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EUROPEAN SOCIAL CHARTER

Comments by the Georgian Trade Unions Confederation (GTUC) on the15th National Report on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF GEORGIA

Articles 2, 4, 5, 6, 21, 26, 28 and 29

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EUROPEAN SOCIAL CHARTER

Alternative report on the implementation of the European Social Charter Submitted by the Georgian Trade Unions Confederation (GTUC)

Comments on Georgia's 15th National Report on the Implementation of the European Social Charter.

(Articles 2, 4, 5, 6, 21, 26, 28 and 29 for the period 01/01/2021– 31/12/2021)

Tbilisi, June 24, 2022

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PREFACE

Georgia ratified the Revised European Social Charter on August 22 th 2005. The report provides information on provisions of the European Social Charter belonging to the thematic group ”Labour Rights”: Article 2, 5,6 , 7, 21, 26, 28 and 29.

INTRODUCTION

In September 2020, Parliament of Georgia has adopted legislative changes and amendments to the Labor Code of Georgia and introduced new law on Labor Inspection. Originally, the bill was prepared in 2019. The Georgian Trade Unions Confederation (GTUC) was actively involved in the law making process from the very beginning and submitted more than fifty recommendations to improve Georgian labor legislation including equality provisions, labor rights, occupation health and safety standards and its enforcement. From the beginning almost all proposed recommendations initiated by the GTUC were approved, however, as a result of the pressure coming from the business organizations and business lobbyists some of very important proposals have been removed from initial draft law. The final document improves workers rights protection standard, but there still many gaps that needs to be properly addressed.

The improved law provisions cover a wide range of labor rights, such as: working hours; workers' rights during massive layoffs or the change of ownership of companies; introduction parental leave; broadening the mandate of the State Labor Inspectorate (LI) to monitor the enforcement of all labor rights, not just occupational safety and health (OSH); definitions of direct and indirect discrimination, definition of harassment prohibition of unequal pay for equal work; mass redundancy, exchange of information and consultations at workplaces; terms of remuneration etc.

One of the key novelties of the reform is a new chapter introduced in the Labor Code on the establishment of the labor inspection with the increased mandate to monitor enforcement of labor rights with repressive power to impose administrative sanctions on companies or individuals in case of violation.

Despite the above-mentioned positive changes, Georgian labor legislation still is not fully complied with the international labor standards (including ratified provisions of European Social Charter) and does not ensure proper protection of workers' rights in many areas, such as: working time, maternity protection, pay gap, right to strike, minimum wage and etc.

European Social Charter Article 2. "The Right to just conditions of work"

Article 2§1 Working Time

Article 2§1 of the European Social Charter sets out the right to reasonable limits on working hours, and obligates Contracting Parties to regulate the maximum number of daily and weekly working hours by national legislation. The daily and weekly maximum time limit should be reflected in domestic legislation and an appropriate authority must supervise and ensure limits are respected.[1]

Limits of Work Week based on Work Type

The Labour Code of Georgia determines the length of the working week; however, it sets a separate standard for workers based on the type of work performed: Article 24(1) it sets a 40-hour standardized work week for adult employees; while Article 24(3) prescribes a 48-hour work week for those operating under what is determined to be a "specific regime", aka, an enterprise where the production / work process is continuous for more than 8 hours. Under the section, the list of fields with a specific working regime is to be determined by the Government of Georgia.

While there is currently, no list of fields with a specific work regime regulated by law, in absence of an objective and reasonable justification, this differentiation would constitute a discriminatory practice based on type of employment, in contravention of Article E of the Charter and related jurisprudence. [2]

Shift Work and a Summary Accounting System

While the Charter does not explicitly define what constitutes reasonable working hours, it has found that working 16 hours in a 24 hour shift and more than 69 hours/week, is unreasonable. It further sets out that work limits apply to all categories of workers, and can only bar exceeded in situations of force majeure.[3] The Committee has found that to comply with the Charter, domestic regulation must: (1) prevent unreasonable daily and weekly working time; (2) circumscribe the discretion left to employers to vary such time; and (3) there must be reasonable reference periods for calculation of average time, which must not exceed 6 months.[4]

However, Article 25 of Labour Code allows the employer to avoid maximum working hours per week by introducing a summary accounting system or setting up a schedule of shifts. According to the Article 25.2 the employees alternate on the same job in accordance with defined schedule, including the rotation plan, so that it is possible to continue the production/work process for more than the working week is set by the law. While Article 26 provides that considering the working specificity, when it is impossible to observe the duration of daily or weekly working hours, it is allowed to introduce the rule of summary accounting of working hours.

These provisions in the Labour Code operate without adequate restrictions: they do not apply to exceptional circumstances, nor do they prevent unreasonable daily/weekly work times. Further,

[1] Digest at 65 (2018), https://rm.coe.int/digest-2018-parts-i-ii-iii-iv-en/1680939f80
[2] Digest at 43, citing Abdul Azziz, Cabales and Balkandali, finding that discrimination includes cases where a person or group of persons is treated less favourably than others without proper justification.
[3] Digest at 65
[4] Digest at 65

they do not circumscribe employer discretion, and are not restricted to any specified a period, and accordingly do not comply with Charter obligations.

