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**REPORT ON THE NEEDS ASSESSMENT
IN RESPECT OF SOCIAL RIGHTS IN GEORGIA**

**CONDUCTED WITHIN THE FRAMEWORK OF THE COUNCIL OF
EUROPE PROJECT “STRENGTHENING PROTECTION OF SOCIAL AND
ECONOMIC RIGHTS IN GEORGIA”**

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After having joined the Council of Europe on 27 April 1999, Georgia ratified the European Convention on Human Rights on 20 May 1999 and the Revised European Social Charter (hereinafter, the “European Social Charter”) on 22 August 2005, accepting 63 of the 98 paragraphs of the European Social Charter. It has neither signed, nor ratified the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints².

Table of accepted provisions

1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	2.6	2.7	3.1
3.2	3.3	3.4	4.1	4.2	4.3	4.4	4.5	5	6.1	6.2	6.3
6.4	7.1	7.2	7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.10	8.1
8.2	8.3	8.4	8.5	9	10.1	10.2	10.3	10.4	10.5	11.1	11.2
11.3	12.1	12.2	12.3	12.4	13.1	13.2	13.3	13.4	14.1	14.2	15.1
15.2	15.3	16	17.1	17.2	18.1	18.2	18.3	18.4	19.1	19.2	19.3
19.4	19.5	19.6	19.7	19.8	19.9	19.10	19.11	19.12	20	21	22
23	24	25	26.1	26.2	27.1	27.2	27.3	28	29	30	31.1
31.2	31.3										Grey = Accepted provisions

Between 2007 and 2021, Georgia has submitted 14 reports on the application of the European Social Charter and 2 reports on non-accepted provisions.

To date, the country has benefited from the Council of Europe co-operation programmes under two consecutive **Action Plans for the periods 2013-2015 and 2016-2019**. The implementation of the Action Plan 2016-2019 resulted in the ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (hereinafter, the “Istanbul Convention”) in 2017, an enhanced independence of the judiciary system, and an increased efficiency of the training system for legal professionals. In addition, the Action Plan 2016-2019 led to significantly improved human rights and healthcare standards in places of detention, improved efficiency of electoral processes, as well as an enhanced compliance of the anti-money laundering/countering of terrorism financing legislation with relevant European standards. Nevertheless, challenges remain concerning the consolidation of the progress achieved, including concerns raised by civil society on most urgent issues concerning the area of social rights. Further improvements in the implementation of the human rights and anti-discrimination legislation can be achieved. To give an example, even though Georgian authorities made an effort to close the gender

² E.T.S., n° 158. The Additional Protocol to the European Social Charter Providing for a System of Collective Complaints was opened for signature on 9 November 1995 and is in force since 1 July 1998.

equality gap, there are still challenges left for legislators and policymakers and women's participation in decision-making remains quite low³.

The current Action Plan for Georgia 2020-2023 was adopted by the Committee of Ministers of the Council of Europe on 5 November 2019. The Action Plan presents a comprehensive framework for cooperation to support key national reforms and ultimately to bring Georgia's legislative and regulatory frameworks, institutions and practice further in line with European standards in the areas of human rights, the rule of law and democracy. One of the priority areas for this cooperation is enhancing the respect of social rights in Georgia. The project "Framing co-operation for social rights development in Georgia" was launched to assist Georgia to enhance the respect of social rights in line with the European Social Charter and other relevant standards of the Council of Europe.

This report provides an assessment of the priority areas concerning social rights, on which the future cooperation between the Council of Europe and Georgia should focus. An initial version of the report was prepared on the basis of a desk research as well as a number of meetings organised online in August and September 2021, which the Council of Europe's office in Georgia facilitated. A draft version of the needs assessment study was presented at a project launching event organised on 23 September 2021.

The following representatives were among **the stakeholders involved in the preparatory meetings and at the Project launching event**: The Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs, the Ministry of Justice, the Ministry of Economy and Sustainable Development, the Ministry of Education and Science, the Human Rights Secretariat, the Government's Administration, the Healthcare and Social Issues Committee of Parliament, the Human Rights and Civil Integration Committee of Parliament, the Public Defender of Georgia (hereinafter, the "Public Defender"), the Labour Inspection Office (hereinafter also, the "Labour Inspectorate"), the State Employment Agency, the Civil Service Bureau, the High School of Justice, the Georgian Bar Association, the Georgian Trade Unions Confederation, the Georgian Employers' Association, and international organizations (the International Labour Organization, the United Nations Development Programme, the Austrian Development Agency, the East-West Management Institute/Promoting Rule of Law in Georgia (PROLoG) Activity, U.S. Agency for International Development /DAI, Gesellschaft für Internationale Zusammenarbeit (GIZ), Sweden's government agency for development cooperation (SIDA), the Swiss Cooperation Office in Georgia, People in Need, the Czech Development Cooperation Office, Agence Française de Développement

³ Council of Europe, *Council of Europe Action Plan for Georgia 2020-2023*, CM(2019)158, 22 October 2019, page 2, available at <https://rm.coe.int/ap-georgia-2020-2023-en/168098f179>.

(AFD). Representatives from Civil Society Organizations included Fair Labour Platform Members (the Social Workers Union, the Union of Healthcare & Service Sector Workers - Solidarity Network, the Georgian Young Lawyers' Association, "Ertoba 2013" - Tbilisi Transportation Company Independent Union, the Public Broadcaster Labour Union, and the Open Society Georgia Foundation) and representatives from Non-Governmental Organizations (the Social Justice Center, Rights Georgia, the Partnership for Human Rights, the Georgian Progressive Forum, the Georgian Association of Social Workers, and the Human Rights Center). **The author is grateful to all the participants in these consultations, whose contributions greatly enriched the content of this report.**

In recent years Georgia has amended its Constitution and completed the evolution to a parliamentary system. The country continues its reform efforts to further develop its legislation and practices in line with the European standards of human rights, rule of law and democracy. Georgia significantly improved its legislature to promote gender equality and combat violence against women⁴. The labour legislation reform, which included an institutional strengthening of the system of supervision over working conditions, including the granting of a full mandate to supervise the implementation of the norms set out in the Labour Code of Georgia (hereinafter, the "Labour Code"), was a prominent development in 2020⁵. Since 1 January 2021, the Labour Inspectorate has been empowered to inspect workplaces without the employer's consent, with the aim to detect breaches of the provisions of the Labour Code and the Law of Georgia on Public Service (hereinafter, the "Public Service Law") and to impose respective sanctions in case a breach is detected. Along with the aforementioned, according to the amendments to the Labour Code which were passed by the Georgian Parliament on 29 September 2020, the scope of the prohibition of discrimination was broadened, and provisions governing, *inter alia*, the employment relationship during the pre-contractual stage, leave, night shifts, shift work and night work and breaks were exhaustively stipulated. The term "intern" was defined and provisions governing the aim of an internship, remuneration and the internship duration have been introduced.

Against this background, **this needs assessment seeks to identify the key areas in which the Council of Europe standards with regards to social rights can contribute to strengthening the economy of Georgia** and ensure it is placed on a more sustainable path. The starting point of this assessment is the standards of the Council of Europe in the area of social rights, particularly those that

⁴ Council of Europe, *Council of Europe Action Plan for Georgia 2020-2023*, CM(2019)158, 22 October 2019, page 2; available at: <https://rm.coe.int/ap-georgia-2020-2023-en/168098f179>.

