017 Action Plan Project for implementation of Association Agreement and Association Agenda, Georgia undertook obligation to make relevant legislative amendments to the Statement #301, approval of Mediator Registry through development of the labour dispute mediation mechanism, including creation of the accountability of parties to implement the Agreement and improvement of the analytical function of the mediation mechanism. Number of collective labour disputes managed with mediation, including the dynamics of reaching the agreement, was set as an indicator if the implementation of the activity (Point 23.3).

¹⁰⁷ Decree #258 of the Government of Georgia of 7 October 2013, Article 6, available at: <https://matsne.gov.ge/ka/document/view/2037256>, last seen on 15 June 2018.

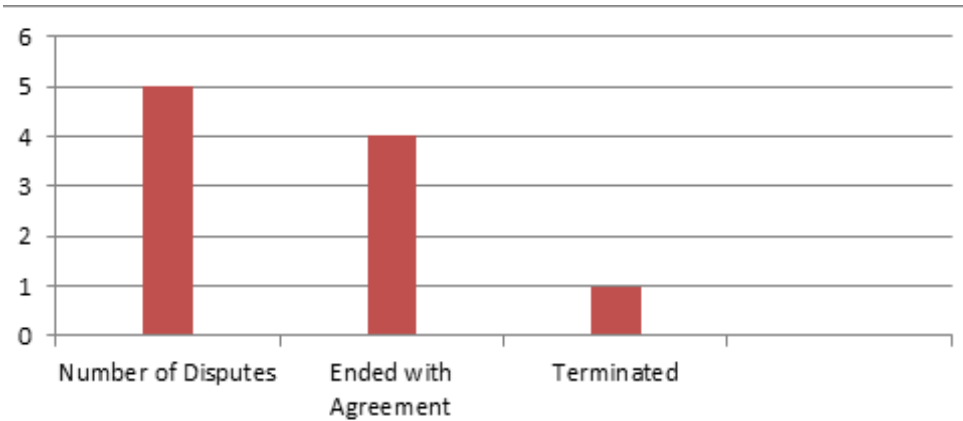
¹⁰⁸ A significant delay in the approval of the Mediator Register is also noteworthy.

Measures Taken by the Country

According to information of the Ministry of Labour, Health and Social Affairs of Georgia,¹⁰⁹ Decree of the Minister on Determining Mediator Registry in Order to Ensure Agreement Procedures of Collective Disputes was approved on 1 March 2017. Mediator Registry, whose authority is determined for 3 years, consists of 11 independent and unbiased mediators, participating in dispute resolution with the mediator status.

According to information provided, in 2017, 5 mediators were assigned to 5 disputes (two disputes out of these started in 2016). 4 disputed were closed with the agreement between the parties and in one case collective dispute was terminated due to dismissing persons initiating the dispute on the bases of their own request.

Statistics of the disputes involving mediators in 2017:



Evaluation of the Measures Taken towards Existing Reality

Mediation as a way to solve collective disputes was determined as one of the options of conciliation procedures with the amendments of 12 June 2013 to the Labour Code of Georgia.¹¹⁰ On 25 November 2013 the government approved the Rules for Reviewing and Resolving Collective Disputes through Agreement Procedures, where mediation was defined as a conciliation pro-

109 Letter #01/15174 of the Ministry of Labour, Health and Social Affairs of Georgia of 15 March 2018.

110 Organic Law of Georgia, Labour Code of Georgia, Article 48¹.

cedure with the direct participation and lead of the mediator assigned by the minister of Labour, Health and Social Affairs of Georgia.¹¹¹ Mediators are selected from the Mediator Registry.¹¹² According to the same statement, necessity to reform mediation registry was determined in 2013 that should have been implemented based on the Social Partnership Tripartite Committee recommendation. However, Mediator Registry was approved couple of year later – in 2017. The reason for this delay was the inability of the Social Partnership Tripartite Committee to meet and discuss the topic.