In addition, under Article 25(5), working time regulations explicitly do not apply to mining sector workers, and a separate standard should be set out for them. No standard has yet been set in this regard; however, the proposed bill is worsening conditions from the above standard for this category of workers, without any justification.

Absence of Daily Work Limits

According to the standard set by the Committee, the maximum working time in 24 hours cannot exceed 16 hours, and only as an exception to this rule, working hours may not exceed 60 hours weekly.

However, the Labour Code of Georgia does not meet this standard since Article 24 (2) and (3) stipulate a maximum working time per week, but does not set a maximum number of working hours per day for an adult employee. In practice, there are frequent cases when workers of the company perform their work 24 hours a day, and there is no established jurisprudence of national courts on the necessity of prohibiting more than 16 hours of work per day.

In contrast, paragraph 2 of Article 60 of the Law "on Public Service" of Georgia stipulates the maximum daily working time for a public servant, should not exceed 8 hours. Accordingly, the differentiation between legislation for public servants which complies with the minimum standard set by the European Social Charter, and private sector, which does not, is neither reasonable or justifiable and would constitute *prima facie* discrimination.

It is important to note that during the labour reform process, the Georgian Trade Unions Confederation demanded a cap of 8-hour working hours per day, which was not accepted. Moreover, the Labour Code does not regulatively aspire to progressive realize this right, since there are no provisions requiring a consistent reduction of working time, and in this respect also falls short of the Charter's requirements.

Article 2.§2 Overtime and Holidays

Overtime

Article 2§2 of the European Social Charter guarantees the right to paid public holidays, in addition to weekly rest periods and annual leave. According to Articles 30.4, 27.2 and 27.3 of the Labour Code of Georgia, provides that overtime work "shall be paid for at an increased hourly rate of remuneration", which is determined by agreement between the parties, and according to Article 27(3), the parties may agree to granting an additional leave period to compensate for overtime. However, the Labour Code of Georgia does not specify the minimum tariff that an employee must receive for working overtime. It also does not set a threshold for the maximum number of overtime hours for adult employees,

However, according to the European Charter jurisprudence, overtime must not simply be left to the discretion of the employer, and the reason as well as the duration for overtime must be subject to regulation. Further, all employees are entitled to "adequate" compensation when they work on public holidays, which has been found not to be satisfied by 75% wage increase for

work performed on public holidays.5 Further, Article 6 (2) of the International Labour Organization Convention No. 1 (hours of work (industry) convention, 1919) stipulates that remuneration for overtime work must be set at an additional minimum of 25%.

The Georgian Trade Unions Confederation had argued that overtime pay should be in the amount of at least 125%, to effectively provide reasonable limits on working hours. In practice the overtime work is often either not remunerated at all or is remunerated in a minimal amount in order to formally comply with the requirements of the Labour Code of Georgia. There are also cases when employees have to work on holidays due to the schedule of shifts, in which case employers often do not pay for work with increased tariff.

Holidays

According to Article 30 of the Labour Code, in addition to the days off provided by law, other holidays may be determined by a resolution of the Government of Georgia. 6 However, the section permits an employer to request the employee to work on that day, and instead take their next day off.

The section does not explicitly state that working on government-set holidays constitutes overtime and must also be remunerated accordingly. During the Covid-19 pandemic, a 2-week holiday period set by the government. However, many employees were forced to work and mostly without additional remuneration.

Accordingly, the Georgian Labour Code does not effectively ensure just conditions of work under the European Social Charter, in that it does not adequately prescribe that overtime and holiday work should be adequately compensated, and under Article 30 permits employers to substitute resolution-determined holidays, without the requirement of paying overtime.

Article 2§5 Rest Time

Article 2§5 of the European Social Charter guarantees employees the right to weekly rest. Article 24.7 of the Labour Code of Georgia7 recognizes the right of an employee to enjoy the right to rest for a period of no less than 24 hours within a 7-day period. In contrast, Article 60.2 of the Law of Georgia on Public Service sets a 5 working days a week for public servants.

However, the right to a weekly rest period, under the European Social Charter is guaranteed across the board, to all workers. Similarly, prescribed rest periods set for the public and private sectors should be equally protected.

Article 2§7 Night Work

Article 2§7 of the European Social Charter ensures that parties undertaking night work benefit from measures which take into account the special nature of the work, which include regular medical examinations including a check prior to employment on night work; the provision of possibilities to transfer to daytime work and continuous consultation with workers representa-

[5] Digest of the Case Law of the European Committee own Social Rights at 67. Conclusion XX-3 (2014) Greece
6 Article 30.3 of the Georgian Labour Code
7 Order of the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia 01-79 / n "On Determining the Proportional Annual Rate of Night Work Time and Approving the Periodicity and Scope of Preliminary (Before Employment) and Further Periodic Medical Examination for a Night Worker", 07/09/2021

tives on the introduction of night work, its conditions and measures to reconcile the workers needs with the special nature of the work.