⁵ *The Law of Georgia on the Labour Inspection Service*, 29.09.2020, available at: <https://matsne.gov.ge/en/document/download/5003057/0/en/pdf>; *The Organic Law of Georgia on the Amendments to the Organic Law of Georgia the Labour Code of Georgia*, 05.10.2020, available at: <https://bit.ly/3fs8JJJ>.

stem from the European Social Charter. In addition to the consultations referred to above, the assessment was based on different documents concerning the current situation and key challenges faced by Georgia in the area of social rights enumerated in the footnotes below.

SUBSTANTIVE AREAS OF CONCERN

This report identifies the key issues raised during the needs assessment exercise concerning the implementation of the European Social Charter and other Council of Europe standards in the area of social rights in Georgia. For ease of exposition, these issues have been listed in accordance with the following reporting purposes under the European Social Charter, which divide the rights of the European Social Charter into distinct "Groups" relating, respectively, to "Employment, training and equal opportunities" (Group 1), "Health, social security and social protection" (Group 2), "Labour rights" (Group 3), and "Children, families and migrants" (Group 4).

The report does not offer to cover the full range of the rights of the European Social Charter. Rather, it highlights the areas in which a reform is imminent or most urgent, recalling the applicable standards and the challenges that Georgia faces in each of the identified areas.

EMPLOYMENT, TRAINING AND EQUAL OPPORTUNITIES (GROUP 1)

Employment, training and equal opportunities (Thematic Group 1 under the European Social Charter) covers: the right to work (Article 1), the right to vocational guidance (Article 9), the right to vocational training (Article 10), the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15), the right to engage in a gainful occupation in the territory of other States Parties (Article 18), the right of men and women to equal opportunities (Article 20), the right to protection in cases of termination of employment (Article 24), the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).

Georgia has accepted all provisions from the above-mentioned group except Articles 9, 10§1, 10§3, 10§5, 15§§1-2, 24 and 25 of the European Social Charter.

The last report concerning employment, training and equal opportunities (the 13th National Report on the implementation of the European Social Charter) was submitted by Georgia on 6 January 2020.⁶ The reference period was from 1 January 2015 to 31 December 2018. Conclusions with respect to the provisions from Group 1 were published in March 2021, the European Committee of Social Rights declared 6 issues of non-conformity (Articles 1§3, 1§4, 10§2, 10§4, 15§3, 20 of the European Social Charter). With respect to the situation related to Articles 1§1 and 1§2 of the European Social Charter, the European Committee of Social Rights could not make an assessment and demanded further information in order to examine the situation.

After the reference period, crucial amendments were introduced to the Labour Code which is the main act regulating employment relationships. Apart from these, the Organic Law of Georgia on Occupational Health and Safety has been introduced and amended and the new Law on the Rights of People with Disabilities was adopted on 14 July 2020.

As to the non-accepted provisions from this group, the European Committee of Social Rights considered, in 2012 and in 2015, that there were no legal obstacles to the acceptance of Article 9, Article 10§§1 and 3 and Article 15§1 of the European Social Charter.

With regards to Group 1 rights under the European Social Charter, as a result of discussions and information provided during the needs assessment meetings, **the following areas have been identified as most needing support** to adjust the legal and practical situation in Georgia to international standards of the Council of Europe, and especially to the standards of the European Social Charter:

- the right to work in the area of the policy of full employment (Article 1§1 of the European Social Charter) and in the area concerning protection against discrimination in employment (Article 1§2 of the European Social Charter);
- the right to vocational guidance in the area of supporting the effectiveness of its provision (Article 9 of the European Social Charter);
- the right to vocational training in the area of inclusion and access based on individual aptitude (Article 10§1 of the European Social Charter) and in the area concerning vocational training and retraining of adult workers (Article 10§3 of the European Social Charter);

⁶ Government of Georgia, *13th National Report on the implementation of the European Social Charter*, (Reference Period: 01/01/2015 - 31/12/2018), 6.1.2020, available at <https://rm.coe.int/rap-cha-geo-13-2020/16809ccd1e>.

- the right of persons with disabilities to independence, social integration and participation in community life in the area of guidance, education and vocational training (Article 15§1 of the European Social Charter);
- the right to equal opportunities and equal treatment in employment and occupation without sex discrimination (Article 20 of the European Social Charter).

ARTICLE 1 § 1 RIGHT TO WORK. POLICY OF FULL EMPLOYMENT

By accepting Article 1§1 of the European Social Charter, States Parties undertake to pursue a policy of full employment. This means that States Parties must adopt and implement an economic policy which is conducive to creating and preserving jobs and must take adequate measures to assist those who become unemployed in finding and/or qualifying for a job. Article 1§1 of the European Social Charter is an obligation of conduct rather than of result⁷, however, the efforts made by States Parties to reach the goal of full employment must be adequate in the light of the economic situation and the level of unemployment⁸. If a State abandoned, at any time, the objective of full employment in favour of an economic system providing for a permanent pool of unemployed, it would infringe the European Social Charter⁹.

In the process of the assessment of Article 1§1 of the European Social Charter, a wide range of indicators are examined, relating to the national economic situation (e.g. the gross domestic product (GDP), growth, inflation, job growth), to patterns of employment (e.g. the employment rate, proportion of part-time and fixed-term employment), as well as to the structure and level of unemployment paying special attention to the situation of vulnerable groups such as youth, the long-term unemployed, persons belonging to minorities and persons with disabilities¹⁰.

In its last report on provisions of Group 1 under the European Social Charter, the Georgian Government reported the following: “The overall employment rate (persons aged 15 to 64 years) fell from 63.9% in 2015 to 60.6% in 2018. The employment rate for men dropped from 70.9% in 2015 to 66.9% in 2018 and the rate for women fell from 57.3% in 2015 to 54.7% in 2018. [...] [T]he overall unemployment rate (persons over 15 years of age) fell slightly, from 14.1% in 2015 to 12.7% in 2018.

⁷ European Committee of Social Rights, *Conclusions I (1969), Statement of Interpretation on Article 1§1*.

⁸ European Committee of Social Rights, *Digest of the case-law of the European Committee on Social Rights*, December 2018, page 56 with the sources enumerated therein, available at: <https://rm.coe.int/digest-2018-parts-i-ii-iii-iv-en/1680939f80>.

⁹ European Committee of Social Rights, *Conclusions I (1969), Statement of Interpretation on Article 1§1*.

¹⁰ European Committee of Social Rights, *Digest of the case-law of the European Committee on Social Rights*, December 2018, page 56 with the sources enumerated therein, available at: <https://rm.coe.int/digest-2018-parts-i-ii-iii-iv-en/1680939f80>.

Youth unemployment dropped from 27.9% in 2015 to 26.6% in 2018 (15 to 19-year-olds) and from 35.3% in 2015 to 30.8% in 2018 (20 to 24-year-olds). Long-term unemployment (as a percentage of the overall unemployment rate) fell from 44.1% in 2015 to 40.2% in 2018. [...] [T]he 2015-2018 State Strategy for the Formation of the Labour Market pursued four goals: i) improve the legal framework in the field of labour and employment, ii) promote effective employment, iii) ensure the protection of decent working conditions and human rights as defined by law, and iv) develop workforce skills”¹¹.