Although Rules for Reviewing and Resolving Collective Disputes through Agreement Procedures sets participation of the parties into collective disputes¹¹³ and reflecting the agreement reached in the labour agreement¹¹⁴ as mandatory, as stated by the representative of GTUC, execution of the agreement reached through mediation is a serious problem in practise, and the most weak part of the mediation process is the execution stage.¹¹⁵ This rule does not envisage monitoring mechanism for the implementation of the agreement reached. It is also worth paying attention, that the right of a strike or lock-out during collective dispute arises after 21 calendar days from submitting a written request of the party to assign mediator or assigning mediator with the Ministers own will.¹¹⁶ Otherwise, a strike or a lock-out will be considered illegal.¹¹⁷ Actually, in order to realize the right of a strike, it's mandatory to begin mediation process, restricting right of the employees to lawful protest and at the same time may cause formal character of the mediation process, as beside mediation, the law acknowledges other ways of dispute resolution too, such as direct negotiation and/or arbitration.¹¹⁸

Accordingly, approval of the Mediator Registry is undoubtedly positive fact, but at the same time, more cooperation of the social partners is necessary, as well as legislative amendments encouraging formation of efficient mediation mechanism for labour disputes and in line with undertaken responsibilities, increasing accountability of parties to implement the Agreement and improvement of the analytical function of the mediation mechanism.

111 Statement #301 of the Government of Georgia on the Approving the Rule of discussion and resolution of Collective Disputes with Conciliation Procedures, 25 November 2013, Article 3, available at: <https://matsne.gov.ge/ka/document/view/2091854#DOCUMENT:1>, last seen on 15 June 2018.

112 Ibid., Article 5.

113 Ibid., Article 4, Point 12.

114 Ibid., Article 4, Point 13.

115 Interview with Deputy Head of the Georgian Trade Unions Confederation Raisa Liparteliani, 23 April 2018, Tbilisi.

116 Organic Law of Georgia, Labour Code of Georgia, Article 49, Point 3.

117 Ibid., Article 51, Point 3.

118 Ibid., Article 48¹.

Conclusion

Despite some positive changes in the country, the problem of adequate protection of labour rights is still acute. Necessity of the whole series of amendments to the labour legislation, in order to converge it to international standards, still remains a challenge. Establishment of an effective labour inspection is still on the agenda of problematic topics. Functioning of the Social Partnership Tripartite Committee is under criticism. Measures taken by the government is not enough and do not respond to the challenges in the country.

Accordingly, it is necessary to adequately assess positive results of the implementation of International Labour Standards, meaning improvement of economic indicators and strengthening social stability, as well as the flow of qualified staff, accident and medical expenses. Social partners must acknowledge that inequality creates ground of decreased productivity and poverty; and more importantly, it may even provoke social instability and even the conflicts. Thus, it is necessary for the economic progress to be linked to bringing social fairness, success and peace to each person.¹¹⁹

“Studies have shown that in their criteria for choosing countries in which to invest, foreign investors rank workforce quality and political and social stability above low labour costs. At the same time, there is little evidence that countries which do not respect labour standards are more competitive in the global economy”.¹

¹ Rules of the Game. A brief introduction to International Labour Standards, p. 11, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_226313.pdf

In the circumstances given, the state shall develop strategic approach towards the topic and make effective steps, initiating legislative amendments and managing awareness raising campaigns among them.

¹¹⁹ Rules of the Game. A brief introduction to International Labour Standards, p. 34, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_226313.pdf

Recommendations

Labour Legislation

- Speed up and reflect directives in line with the annex XXX of the Association Agreement in the legislation as soon as possible.
- Speed up and, with maximum participation of social partners, implement pension reform;
- Make relevant amendments to the Presidential Decree on the Minimum Wages and the minimum wage defined in accordance with the consumer basket;
- Prepare package of legislative initiatives and carry out relevant changes in order to harmonize Georgian legislation with international standards.

Labour Safety and Healthcare at Work

- Establish an effective mechanism Labour inspection with the relevant mandate;
- Georgian Law on Labour Safety to cover each place of employment, without exception;
- Department of the Labour Inspection to be equipped with the mandate of monitoring violations of the employees' rights, and granted with unconditional and immediate access to workplaces;

Development of Social Partnership Opportunities

- The Government of Georgia to ensure development of social partnerships;
- The Social Partnership Tripartite Commission to be more active;
- The Commission to meet quarterly, in accordance with the law;

Establishment of a mechanism of labour disputes and its activities

- Ensure the existence of effective mediation mechanism and develop its possibilities. Establish an effective monitoring mechanism for the fulfilment of the Agreement.