Article 28 of the Labour Code of Georgia defines night work. It provides under 28(5) that am employer must provide medical examination, if the employee requests it. However, this does not go far enough to fulfil the Article 2(7) Charter obligations, which require "regular" medical examinations and checks prior to night work. Article 28 also does not provide the possibilities of transfer to daytime work; or require consultation with unions to introduce and regulate night work, as required by the Charter. In practice employees fear requesting medical examinations, and do not do so.

Further, Article 28(3) of the Georgian Labour Code, prohibits night work for "minors, pregnant women, and women who have recently given birth or are breastfeeding". While people with disabilities or who have children under the age of 3 "shall not be employed for night work without their consent."

In this regard, Article 8 of the European Social Charter sets out the right of employed women, to special protection in cases of maternity. However, the Charter protects maternity through regulating and prescribing the conditions for night work, rather than imposing a blanket prohibition on the employment of women who have recently given birth or are breastfeeding.

Article 4. The Right to a fair remuneration

Article 4 of the Charter sets out the right of all workers to a fair remuneration sufficient for a decent standard of living for themselves and their families. Article 4(2) recognizes the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases. In situations where leave is granted to compensate for overtime, the leave granted must be longer, not of equal time to the hours worked.[8]

Article 4§2 Fair Remuneration and Overtime Work

Under Article 27 of the Georgian Labour Code overtime work is remunerated at the amount of the increased hourly rate of remuneration, and according to Article 27.3 of the Labour Code, the parties may agree to provide the employer with proportionate additional rest time in exchange for overtime pay. However, the Charter requires that leave granted be longer not of equal time to hours worked. Further, there is no minimum overtime rate, nor a stipulation that such a rate must be fair. These provisions are particularly egregious in light of the absence of a maximum limit for overtime work per day for adult employees in Georgia.

In practice there are many cases where the overtime pay rate is unreasonable and unfair. In one of the cases litigated by the Georgian Trade Unions Confederation N as-1128-2021, the City Court, the Court of Appeals and the Supreme Court of Georgia have annulled the part of the contract, which set the increased tariff for overtime work in the amount of 0.01% of the hourly wage and set the overtime tariff with a coefficient of 1.25 %.

[8] Digest at p 86

The right to fair remuneration for overtime work is further exacerbated by the separate standard of the working week: the overtime work (of employees working in a specific regime) starts at 48 hours and not 40 hours per week, as is the case when employees working in a non-specific regime, consequently they work longer hours and receive less pay which puts them in an unequal position compared to other employees. In addition, although the Labour Code [9] requires the employer to record the employee's working time, there are many cases where the hours worked by the employee are not fully recorded in the logbook and the employee is unable to receive the appropriate remuneration.

In addition, the obligation to work overtime without any remuneration to prevent natural disasters and / or eliminate their consequences is problematic**.** [10]

Overtime Remuneration and Georgian Realities

Although the Georgian Labour Code provides overtime pay for increased working hours, unpaid overtime has become the norm in Georgia over the years. While the Labour Inspection has been given the right to control labour rights since 2021, so far it has not carried out inspections on issues related to wages.

However, a bigger problem is the fact that most employees are not paid for overtime work with an increased tariff, and/or the additional hours of work are not compensated at all. The reason for this, is both the absence of sanction in the legislation as well as the double standard in the law, which allows the employer to establish a 48 –hour working week in exceptional cases. Such "exceptions" cover a large part of the economic sector and this list is currently being revised. By way of example, below, is the average number of hours worked per week for a main job by type of economic activity:

- Industry: 44.9 hours;
- Construction: 49 hours;
- Wholesale and Retail Trade; Repair of cars and motorcycles: 49 hours;
- Transport and Warehousing: 50 hours;
- Accommodation and Food Delivery Activities: 49.6 hours;
- Information and Communication: 43.5 hours;
- Financial and Insurance Activities: 42.8 hours;
- Real Estate Activities: 44.3 hours;
- Administrative and Support Service Activities: 45.5 hours;
- State Governance and Defense; Compulsory Social Security: 46.9 hours;
- Health and Social Service Activities: 43 hours;

[9] Article 24.11 of the Labour Code of Georgia
[10] Article 25.5 (a) of the Labour Code of Georgia

A study (conducted by the Georgian Trade Unions Confederation in the textile and trade sector in 2019) found that the average number of hours worked per week in these sectors exceeds the limit set by the Labour Code and is:

52.2 hours in textile production;

48.6 hours in the trade network,

And in supermarkets 54.4 hours.

The average number of hours worked per day in the surveyed sectors was:

9 hours in textile production;

9 hours in the trade network;

In supermarkets - 10.8 hours.

According to the distribution, most of the textiles (54%) work 9 hours a day. In the retail chain 36% for a 10-hour workday, while in supermarkets 26.5% work for 10 hours.

It should also be noted that most of the respondents state that they are not remunerated in exchange for overtime hours. This is 61.3% of the employees in the textile industry, 69% in the trade network, and 80.7% in the supermarkets.

The small number of respondents who receive overtime pay are most often remunerated for overtime work at the same rate as they would be paid for working part-time. The average overtime rate is: 140% in the textile industry, 115% in the retail chain, and 101% in the supermarket. This means that the overtime pay rate paid in supermarkets has only a symbolic face and is only 1% higher than the standard time pay.