Based on the above, in 2020, the European Committee on Social Rights deferred its conclusion pending the receipt of further, more detailed information. The European Committee of Social Rights observed that the economic situation in Georgia had slightly improved, nevertheless, it noted that unemployment rates remained high and particularly so among young people.

Since the last reporting period, a high unemployment rate and low salaries have remained one of the most pressing issues in Georgia. At over 15 percent, the unemployment rate in Georgia is high, measured by European standards. In particular, Georgia faces three main labour market issues: (a) underutilization of labour resources, (b) income inequality, and (c) skills mismatch. All three issues have a negative impact on poverty. Moreover, there is a mismatch between the demand for highly educated workers and their supply¹². According to the latest statistical data¹³, the overall employment rate (persons aged 15 to 64 years) reached 42,7% in 2019 and was at the level of 41,1% in 2020. The employment rate for men was 50,1% in 2019 and 49,5 % in 2020, while for women the employment rate amounted to 36,2% in 2019 and 33,9% in 2020. The overall unemployment rate (persons over 15 years of age) was 17,6% in 2019 and 18,5% in 2020. Youth unemployment (15 to 19-year-olds) reached 27,8 % (for age group 15-24) in 2019 and 43,9% in 2020.

One of the main challenges that were raised during the discussions led within the needs assessment mission meetings is **informal labour**. According to official statistics by the National Statistics Office of Georgia, the share of informal employment in non-agricultural employment accounts for 31,7 % in total, specifically 30,2 % in urban and 35,6 % in rural areas (26,2 % female and 36,4 % male). According to surveys and estimations conducted by Non-Governmental Organizations

¹¹ European Committee of Social Rights, *Conclusions 2020. Georgia*, March 2021, p. 5, available at: <https://rm.coe.int/rapport-geo-en/1680a1c798>.

¹² Government of Georgia, *Social-economic Development Strategy of Georgia “GEORGIA 2020”*, 2020, page 41, available at: https://policy.asiapacificenergy.org/sites/default/files/Georgia%202020_ENG.pdf; Government of Georgia, *The National Strategy 2019-2023 for Labour and Employment Policy of Georgia*, 30.12.2019, p. 5.

¹³ The National Statistics Office of Georgia, *Labour Force Survey*, available at: <https://www.geostat.ge/en/modules/categories/683/Employment-Unemployment>.

and Civil Society Organizations the level of informal labour is in practise much higher than officially estimated (up to 48%). The issue of informal labour is not covered by Georgian regulations.

During the COVID-19 pandemic, the issue of informal labour became even more apparent because people working in non-formalised relations were deprived of protection and not eligible to State support for which employees were eligible. The reasons for the very high level of informal labour that were raised during the needs assessment meetings differ greatly and rank from a lack of incentives for the employers to conclude employment agreements, and very low wages offered in most professions, to a lack of incentives for the employees to insist on the formalised contract. It was raised that people do not see any benefits of becoming officially employed and are afraid they will lose social allowances and State support when concluding an employment contract and that due to very low wages offered their situation will worsen. To address those issues, the Government of Georgia, by Ordinance Nr. 145 of the Government of Georgia on Targeted Social Assistance, amended in 2019,¹⁴ decided not to take social allowances away from people who become employed and established the right to maintain the same amount of social allowances for the next 12 month for people whose income increased not more than 175 GEL average per household members per month. At the end of this period, the beneficiaries shall be re-evaluated¹⁵.

Under the National Strategy 2019-2023 for Labour and Employment Policy of Georgia¹⁶ which includes the vision of the Government of Georgia on systemic and strategic reforms and measures to be implemented over the next 5 years in the field of labour and employment, promoting legal labour is one of the long-term issues. To address this issue it is planned to reduce the discrepancy between demand and supply of the workforce, to strengthen the Active Labour Market Policy and to promote the involvement of women and vulnerable groups in the labour market through targeted social and inclusive employment policies.

¹⁴ Government of Georgia, *Ordinance #145 of the Government of Georgia on Targeted Social Assistance*, 28.07.2006, amended in 2019.

¹⁵ Under *Ordinance #322 of the Government of Georgia On the Approval of Isolation and Quarantine Rules*, 23.05.2020, available at: <https://matsne.gov.ge/en/document/download/4877009/8/en/pdf>, the repeated verification of the social and economic situations of families registered in the database, irrespective of the rating score, shall not be provided at the initiative of the Agency and/or on the basis of confirmed information received and/or found (identified) from various sources within the competences and authority provided for by *Ordinance #126 of the Government of Georgia on Measures for Lowering the Level of Poverty and Improving the Social Security of Population in the Country*, 24.04.2010, except for cases where the initial and repeated verification of the social and economic situation of a family is requested by the family itself (until the 01.01.2022).

¹⁶ Government of Georgia, *Ordinance #662 On the Approval of the National Strategy 2019-2023 for Labour and Employment Policy of Georgia*, 30.12.2019, available at https://www.moh.gov.ge/uploads/files/2020/Failebi/strategy-13.12.19_final-translation.pdf.

The institution responsible for the monitoring and addressing of informal labour is the Labour Inspection Office. However, because of the very recent increase of the Labour Inspectorate's mandate (since 1 January 2021), its possible effect on decreasing informal labour is not yet visible and cannot be assessed. More time is required to see what, if any, effect it may have.

The findings presented above confirm the need to support Georgia in its activities planned to bring the country in line with European standards, especially with the standards of Article 1§1 of the European Social Charter.

ARTICLE 1 § 2 RIGHT TO WORK, FREELY UNDERTAKEN WORK - NON-DISCRIMINATION

Article 1§2 of the European Social Charter prohibits all forms of discrimination in employment, *inter alia*, on grounds of sex, race, ethnic origin, religion, disability, age, sexual orientation, and political opinion, including on grounds of conscientious objection or non-objection. Legislation should prohibit both direct and indirect discrimination and provide for the power to set aside, rescind, abrogate or amend any provision contrary to the principle of equal treatment which appears in collective labour agreements, employment contracts or in internal company regulations¹⁷. Domestic law must also provide appropriate and effective remedies in the event of an allegation of discrimination. Firstly, there must be a right to appeal to a court in case of alleged discrimination, secondly, there must be a protection against dismissal or other retaliatory action by the employer against an employee who has lodged a complaint or taken legal action¹⁸, thirdly, domestic law should provide for a shift in the burden of proof in favour of the plaintiff in discrimination cases¹⁹, and fourthly, remedies available to victims of discrimination must be adequate, proportionate, and must make acts of discrimination dissuasive²⁰.

In its last report on provisions of Group 1 rights under the European Social Charter, the Georgian Government reported that “several relevant acts were amended in 2019 (including the Law on the Elimination of All Forms of Discrimination, Criminal Code and Labour Code) establishing a general framework for equal treatment with regards to employment and prohibiting any form of

¹⁷ European Committee of Social Rights, *Conclusions XVI-1 (2002), Iceland*.

¹⁸ European Committee of Social Rights, *Conclusions XVI-1 (2002), Iceland; Syndicat de Défense des fonctionnaires v. France* Complaint No. 73/2011, decision on the merits 13 September 2012, § 59.