Decent Pay

The concept of fair remuneration is not recognized in the Labour Code of Geogia. This is significant in light of the high Income inequality in the country (Gini Coefficient -0.36), and can her attributed to the lack of social dialogue, and the absence of an instrument for regulating minimum wage. The minimum wage in the country was set by presidential decree in 1999 and does not exceed 7 Euros per month[11].

Indeed, 21.3% of the population lives below the absolute poverty line. 11.2% of the employed in the country have wages below the subsistence level. Consequently, a large proportion of employees are living below the poverty line. Out of the 829 thousand people employed, 108 of the highest-income citizens receive the same salary as 130 thousand of the lowest-income citizens taken together. Because of this, the state has to provide social assistance to the population below the poverty line for those who work and as a rule should be able to provide for their own needs with their own salary. However their salary is so minimal that it is impossible to cover even the basic expenses, and does not afford a decent stander of living.

[11] Decree of the President of Georgia № 351 June 4, 1999 "On the amount of the minimum wage"“

Another reason for the high income inequality among employees is also the universal (flat rate) income tax. All taxes in Georgia are universal. In this regard progressive taxation can have some impact on the growth of disposable income of employees whose wages are below the subsistence level.

A brief assessment of average monthly nominal wages of employees by region, finds that the wage gap in the regional context is also quite large. For example the following regions have the most visible wage gap compared to the capital:

- Guria: 51.32%
- Imereti: 39.60%
- Kakheti: 45.64%
- Racha-Lechkhumi and Kvemo Svaneti: 56.56%
- Samtskhe-Javakheti: 41.57%
- Shida Kartli: 45.34%.[12]

Article 4. §3. Equal Pay for Work of Equal Value for Women and Men

Under the Charter, women are entitled to equal pay for work of equal value, which applies not only to the same work, but also to different work of the same value. This principle includes not only direct salary bur all benefits, and applies to both full and part time employees, and must be expressly provided in legislation.[13] Domestic law must provide adequate and effective remedies, including adequate compensation. The European Committee of Social Rights has found that domestic law must make provision for comparison of pay and jobs to extend outside the company concerned, where this is necessary for appropriate an appropriate.[14]

As a result of the 2020 amendments to the Labour Code, a regulation has emerged that obliges employers to ensure equal pay for female and male employees if they perform equal work15. This reform is significant, but it should be noted that despite the demands of trade unions, there is still no methodology for measuring / evaluating the value of equal work, which is why the regulations remain just formal. The lack of methodology has been the subject of criticism by the ILO for years.16

Despite legislative improvements in the prohibition of discrimination, in practice the Labour Inspection Service and the court have very often refrained from establishing discriminatory facts [with a few exceptions], despite the fact that the preconditions provided by law are obvious. This approach further complicates the implementation of norms in everyday life and improves the situation of employees in this area. Moreover, in many cases the discriminatory treatment is explicitly described in the motivational part of the court decision, however, the fact of discrimination is not established in the concluding / resolution part.

Statistics on the pay gap are crucial in this respect. According to 2020 data, the average monthly nominal salary of employed women in the country was 952.2 GEL, while the average monthly nominal salary of employed men was 1407.7 GEL. Accordingly, the gender pay gap of the average monthly nominal wage of hired employees is 32.31%17. Such a large difference is because women in Georgia have less opportunity to hold high-paying managerial positions.

[12] Geostat. (2021). Average monthly nominal wages of employees by regions. geostat.ge/ka/modules/categories/39/khelfasebi
[13] Digest at 88
[14] Digest at 89
[15] Georgian Labour Code, Article - 4.4.
[16] https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:4057609
[17] Geostat. (2021). Average monthly nominal wage of hired employees by sex. geostat.ge/ka/modules/categories/39/khelfasebi

However, there is also a difference in pay between women and men employed in the same positions, which cannot be explained by objective reasons. As for the gender pay gap according to the positions, in this context for the positions where logically the lowest pay gap should be fixed, because working conditions do not require any different physical endurance, here we have the following situation:

- Managers: Hourly pay gap: 21.2%; Monthly salary difference: 26.5%.
- Specialists-professionals: Hourly salary difference: 20.2%; Monthly salary difference: 17.8%;
- Technicians and Support Specialists: Hourly salary difference: 32.2%; Monthly salary difference: 33.7%;
- Office support staff: Hourly pay gap: 20.1%; Monthly salary difference: 20.5%.[18]

As for the average monthly nominal wage gap for hired employees by type of activity, in the areas where logically the most equal pay should be fixed, we have the following types of gender pay gap:

- Information and Communication: 20.6%;
- Financial and Insurance Activities: 45.5%;
- Real Estate Activities: 14.6%;
- Professional, Scientific and Technical Activities: 29.9%;
- Administrative and Support Service Activities: 12.27%;
- Education: 7%;
- Health and Social Service Activities: 28.5%;
- Art, Entertainment and Leisure: 22.3%.[19]

Article 4. § 4. Notice of Termination of Employment

Under Article 4.4 of the Social Charter, parties undertake to recognise the right of all workers to a reasonable period of notice for the termination of employment. The standard of reasonableness is determined with reference to length of service.

The grounds and procedures for termination of employment are defined by Articles 47 and 48 of the Labour Code of Georgia. The employer has the obligation to notify the employee in writing at least 30 days in advance only in the following situations: a) economic circumstances, technological or organizational changes that make it necessary to reduce the workforce; b)incompatibility of the employee's qualifications or professional skills with the position / job to be held; c) unless otherwise provided by the employment contract - long-term incapacity for work, if his / her term exceeds 40 consecutive calendar days or the total term for 6 months exceeds 60 calendar days, in addition, the employee has used the leave provided for in Article 31 of this Law; or d) an objective circumstance that justifies the termination of the employment contract.

This falls short of Charter requirements which establishes the right to a reasonable period of notice for termination of employment applies to all cases of termination of employment, and all categories of employment, irrespective of status. Indeed, it is only in situations of immediate dismissal for serious offenc-

[18] Geostat. (2021). Gender pay gap. https://www.geostat.ge/ka/modules/categories/39/khelfasebi
[19] Geostat. (2021). Average monthly nominal salary of hired employees by type of activity and sex. geostat.ge/ka/modules/categories/39/khelfasebi

es, that could justify the absence of reasonable notice. [20] Under Article 48 provisions, there is no requirement of reasonability, and determining notice period by the length of service, as is required by the Charter. In particular, in case of a warning about the expected dismissal 3 calendar days in advance, the employee will be paid at least 2 months, and in case of a warning 1 month in advance, not less than 1 month.

Article 4.§5. Deduction from the Labour Remuneration

Article 4(5) of the Charter requires permissible

Deductions from wages only under conditions prescribed by laws or in collective bargaining agreements. Such deductions must be subject to reasonable limits, and their determination should not be left to the discretion of sole parties to the contract.[21] This includes all forms of deduction, including repayments or wage advances.[22]

According to Article 43 of the Labour Code of Georgia, the employer has the right to deduct from the employee's remuneration the overpaid amount or any other amount that, due to the employment relationship, the employee owes to him. The total amount of the one-time deduction from the salary should not exceed 50 percent of the salary, which is unclear and making risks of excessive use of power by emoloyer.

In practice, there are frequent cases when employees are deducted from their salaries without justification the so-called arbitrary payment of fines or damages without providing any guilt. Such an approach constitutes corporate responsibility, which is contrary to the Charter standard.

Based on a study conducted in the field of textiles and trade in 2019, it was determined that some employees have amounts deducted from their salaries that are unrelated to the payment of taxes. Such charges are more common in supermarket chains (18.1%), than in textile production (15.7%) and trade networks (8.3%). Among respondents reporting a reduction in wages, 53.3% of supermarket employees said that such cases are frequently applied; 58.3% indicated a systematic nature of wage reduction in textile production, while 29.4% indicated in the trade network. Further, 64.5% of the employees indicated that they do not know the exact reason for the salary withholding, the reasons for the additional withholding of wages in the textile industry. In the trade network, 47.1% reported that wages were reduced due to the shortfall. The same, - 78.6%[23] in supermarkets named the commodity loss as the reason for the salary deduction.

Article 5. Right to Organize and Article 6 Right to Bargain Collectively

Article 5 of the European Social Charter obliges member states to guarantee the right of association of employers and workers both at the legislative level and in practice. Under Article 6(4), right to bargain collectively, workers are ensured the right to collective action, including the right to strike.

Article 6(1) of the Charter requires state parties to undertake to promote joint consultation between workers and employers. The Committee has held that if there is not adequate joint consultation in force, the state must take adequate steps to encourage it. [24] Such consultation must take place at the national, sectoral and enterprise level.[25]

[20] Digest at p 91
[21] Digest at p 92
[22] Digest at 93
[23] Chanturidze G. (2019). Execution of labour rights in the fields of textiles and trade. GTUC, GIZ (Deutsche Company for International Business ().
[24] Digest at 98
[25] Digest at 99

While, the Labour Code and the Organic Law on "Trade Unions" guarantee the right of collective bargaining for employees. Amendments to the Labour Code in 2020 made it possible to apply to both the court and the Labour Inspection Service in the event of voluntary non-compliance with the mediation agreement, which is a positive change.

Nevertheless, collective bargaining is still not properly encouraged and supported by the state and consequently the legislative changes have not had a tangible positive impact on the ground. During the reporting period, there were numerous cases when employers in collective bargaining, strikes and mediations refused to negotiate with employees through trade unions, while state and local government officials (governor, MP, mayor) met with employees and through informal mediation without a trade union, called for negotiations with the employer (Ltd. IDS Borjomi Georgia, JSC Rustavi Nitrogen, Ltd. Guria-Express and other mediations and strikes).

Unfortunately, the tendency to avoid collective bargaining as much as possible is evidenced during the reporting period. In 2021, the strike of Ltd. IDS Borjomi in Georgia ended with an agreement that the parties would continue to negotiate a collective agreement, however, the employer still continues to avoid negotiations (the case of the Ltd. IDS Borjomi Georgia).