¹⁹ European Committee of Social Rights, *Conclusions XVI-1 (2002), France; European Committee of Social Rights, Syndicat de Défense des fonctionnaires v. France, Complaint No. 73/2011, decision on the merits, 13.09.2012, §59, available at: https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-73-2011-syndicat-de-defense-des-fonctionnaires-v-france?inheritRedirect=false.*

²⁰ European Committee of Social Rights, *Digest of the case-law of the European Committee on Social Rights*, December 2018, page 59 with the sources enumerated therein, available at: <https://rm.coe.int/digest-2018-parts-i-ii-iii-iv-en/1680939f80>.

discrimination. The purpose was to ensure equal enjoyment of the rights set forth by the legislation for all natural and legal persons regardless of race, colour, language, sex, age, nationality, origin, place of birth, residence, property or title, religion or faith, national, ethnic or social belonging, profession, marital status, health condition, disability, sexual orientation, gender identity and expression, and political or other beliefs. [...] [T]he law prohibits both direct and indirect discrimination and [...] the principle of equal treatment under the Labour Code applies also to pre-contractual relations, including the selection criteria and the conditions of recruitment”²¹.

Given the above information, in 2020, the European Committee on Social Rights deferred its conclusion pending the receipt of further, more detailed information. The European Committee of Social Rights stressed the need for the adoption and implementation of the practical, specifically targeted measures to combat discrimination on grounds of disability, race, sexual orientation, age, political opinion or religion.

Since the end of the last reporting period, the legal basis for the protection against discrimination during the employment cycle have been strengthened by amendments to the Law of Georgia on the Elimination of All Forms of Discrimination (hereinafter, the “Elimination of Discrimination Law”) adopted by the Parliament of Georgia in 2019 and 2020²², and by the introduction of anti-discrimination provisions to the Labour Code on the basis of amendments introduced in September 2020.

The purpose of the Elimination of Discrimination Law shall be the elimination of all forms of discrimination and to ensure the equal enjoyment of rights prescribed by law of every person, irrespective of their race, skin colour, language, sex, age, citizenship, origin, place of birth or residence, property or social status, religion or belief, national, ethnic or social origin, profession, marital status, health, disability, sexual orientation, gender identity and expression, political or other opinions, or other characteristics (Article 1 of the Elimination of Discrimination Law). The law distinguishes between direct and indirect discrimination and introduces the concept of multiple discrimination. It defines the Public Defender and the court system as legal mechanisms for the protection of the right to equality.

In 2019, significant changes were made to the Elimination of Discrimination Law: the mandate of the Public Defender was extended to private individuals with legal regulations that are similar to

²¹ European Committee of Social Rights, *Conclusions 2020. Georgia*, March 2021, p. 6.

²² Parliament of Georgia, *Law of Georgia on the Elimination of All Forms of Discrimination*, 02.05.2014, amended on 15.07.2020, available at: <https://matsne.gov.ge/en/document/view/4910926?publication=0>.

those that apply to public agencies. Now, natural persons and legal entities under private law are required to submit information to the Public Defender²³. Moreover, in case of non-implementation of the recommendation, the Public Defender has been authorized to sue a legal entity under private law²⁴. The deadline for introducing a case of discrimination at court has been increased from 3 months to a year²⁵ and harassment and sexual harassment have been defined as forms of discrimination²⁶. Additional changes to this law were introduced the following year²⁷. In 2020, the denial of reasonable accommodation was defined as discrimination on the ground of disability.

In September 2020, substantial changes were made to the existing labour legislation. The prohibition of labour discrimination was detailed in a separate chapter of the Labour Code (Articles 4 to 9 of the Labour Code). The new edition of the labour law, as amended on 29 September 2020, directly establishes the obligation of the employer to ensure equal pay for equal work performed by male and female employees. Furthermore, an open list of specific issues relating to labour and pre-contractual relations (selection criteria, employment conditions, access to trainings, etc.), to which the principle of equal treatment applies, has been defined. Furthermore, the principles of the distribution of the burden of proof and reasonable accommodation have also been explicitly defined. Finally, the employer is required to respond to sexual harassment²⁸.

According to Article 11 § 9 of the amended Labour Code, “[i]n pre-contractual relations, before concluding an employment agreement, an employer shall let a job candidate become familiar with the provisions of the legislation of Georgia regarding the principle of equal treatment between persons and the means of complying therewith, and shall take measures to ensure compliance with the principle of equal treatment between persons in the workplace, and shall include anti-discrimination provisions in its internal labour regulations, collective agreements and other documents, and shall ensure adherence thereto”.

²³ Paragraph b of Article 18 of the *Organic Law on the Public Defender of Georgia*; Article 24 of the *Organic Law on the Public Defender of Georgia*.

²⁴ Paragraph 141 §1 of the *Organic Law of Georgia on the Public Defender*.

²⁵ Article 3632§2 of the *Civil Procedure Code of Georgia*, 14.11.1997 available at <https://matsne.gov.ge/en/document/download/29962/92/en/pdf>.

²⁶ Article 2 §3.1 and 3.2 of the *Law on the Elimination of All Forms of Discrimination*, 02.05.2014, as amended, available at: <https://matsne.gov.ge/en/document/view/2339687?publication=3>.

²⁷ Parliament of Georgia, *Law of Georgia On Amendments to the Law of Georgia on the Elimination of All Forms of Discrimination*, 19.02.2019, available at: <https://rb.gy/itrcbc>.

²⁸ The Public Defender of Georgia, *The 6th Annual Report on the State of Equality*, 7 May 2021, page 3-4, available at: <https://ombudsman.ge/res/docs/2021051313265374968.pdf>.

Apart from amending the mentioned laws, Parliament also adopted the Law on the Rights of Persons with Disabilities in 2020²⁹. It has been in force since January 2021. Under Article 11§2 of the Law on the Rights of Persons with Disabilities, the State shall protect and promote the exercise of the right to work for persons with disabilities, including in contractual and pre-contractual employment relationships, and ensure that persons with disabilities have, on an equal basis with others, the right to fair and favourable labour conditions, a safe and healthy working environment, and the right to protection from forced labour and discrimination.

From January 2021, following its increased mandate, the Labour Inspection Office has been given the power to ensure the effective application of any normative acts of Georgia on labour rights and employment conditions, employment agreements and collective employment agreements, including the Labour Code (Article 75§1 of the Labour Code). Hence, the mandate also covers discrimination at the workplace.

Although the provisions of both, the Labour Code and the Elimination of Discrimination Law, provide a solid basis for the protection against discrimination, pursuant to information provided by the Public Defender Office, the Labour Inspection Office, Civil Society Organizations and the Non-Governmental Organizations, labour relationships were one of the most vulnerable areas to discrimination in recent years. Despite numerous responses to discriminatory acts from the side of the Public Defender and the Labour Inspection Office³⁰, discrimination in the employment cycle has occurred. The most frequent acts have been publishing discriminatory announcements of vacancies, posting of discriminatory content on websites, inequalities in remuneration based on discriminatory criteria and discriminatory dismissals³¹. With regards to protected characteristics, the biggest issue seems to be sex discrimination and discrimination on the basis of sexual orientation and gender identity. Although Georgia directly prohibits discrimination against lesbian, gay, bisexual, trans(gender), intersex and/or queer (hereinafter, “LGBTIQ+”) people in its legislation, labour-related or otherwise, and considers crimes committed on the grounds of one's sexual orientation an aggravating factor in prosecution, homosexuality is often considered a deviation from traditional Orthodox Christian values that are prevalent in the country. Consequently, as the Georgian population is strongly

²⁹ Parliament of Georgia, *Law of Georgia on the Rights of Persons with Disabilities*, 14.07.2020, available at: <https://matsne.gov.ge/en/document/view/4923984?publication=0>.