The practice of appealing to a court or Labour Inspection for non-compliance with a collective agreement has not yet been developed due to the small number of collective agreements.

Thus, the small scale of collective bargaining remains an important problem in Georgia. The tripartite format of social partnership in the country exists only at the central level and the pilot program is implemented only in the Adjara region. Tripartite commissions do not exist in most regions and agreements reached as a result of bilateral negotiations and number of collective bargaining agreements are also small.

As of 2021 in Georgia, there were a total of 59 collective agreements at the enterprise level and only one sectoral agreement. The only sectoral collective agreement is concluded between the Education and Science Workers Free Trade Union and the Ministry of Education, Science, Culture and Sports of Georgia.

Most of the educational institutions in the education sector are public institutions; therefore, it made it possible to conclude a sectoral agreement. However, no sector other than the education sector can reach a sectoral agreement, which underscores the fact that most employers are not positive about social dialogue and negotiating with employee representatives. At the same time, employers' unions are mostly committed to protecting their own business interests and the social and labour rights of employees are secondary to them.

Inefficient Labour Inspection, Ineffective Mediation and Unresponsive Courts

There have also been cases where employees have refused to work collectively because of unsafe working conditions and unreasonably low wages[26]. In one case, this was followed by the creation of a trade union, mediation and collective bargaining. However, the employer applied to the court in parallel with the mediation to declare the strike illegal. The trade unions then complained to the LEPL Labour Inspection Service and demanded an immediate inspection for violation of labour safety norms. The Labour Inspection Service, found violations, but did not stop the work process despite the fact that sufficient evidence was presented to prove the existence of danger to the life and health of both employees and third parties. The court ultimately determined that the refusal of the employees to work as an illegal strike, de-

[26] www.gtuc.ge

spite the mediation agreement (which was concluded before the court decision) In which the employer has made a commitment to improve compliance with labour safety standard27.

Further the Labour Inspection Service, were not adequately responsive to employees who collectively refused to perform work due to safety violations and had joined a trade union and were at risk of being fired. It should also be noted that shortly before the court decision was made, mediation took place between the employer and the trade unions, which ended with the employer refusing to enter into an agreement and promising not to dismiss those employees who participated in the court decision illegally.

Article 6(3) requires states to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration to settle labour disputes. However, in Georgia, the mediator has a limited role and function in the process of settling a collective dispute and concluding an agreement and is largely ineffective. During the first mediation between the employer and the employees in the above case, the mediator offered the employees to sign the mediation agreement so that the agreement had not yet been signed by the trade union leader of the employees' representative. After being signed by the employees, the text turned out to be in the interests of the employer.

Due to the weakness of the role of mediator, the Labor Inspection Service and the court, employees cannot effectively exercise the right under part 4 of the Article of the Charter, despite the efforts of trade unions and extensive media coverage of the issue (Ltd. Guria-Express case).

During the reporting period, there were also cases when the mediator held only one meeting with the employees during the mediation. Finally, it was only after a trade union representative inquired with the mediator, the employees were informed that the mediation had ended without a result because the employer had refused the agreement. The mediator's participation was ineffective in this case as well. He, as a representative of the state, made no effort to help the parties reach an agreement to resolve the collective dispute (the mediation case of Tifliski Winnie Pogreb Ltd. and the Georgian Wines Producing Company).

The weak position of the state in exercising the right of collective bargaining became particularly apparent during the pandemic period. In 2021, against the background of deteriorating socio-economic conditions caused by the pandemic, a wave of strikes actually hit Georgia. The strikes took place everywhere, in all regions of the country and in companies with all sizes of turnover (small, medium, large).

Due to the severity of the situation, the Georgian Trade Unions Confederation (GTUC) appealed to the Prime Minister to convene an extraordinary meeting of the Tripartite Social Partnership Commission, which is authorized by Georgian law, but no decision was made to hold an extraordinary meeting (JSC Rustavi Azot Strike). A representative platform, such as the Tripartite Social Partnership Commission, should be actively used to engage in a dialogue on acute employment issues and to reach a decision with the participation of all stakeholders, which would also fulfill the commitments made in Article 6 (1-3 paragraphs) of the European Social Charter. Contrary to this, the meetings of the Tripartite Social Partnership Commission are not held even at regular intervals established by law.

During the reporting period, it was observed that the employer in the past did not fulfill the collective agreement concluded with the trade union unilaterally, despite the fact that the collective agreement was concluded for open-ended (JSC Rustavi Azot).

The role of the state is especially important in such conditions. It should create a legal framework and be a kind of mediator between employees and employers and at the same time be a guarantor in the implementation of the norms provided by the legislation and collective agreements.

[27] Collective labour dispute of Ltd. Guria Express

On November 2, 2017, Georgia ratified the 144th International Labour Organization Convention on "Tripartite Consultations to Promote the Implementation of International Labour Standards".

A Tripartite Social Partnership Commission has been functioning in Georgia since 2013. The activities of the commission are regulated by a government resolution "On the approval of the statute of the Tripartite Social Partnership Commission"28. This commission operates only at the central level. The activities of the only tripartite commission operating at the regional level are regulated by a resolution of the Government of the Autonomous Republic of Adjara.29 For years, decisions have not been made on trade union initiatives such as setting a minimum wage, introducing unemployment benefits and much more. It should also be noted that the government does not work in practice to encourage collective bargaining with employers.

The Appendix to the Labour and Employment Strategy of Georgia for 2019-2023 (Task 4.3) discusses the deepening of social dialogue and partnership.30

The strategy speaks of strengthening the Tripartite Commission in both the central and regional contexts, however so far there are no positive steps at the regional level.

The strategy notes: "Social partnership at the local level is particularly important in reducing supply-demand mismatches. This partnership will facilitate the implementation of job-based learning in enterprises, improving educational programs, infrastructure and methodology as required by the labour market. In this regard, it is important to develop public-private partnership mechanisms, communicate regularly and promote cooperation between employers and the education sector."

It is clear from this record that the government presents social dialogue at the local level as collaboration between business and educational institutions (between two business entities) and not a dialogue and encouragement of collective agreements between employers and employees. No steps have been taken in recent years to encourage collective bargaining.

Compulsory Mediation and the Right to Strike

It should also be noted that the mandatory mediation that employees must go through before going on strike actually serves to hinder the strike rather than bring the positions of employees and employers closer together. In 2013-2017, 30% of mediations were repeated mediations, which were caused by non-compliance by employers with the mediation agreement reached. The Labour Inspection has neither a mandate to enforce the agreement reached through mediation nor a collective agreement. Consequently, the agreements reached are often not fulfilled.

Essential Services and the Right to Strike

The Charter does allow for restrictions and prohibitions on the right to strike in cases of essential services/sectors, but such regulation must be proportionate to the requirements of the sector.31

According to the amendments to the Labour Code in 2020, the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, after consulting with the

[28] Resolution of the Government of Georgia N258, October 7, 2013, on the Approval of the Statute of the Tripartite Social Partnership Commission

[29] Resolution of the Government of the Autonomous Republic of Adjara N110, April 24, 2018 "On the Establishment and Approval of the Statute of the Tripartite Territorial Commission for Social Partnership of the Autonomous Republic of Adjara"

[30] Resolution of the Government of Georgia N662, December 30, 2019 "On Approval of the National Strategy of Labour and Employment Policy of Georgia for 2019-2023"

[31] Digest at 105

social partners, redefined the list of vital services. The new list should expand the circle of employees who have the right to strike.

According to the Labour Code amendments 2020, the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia redefined the list of vital services intended to downsize the existing list of employees restricted to enjoy the rights to strike[32]. However, It should be noted that the draft version of the proposed list have not included the municipal cleaning among the vital services, but it reappeared on the list after the employees of the Tbilisi City Hall Cleaning Service went on strike right before the new list was approved.

The Minister has not considered proposal of Georgian Trade Unions Confederation to narrow down the list of workers restricted to enjoy the right to strike to the workers whose, duties and responsibilities are considered as a vital service provider. A similar proposal has been submitted by the GTUC for the public services defined by the order. The existing list is the long one and covers too many public institutions and all public servants employed there. Also, we believe that in this case an individual approach is needed, taking into account the specifics of the work, with the aim of restricting the right to strike.

The Minister also did not take into account the remarks of the Georgian Trade Unions Confederation regarding the narrowing down of the list and the restriction of the right to strike only for those employees who, due to the duties and responsibilities provided for the position, are a vital service provider. A similar offer was made for the public services defined by the order, the list of which, on the one hand, is extensive and on the other hand, substantially covers many institutions and consequently, employees. Also, we believe that in this case an individual approach is needed, taking into account the specifics of the work, with the aim of restricting the right to strike.

Particularly problematic is the fact that employees of the vital service specified in the order have the right to strike only if they provide a minimum service. This implies the provision of minimum operational services in such a way as to meet the basic requirements of the customers and such services are provided safely and without interruption. The definition of the minimum service, its scope, the organization of the minimum service and the minimum number of employees to be provided by the collective labour dispute shall be determined by the parties to the collective bargaining agreement before sending a written notice to the Minister.

Defining the scope of minimum service by the opposing parties carries risks that such an agreement may not be reached at all, especially since reaching an agreement on these issues should not naturally be in the employer's interest (no agreement can be reached and still a strike will take place, the employer will have the opportunity to go to court to declare the strike illegal). With this in mind, we may get a situation where the right to strike will exist, but employees will practically not benefit from it.

In addition, it should be noted that the Labour Code does not explicitly establish the right to an individual strike. Provisions of Labor Code are mainly focused on collective labor disputed on precondition of strike. Collective labor dispute can be initiated by at least 20 employees or/and trade unions, whereas there is no procedure defined by the Code to initiate strike based on individual labor dispute.

Article 21 Right to Information and Consultation

The Charter Article 21 of the Charter requires that workers have the right to be informed and consulted with within the undertaking, which includes information on the financial situation of the employer and on

[32] Order of the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia 01-78 / n "On Approval of the List / List of Vital Services", 07/09/2021

decisions which could substantially impact on workers. While these provisions apply to all undertakings, state parties may exclude undertakings employing a lower threshold of people. According to Charter jurisprudence, these rights must be guaranteed through enforceable remedies and sanctions.