³⁰ In the last few months, the Labour Inspection Office has revealed up to 15 cases of discrimination both in pre-contractual relations and in already existing labor relations.

³¹ The Public Defender of Georgia, *Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia*, 2020, pages 138-139, available at: <https://ombudsman.ge/res/docs/2021070814020446986.pdf>.

conservative, homosexuals are often targets of abuse and physical violence³². In July 2021, LGBTIQ+ campaigners cancelled the "March for Dignity" Pride event after violent protesters stormed and ransacked their offices before the march had begun³³. Investigations into violence against LGBTIQ+ campaigners and journalists have been launched by the Police, including a criminal investigation into the death of a cameraman who was attacked while covering an anti-Pride event³⁴.

In a joint statement in May 2021, the United Nations, European Union (herein after, the “EU”), and Council of Europe representatives in Georgia, together with the ambassadors of 21 countries³⁵, urged Georgian officials to address LGBTIQ+ rights during the Covid-19 pandemic and beyond³⁶.

On 7 May 2021, the Public Defender published the 6th Annual Report on the State of Equality (hereinafter, the “Report on the State of Equality”)³⁷. The report covers the year 2020 and highlights the major obstacles to the realization of the right to equality faced by women, persons with disabilities, members of religious minorities, LGBTIQ+ people and other vulnerable groups. Apart from these, it assesses the compliance of the regulations imposed to prevent the spread of the novel Coronavirus with the right to equality.

Pursuant to the Report on the State of Equality, the effective realization of the right to equality was negatively affected by the epidemiological situation caused by COVID-19 throughout 2020. Due to the pandemic, the Public Defender was unable to properly carry out educational activities to disseminate information on the said principle³⁸. In the area of employment, the Public Defender noticed three main problems: harassment in the workplace, discrimination against media representatives in employment relationships, and discriminatory vacancies³⁹. Despite numerous

³² See more at: Couple of Men (Gay Travel Blog), “If you are Georgian, you need to be a straight man”, 03.06.2021, available at: <https://coupleofmen.com/14426-gay-georgia-current-situation-lgbtq-community/>.

³³ See more at: CNN, 'I'm happy to be alive,' says LGBTQ campaigner after attack on Pride march offices in Georgia, 05.07.2021, available at: <https://edition.cnn.com/2021/07/05/europe/lgbt-pride-march-attacked-georgia-intl/index.html>.

³⁴ See more at: BBC, Georgia: Cameraman dies after attack at anti-Pride march, 11.07.2021, available at: <https://www.bbc.com/news/world-europe-57797467>.

³⁵ The Embassies to Georgia of Austria, Belgium, Canada, Czech Republic, Estonia, Finland, France, Germany, Greece, Israel, the Netherlands, Norway, Spain, Sweden, Switzerland, the United Kingdom and the United States.

³⁶ United Nations, Time to stand up for equal rights and fair treatment of LGBTIQ+ persons in Georgia, 17.05.2021, available at <https://georgia.un.org/en/126933-time-stand-equal-rights-and-fair-treatment-lgbtq-persons-georgia>.

³⁷ Public Defender of Georgia, *Special Report of the Public Defender of Georgia On Combating and Preventing Discrimination and the State of Equality*, 2019, <https://ombudsman.ge/res/docs/2021051313265374968.pdf>.

³⁸ Public Defender of Georgia, *Special Report of the Public Defender of Georgia On Combating and Preventing Discrimination and the State of Equality*, 2019, Page 4.

³⁹ The Public Defender of Georgia, *Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia*, 2020, page 130, available at: <https://ombudsman.ge/res/docs/2021070814020446986.pdf>.

responses by the Public Defender to discriminatory vacancies, the posting of discriminatory job adverts on certain websites is still a significant issue which contributes to the strengthening of negative stereotypes on the grounds of, *inter alia*, gender, and age. The Public Defender noted that job websites, where anyone can search for a desired vacancy, play an important role in the labour market. The fact that employment websites do not filter vacancies containing discriminatory words, on the one hand, encourages employers to discriminate against applicants at the employment application stage, and on the other hand, promotes the circulation of discriminatory practices⁴⁰.

The findings presented above confirm the need to support Georgia in its activities to bring the country in line with European standards, and especially with the standards of Article 1§2 of the European Social Charter.

ARTICLE 9 RIGHT TO VOCATIONAL GUIDANCE

Article 9 of the European Social Charter implies to set up and operate services that assist all persons in solving their issues relating to occupational choice and opportunity, with due regard to the individual's characteristics. Such vocational guidance must be provided within the school system and the labour market, addressing in particular school-leavers and job-seekers. It must be provided free of charge, by a sufficient amount of qualified staff, to a significant number of persons, and by aiming and reaching as many people as possible. Vocational guidance must equally be granted to nationals of other States Parties that are lawfully resident or regularly work on the territory. This implies that no minimum length of residence shall be required from students or trainees that reside in the country before they can start their training, except where these entered the territory with the sole purpose of attending training⁴¹.

In its last report on non-accepted provisions of the European Social Charter, the Georgian Government reported that “in 2013 a concept on career planning and vocational guidance had been developed, which the authorities started to implement in 2014. Under the coordination of the new

⁴⁰ The Public Defender of Georgia, *Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia*, 2020, Page 31.

⁴¹ European Committee of Social Rights, *Second Report on the Non-Accepted Provisions of the European Social Charter*, Georgia, 2015, p. 6, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804966d6>; European Committee of Social Rights, *Digest of the case-law of the European Committee on Social Rights*, December 2018, page 120 with the sources enumerated therein, available at: <https://rm.coe.int/digest-2018-parts-i-ii-iii-iv-en/1680939f80>.

career planning department in the Ministry of Education and Science resource officers in educational institutions would now also provide vocational guidance services. These services covered 482 schools in 2014 and 1004 schools in 2015. Also, high schools would now provide professional orientation and career planning classes, which provide information on further education and professions available after school, and organised field visits to businesses⁴².

Given the above information, the European Committee on Social Rights gave a positive assessment of the situation in 2015, and recommended acceptance of Article 9 of the European Social Charter. However, it requested more information with regards to the provision of vocational guidance to job-seekers, the cost of vocational guidance and the equal treatment of nationals from other States Parties.

Since 2015, the regulatory framework for vocational guidance in Georgia has not deteriorated and from the legal perspective it can be noted that the right has been guaranteed. According to Article 2 paragraph i) of the Law of Georgia on Vocational Education, the development of a system of career guidance, counselling and career planning in formal education is one of the main objectives of State policy in the field of vocational education. The system shall consist of a wide range of measures that help a person, at any stage of their formal education, to determine their abilities, competences and interests in order to be able to make decisions related to their education and choosing a profession, as well as to manage their career.

On 14 July 2020, the Parliament of Georgia adopted the Law on Promotion of Employment, establishing procedural measures such as the registration as a job seeker and the processing data of registered persons. It also includes provisions on providing information and advice to job seekers, assessing employment opportunities, drawing up an individual career development plan, training and employing job seekers, assessing the needs of the employers, increasing motivation and accessing finances⁴³.

Currently, the State Employment Support Agency (hereinafter also, the “SESA”) has the obligation to provide vocational guidance within the labour market in Georgia. Within the school system it is provided by vocational education institutions.

The SESA was established in 2020 and is a legal entity of public law that consists of two main departments. The Department of Employment Support executes most activities and the Labour

⁴² European Committee of Social Rights, *Second Report on the Non-Accepted Provisions of the European Social Charter*, Georgia, 2015, p. 6, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804966d6>.

⁴³ See more on that in: *Labour Rights in Georgia*, page 16.

Migration Department is responsible for issues related to labour migration. There are 12 SESA centres in Georgia. However, the 5 centres in Tbilisi and 7 centres in the regions⁴⁴ are not sufficient to cover the whole territory of the country. There are some regions that are not covered by any SESA centre which constitutes a significant gap⁴⁵. To ensure the efficiency of the right to vocational guidance in practice it must be noted that the gap shall be eliminated and the coverage shall be expanded at the soonest possibility.

Vocational guidance and support in career planning that are offered by the SESA are free of charge to all persons registered in the SESA system. The registration is the only precondition to be able to benefit from the SESA services. The SESA has categories of consultants: general employment consultants and support consultants for people with disabilities and other vulnerable individuals (Internally Displaced Persons, 16-29-year-olds from deprived families, single mothers). Vocational guidance that is offered includes individual and group consultations on occupational qualifications and support in career planning. What must be noted with satisfaction and stressed as very important from the point of view of adjusting Georgian regulations and practice to European standards, is that currently there are ongoing discussions to expand the vocational guidance and make it available for school children during their last two years at schools. Reaching an agreement concerning this issue and implementing it into practice will be of great importance.

The main challenges that the SESA faces in terms of vocational guidance are insufficient funding, insufficient human resources, insufficient level of qualifications of the consultants (shortage of adequate trainings for consultants) and insufficient coverage of the Georgian territory (both at the level of accessibility and at the level of society members' awareness about the SESA and its programmes). In 2020, the SESA provided vocational guidance for only 72 job seekers and in the 1st quarter of 2021 it only provided vocational guidance for 9 job-seekers. Apart from these, public awareness on the existence of the SESA is very low. The SESA does not have a separate website to enable members of the society or NGOs observe and follow its activities⁴⁶.

The findings presented above confirm the need to promote the acceptance of Article 9 of the European Social Charter by Georgia. Accepting the said provision will certainly contribute to further development of the country.

⁴⁴ Guria, Imereti, Kakheti, Kvemo Kartli, Samegrelo-Zemo Svaneti, Shida Kartli and Adjara Autonomous Republic.

⁴⁵ Samtskhe-Javakheti, Racha-Lechkhumi and Kvemo Svaneti and Mtskheta-Mtianeti.

⁴⁶ The website <http://www.worknet.gov.ge> is only for the registration of job seekers and vacancies and experiences some technical issues.

Article 10§1 of the European Social Charter obliges States to provide or promote technical and vocational training for all persons, including persons with disabilities, in consultation with employers' and workers' organisations. States Parties must build bridges between secondary vocational education as well as university and non-university higher education and introduce mechanisms for the recognition of knowledge and experience acquired in order to achieve a qualification or to gain access to general, technical and university higher education. Access to higher technical and university education solely on the basis of individual aptitude, shall be facilitated. This can be achieved by avoiding registration fees or other educational costs creating financial obstacles for some candidates⁴⁷.

The main indicators of compliance with Article 10§1 of the European Social Charter include the existence of an education and training system, its total capacity (in particular, the ratio between training places and candidates), the total spending on education and training as a percentage of the GDP, the completion rate of young people enrolled in vocational training courses and of students enrolled in higher education, the employment rate of people who hold a higher-education qualification, and the waiting-time for these people to get a first, qualified job⁴⁸.

In its last report on non-accepted provisions of the European Social Charter, the Georgian Government reported that “based on [the principle of] gender equality, the training of citizens follows the concept of inclusive education. The Strategy for Reform of Education 2013-2020 gave priority to poverty reduction, gender equality, inclusion and children’s rights. The action plan adopted achieved these goals by developing the potential, employment and business opportunities, as well as the sustainable development of citizens. It made sure that education matches the demand on the labour market. [...] [V]ocational training was [advertised to] employers and assistance for training and retraining [was] provided.”⁴⁹

Given the above information, the European Committee of Social Rights gave a positive assessment of the situation and recommended acceptance of Article 10§1 of the European Social

⁴⁷ European Committee of Social Rights, *Digest of the case-law of the European Committee on Social Rights*, December 2018, page 122-123 with the sources enumerated therein.

⁴⁸ European Committee of Social Rights, *Digest of the case-law of the European Committee on Social Rights*, December 2018, page 122-123 with the sources enumerated therein.

⁴⁹ European Committee of Social Rights, *Second Report on the Non-Accepted Provisions of the European Social Charter, Georgia*, 2015, p. 6, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804966d6>.

Charter in 2015. However, it requested more information with regard to the consultation of the social partners, facilities granted to ease access to higher education solely on the basis of individual aptitude, and the equal treatment of Georgian nationals and nationals from other States Parties.

Since 2015, the regulatory framework for vocational training in Georgia has not deteriorated and from the legal perspective it can be noted that the right has been guaranteed. The legal basis for vocational training is mainly provided in the Law on Vocational Training. As it has been previously mentioned, on 14 July 2020, the Parliament of Georgia adopted the Law on Promotion of Employment, establishing procedural measures such as the registration as a job seeker and the processing of data of registered persons. It also includes measures on informing and advising job seekers, assessing employment opportunities, drawing up an individual career development plan, training and employing job seekers, assessing needs of the employers, increasing motivation, and providing access to finances. The Law on Vocational Training includes provisions on subsidizing wages for, *inter alia*, persons with disabilities and other vulnerable members of the society such as Internally Displaced Persons, those under State care, or former State care beneficiaries between the ages of 16 and 29, and persons with special educational needs.

However, in practice, the effectiveness of vocational training in Georgia must be assessed as relatively low. Vocational training for young people, jobseekers and the unemployed is provided by the State Employment Support Agency through its central and regional centres. As it has been mentioned before (Article 9 of the European Social Charter), SESA centres do not fully cover the territory of Georgia and there are regions deprived of its services, which directly influences their inhabitants' right to vocational training. Similarly, vocational education institutions do not fully cover the Georgian territory. In total, there are 39 public and 52 private vocational providers, including 6 State universities. Most of them operate in bigger cities, only some have regional branches.

Additionally, Georgia's vocational training system faces different challenges. First of all, vocational training programmes struggle to meet labour market requirements. The numbers of students, pupils or trainees accepted for particular faculties or courses are not adjusted to the demand of the labour market. To help bridge this gap, the country aims to increase the attractiveness of vocational education and training (hereinafter the "VET") and to strengthen institutions in the development of an industry-led professional workforce. Having recognized the potential for Georgia's economic growth of this important education sub-sector, the government is currently working with development partners to prioritize reforms and the modernization of VET education. The improvement of access to vocational education remains one of the priorities of vocational education. Among the

initiatives are the establishment and development of vocational education institutions and their specialised branches as well as the improvement of municipal coverage.