While positive steps have been taken in Articles 70-73 of the Labour Code of Georgia to regulate the rules for the exchange of information between the employer and the employee, which are consistent with the requirements of Article 21 of the European Social Charter. However, there are no official statistics on implementation in practice. Indeed, there are frequent cases when the enterprise has more than 50 employees and before the dismissal of a person on the basis of re-organization, the employees are not informed in accordance with Articles 70-73 of the Labour Code. Consequently, while Adoption of Articles 70-71 of the Labour Code of Georgia is a step forward, the culture of their implementation is still underdeveloped. Furthermore, the broaden mandate of labor inspection covers monitoring over the efficient enforcement of the abovementioned provisions in Labour Code.

Article 22. The Right to take part in the determination and improvement of working conditions and working environment

Despite the fact that a new chapter "Information and Consultation in the Workplace" has appeared in the Labour Code of Georgia, it does not ensure the achievement of the goal set out in Article 22 of the Social Charter. In most cases, the commitment set out in the chapter is formal and is rarely reflected in the daily lives of employees. Also, these norms [Articles 72-73] do not fully cover the obligations set out in Article 22 of the Charter.

Article 26. The right to dignity at work

Article 26 of the European Social Charter obliges member states to take proactive - preventive and reactive - post-facto measures against sexual harassment, including the promotion of awareness, information and prevention, as well as taking all measures to protect workers from such conduct.

In terms of proactive and preventive response, positive dynamics were revealed during the reporting period. As a result LEPL Labour Inspection Service detected non-existence of anti-discrimination internal policy and enforcement mechanisms for victims of discrimination.

Despite a number of positive legislative changes in the Labour Code in 2020, it remains difficult to identify the fact of harassment (sexual harassment) and successfully impose legal liability, as required under Article 26 of the Charter.

Inspections of harassment complaints by the Labour Inspection Service are largely incomplete, the factual circumstances hare not fully investigated and the decision is either unsubstantiated or says nothing at all as to whether the Labour Inspection has established harassment. Further, the Labour Inspection Service does not interview the complainant and nor allow them to take an active part in the ongoing inspection process within the complaint. They also do not provide the inspection materials in full and delivers the decision to the complainant only upon request. In terms of timeliness and efficiency, the Labour Inspection Service in many cases does not meet the deadlines set by law for neither inspection nor review of an administrative complaint.

The burden of proof in court remains heavy for the victim. While the law does impose the burden of proof on the perpetrator of harassment (discrimination) if the alleged victim meets the standard of reasoned presumption, case law illustrates the opposite. During the reporting period, there were cases when the court did not comply with the request to establish the fact of harassment (discrimination), however the reason-

ing of the decision clearly indicated the alleged discriminatory motive (case of the National Communications Commission). There was also a case when the court refused to establish the fact of discrimination without establishing the facts only on the grounds that the plaintiff (the victim) could not cope with the burden of pointing out the facts of the alleged discrimination (Ltd. Georgian House)[33].

Also in terms of changing the practice of harassment (discrimination) cases. Until now, the Public Defender has also investigated allegations of harassment (discrimination) in which the facts described may have been mentioned in the court proceedings, but the court did not have the applicant to establish the fact of harassment (discrimination), but only sought to establish such fact. During the reporting period, the Public Defender changed this practice and either refuses or suspends the consideration of allegations of harassment (discrimination) until the final decision of the court.

Such practices will negatively affect the detection of facts of harassment (discrimination) and the desire to use the mechanisms of appeal. In addition, it violates the current legislation of Georgia in this regard that according to the current legislation, the victim has the right to independently apply to the Public Defender and other bodies with a request to establish harassment (discrimination).

Article 28. The right of workers' representatives to protection in the undertaking and facilities to accorded to them

Georgia has not ratified the Article 28 of the European Social Charter. However, the legislative changes made in the Labour Code of Georgia in 2020 define in detail the issues related to the prohibition of discrimination. Article 4.1 and Article 5 (d) of the Labour Code prohibits direct and indirect discrimination against an employee on the basis of membership in an employee union (Trade Union) . Accordingly, it should be noted that despite some shortcomings, we consider it necessary for Georgia to ratify Article 28 of the European Social Charter

Article 29. The right to information and consultation in collective redundancy procedures

Under Article 29 of the Charter all workers have the right to be informed and consulted in collective redundancy procedures. These rights must be enforced through recourse to administrative or judicial proceedings and effective sanctions.34

Article 49 of the Labour Code of Georgia, defines the concept of mass dismissal and the obligation of the employer (if he/she plans a mass dismissal) to consult with trade unions (in the absence of unions, than with the representatives of the employees), as well as the employer 45 days in advance to send a written notice to the Minister and those employees whose employment contracts are terminated.

However, the provisions are rendered ineffective by the absence of provisions of liability for breach of obligations by the employer. Further the Labour Inspection does not have the mandate to inspect and apply a sanction to an employer in the event of a breach of an obligation.

[33] www.gtuc.ge
[34] Digest at 220