Secondly, the level of awareness of VET programmes is low and vocational training is still not regarded as an equal or more attractive alternative to academic education. More specifically, vocational training in Georgia is generally not regarded as an income-generating or career-stimulating option⁵⁰. According to the World Economic Forum's Global Competitiveness Report 2019, Georgia ranks far below the world median in terms of "quality of vocational training" – with a result of 3.07 while the world median amounts to over 4.10.⁵¹

The findings presented above confirm the need to promote the acceptance of Article 10§1 of the European Social Charter by Georgia. Accepting the said provision will significantly contribute to the further development of the country by improving the effectiveness of vocational training.

ARTICLE 10 § 3 RIGHT TO VOCATIONAL TRAINING. VOCATIONAL TRAINING AND RETRAINING OF ADULT WORKERS

Article 10§3 of the European Social Charter concerns measures designed to make access to vocational training efficient in practice. These concern the obligation to provide or promote on the one hand side adequate and readily available training facilities for adult workers, and on the other special facilities for the re-training of adult workers that is needed as a result of technological development or new trends in employment. Both employed and unemployed persons, including young unemployed people and self-employed persons are covered by the provision. As regards employed persons, States Parties are obliged to provide facilities for training and retraining of adult workers. This aims to reduce the deskilling of still active workers at risk of becoming unemployed as a consequence of technological and/or economic development. As regards unemployed people, the availability of vocational training is measured by the activation rate, i.e. the ratio between the annual average number of previously unemployed participants in active measures, divided by the number of registered unemployed persons and participants in such measures. In addition, the existence of legislation on individual leave for

⁵⁰ Government of Georgia, *Social-economic Development Strategy of Georgia "GEORGIA 2020"*, 2020, page 42, available at: https://policy.asiapacificenergy.org/sites/default/files/Georgia%202020_ENG.pdf.

⁵¹ World Economic Forum, *Global Competitiveness Report 2019*, 08.10.2019, available at <https://www.weforum.org/reports/how-to-end-a-decade-of-lost-productivity-growth>; additional data available at: https://tcddata360.worldbank.org/indicators/h2466438e?country=BRA&indicator=41396&countries=MEX,TUR,CHN,RUS,THA&viz=line_chart&years=2017,2019.

training, its characteristics, and the sharing of the cost burden of vocational training among public bodies, unemployment insurance systems, enterprises, and households, must be taken into account⁵².

In its last report on non-accepted provisions of the European Social Charter, the Georgian Government reported that “the Ministry of Education and Science was currently assessing the situation with regard to training facilities. Adapting teaching materials and the physical environment needed time. But projects were under way to enhance the access to training facilities for persons with disabilities”⁵³.

Given the above information, the European Committee of Social Rights gave a generally positive assessment of the situation in 2015, and recommended acceptance of Article 10§3 of the European Social Charter. However, it requested more information with regards to training facilities available to unemployed persons, the re-training of adult workers as a result of technological development or new trends in employment, existing legislation on individual leave for training, and the equal treatment of Georgian nationals and nationals from other States Parties.

Currently, the main unit responsible for training and retraining of adult workers in Georgia is the State Employment Support Agency, characterised under Article 9 of the European Social Charter, however, it must be stressed that the Ministry of Education also provides Vocational Education and Training courses for adults. One of the SESA’s main focuses is on people with disabilities and other vulnerable members of the society. The SESA currently runs two main programmes, namely employment support (wage subsidies) and improving and enhancing qualifications. Within the employment support programme there is a special subcomponent devoted to supporting people with disabilities, that may also be used by other, vulnerable members of the society such as youths up to 29 years-old and persons with special educational needs. Within the improving and enhancing qualifications programme training and retraining is offered together with vocational guidance and career planning consultations.

Training programmes are improved with time and those that will start in 2021-2022 are in the launching process. Programmes were introduced that aim to enhance the competence of trainees in four areas. These include personal and social competences, digital skills, entrepreneurship competences, and multilingual competences. As to the trainings that have been completed or are pending the following must be noted. While in the beginning, in 2015, there were only around 300

⁵² European Committee of Social Rights, *Second Report on the Non-Accepted Provisions of the European Social Charter*, Georgia, 2015, p. 8.

⁵³ European Committee of Social Rights, *Second Report on the Non-Accepted Provisions of the European Social Charter*, Georgia, 2015, p. 7.

beneficiaries in training and retraining programmes, in 2018-2019 2.000 beneficiaries were trained or retrained. In 2021, around 1.100 beneficiaries participated in training and retraining programmes. 30 people are in the internship programme, and 15 people are in the subsidising programme targeted at people with disabilities. 3.000 people have been already directed to employers in 2021.

In order to prevent the spread of COVID-19, some changes have been made in the vocational education agenda, and some components had to be managed remotely. In 2020, 190 applicants that had registered for vocational education programmes were confirmed to have special educational needs. In the same year, 161 students with special educational needs and disabilities were enrolled in vocational programmes. However, the results of the programmes have been negatively affected by the COVID-19 pandemic. Based on the information provided to the Office of the Public Defender, by the end of November 2020, due to various obstacles, 45 vocational students could not engage in online education. Furthermore, in the case of other 125 students, low motivation for distance learning was identified and 25 students planned to suspend their participation. As to vocational students with special educational needs and disabilities, since December 2020, 9 have suspended their participation and the enrolment of 4 was terminated⁵⁴.

The findings presented above confirm the need to promote the acceptance of Article 10§3 of the European Social Charter by Georgia.

ARTICLE 15 § 1 RIGHT OF PERSONS WITH DISABILITIES TO INDEPENDENCE, SOCIAL INTEGRATION AND PARTICIPATION IN THE LIFE OF THE COMMUNITY. GUIDANCE, EDUCATION AND VOCATIONAL TRAINING

Article 15§1 of the European Social Charter implies that necessary measures must be taken to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible. Where this is not possible this should be provided through specialised public or private bodies. The notion of education encompasses primary education, general and vocational secondary education as well as other forms of vocational training. As regards the education of disabled children and adolescents, priority should be given to mainstream schools, and human assistance needed for the school career should be provided⁵⁵.

⁵⁴ The Public Defender of Georgia, *Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia*, 2020, page 304.

⁵⁵ European Committee of Social Rights, *Second Report on the Non-Accepted Provisions of the European Social Charter*, Georgia, 2015, p. 9.

In its last report on non-accepted provisions of the European Social Charter, the Georgian Government reported that “persons with disabilities had unrestricted access to education in public schools and vocational training institutions. Inclusive vocational training was currently being established with the assistance of the Government of Norway. Within pilot vocational training institutions, 51 students could enrol in mainstream training in 2012, and 242 more in 2013 and 2014. All vocational training institutions currently welcomed students with disabilities. Also, a support mechanism was established by the Ministry of Education and Science to ensure the quality of teaching. Specialists (assistant teachers, body language assistants, and vocational guidance assistants) had been hired and trained to provide students with disabilities with the services they need to attend mainstream training. Moreover, universal design principles were developed to improve the physical environment, and were applied in model architecture projects in some vocational training institutions”⁵⁶.

Given the above information, the European Committee of Social Rights gave a positive assessment of the situation in 2015, and recommended acceptance of Article 15§1 of the European Social Charter. However, it requested more information with regards to inclusion measures in primary and secondary education, adequate teaching in mainstream and special schools, and any existing non-discrimination legislation.

Currently the unit responsible for vocational guidance, training and retraining of adult people with disabilities in Georgia is the State Employment Support Agency, characterised under Article 9 of the European Social Charter and the Ministry of Education and Science. In the SESA there are two categories of consultants, namely general employment consultants and support consultants for people with disabilities (e.g. job coaches) and other vulnerable individuals (16-29-year-olds and persons with special educational needs). The SESA does not offer any special programmes for people with mental disabilities. Vocational guidance that is offered includes individual and group consultations on occupational qualifications and support in career planning. Within the employment support programme there is a subcomponent for people with disabilities. Within the subsidy programme 50% of the wages and salaries of disabled employees directed to particular employers by the SESA are subsidised for 4 months (up to 560 GEL). Afterwards the employer is obliged to continue the employment relationship at least for 6 months and during this time the employee is still supported by SESA consultants. The consultations focus on adjusting to the working environment and conditions in a particular enterprise. As to statistical data, currently 15 beneficiaries are covered by the subsidy

⁵⁶ European Committee of Social Rights, *Second Report on the Non-Accepted Provisions of the European Social Charter, Georgia*, 2015, p. 9.

programme. On average, 70% of employees retain their employment relationship after the subsidy programme.

However, in the area of inclusive education, many challenges still exist. There is a shortage of staff and qualifications. Moreover, the readiness of schools to accept students with sensory disabilities is low and these students still have to study in special schools, as the quality of teaching there is much higher.

The findings presented above confirm the need to promote the acceptance of Article 15§1 of the European Social Charter by Georgia. Accepting the said provision will certainly contribute to the further development of the country.

ARTICLE 20 RIGHT TO EQUAL OPPORTUNITIES AND EQUAL TREATMENT IN EMPLOYMENT AND OCCUPATION WITHOUT SEX DISCRIMINATION

Article 20 of the European Social Charter guarantees the right to equality at all stages of working life. Its scope includes access to employment, remuneration and other working conditions, vocational training, as well as guidance and promotion, and it prohibits dismissals and other forms of detrimental treatment on grounds of sex. Article 20 of the European Social Charter is the *lex specialis* in relation to Article 1§2 of the European Social Charter, which prohibits all discrimination at work⁵⁷. The principle of equal treatment of women and men is understood to mean the absence of any discrimination on the grounds of sex. Equal treatment precludes any discrimination, whether direct or indirect⁵⁸.

In its last report on provisions that fall into Group 1 of the European Social Charter, the Georgian Government responded to the specific questions regarding Article 20 of the European Social Charter, which related to equal pay. However, this issue will be discussed under Article 4§3 of the European Social Charter, as Georgia has accepted the latter.

Given the information, in 2020, the European Committee on Social Rights concluded that the situation in Georgia was not in conformity with Article 20.c of the European Social Charter. The conclusion was based on the fact that there was no explicit statutory guarantee covering equal pay for women and men that conduct equal work or work of equal value and that the obligation to make measurable progress in reducing the gender pay gap had not been fulfilled⁵⁹.

⁵⁷ European Committee of Social Rights, *Conclusions 2002, Statement of Interpretation on Article 20*.

⁵⁸ European Committee of Social Rights, *Conclusions XIII-5, Sweden, Article 1 of the Additional Protocol*.

⁵⁹ European Committee of Social Rights, *Conclusions 2020. Georgia*, March 2021, p. 33.

In 2021, gender equality still remains a challenge in Georgia. Despite a number of steps taken in the past few years to enhance legislative and institutional mechanisms (the relevant provisions have been discussed under Article 1§2 of the European Social Charter), the protection of women against discrimination in many areas of life, including the area of employment and labour rights is still a challenging topic. The UN High-Level Panel on Women’s Economic Empowerment highlights four key barriers to women’s economic activity in Georgia, including “adverse social norms, discriminatory laws and lack of legal protection, failure to recognize, reduce and redistribute unpaid household work and care, and a lack of access to financial, digital and property assets”⁶⁰. In the light of the above-mentioned it must be stressed that under the Labour Code, sex discrimination – both direct and indirect – is prohibited (Article 4§§1,2,3 of the Labour Code). In particular, There is an obligation of the employer to ensure equal remuneration of female and male employees for equal work (Article 4§3 of the Labour Code), there is prohibition of retaliatory actions (Article 4§7 of the Labour Code), the burden of proof in cases of discrimination is shared (Article 7 of the Labour Code), and is a legal basis for special measures and positive action (Article 8 of the Labour Code).

As stressed during the fact finding mission meetings, the COVID-19 pandemic has had a negative impact on achieving gender equality and improving women's rights. This also regards employment rights, health, economic empowerment, security and social justice. It should be noted that in 2020, the Parliament of Georgia took into account the recommendation of the Committee on the Elimination of All Forms of Discrimination against Women regarding the introduction of a mandatory quota mechanism. Nevertheless, given the existing gender stereotypes, equal participation of women in public and political life remains a challenge. Also, the number of women employed at and in leading positions in the security sector is critically low⁶¹.

According to the study of the United Nations Entity for Gender Equality and the Empowerment of Women (hereinafter, “UN Women”)⁶², employment of women and men in the informal economy is almost equal in Georgia, although informal employment for women, unlike men, is largely associated with lower incomes, lower levels of mobility and lower self-esteem. In Georgia,

⁶⁰ UN Women, *Women’s Economic Inactivity And Engagement In The Informal Sector In Georgia*, 2018, page 6, available at: <https://georgia.unwomen.org/en/digital-library/publications/2018/12/womens-economic-inactivity-and-engagement-in-the-informal-sector-in-georgia>.

⁶¹ The Public Defender of Georgia, *Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia*, 2020, page 145-146.

⁶² UN Women, *Low economic activity of women and involvement in the informal sector in Georgia*, 2018, page 17, available at: <https://bit.ly/3r2YZYM>.

women spend 3 times more on unpaid family activities than men⁶³. The COVID-19 pandemic exacerbated the burden of unpaid domestic work on women. According to a rapid gender assessment of the COVID-19 situation in Georgia⁶⁴, 42% of women say that in comparison with the situation before the pandemic, they are now doing more work. In addition, the closure of schools has reduced rest time for women by 31%. An additional challenge is that the spread of the virus has also limited the labour opportunities of migrant women, which leads to the loss of livelihood for them and their families⁶⁵.

According to the World Economic Forum's 2020 Global Gender Gap Index⁶⁶, Georgia ranks 61st out of 153 countries in terms of women's economic participation and opportunities. The labour force participation rate is 63,4 % for women and 83,2 % for men (Georgia ranks 91st out of 153 on this indicator). Gender differences remain in both average income and equal pay (6.5 for women and 13.2 for men in terms of "estimated labour income int'l \$1,000"⁶⁷), and Georgia ranks 118th (average income) and 73rd (equal pay) in these categories). In terms of women's political participation and women's representation in parliament, Georgia has risen from 117th to 94th place out of 153 countries in the last 5 years. According to the data of the Inter-Parliamentary Union⁶⁸, among 188 countries, Georgia moved from 140th to 109th place with 31 women in Parliament because of the introduction of a gender quota mechanism.

The findings presented above confirm the need to support Georgia to bring the situation in conformity with Article 20 of the European Social Charter.

HEALTH, SOCIAL SECURITY AND SOCIAL PROTECTION (GROUP 2)

Health, social security and social protection (Thematic Group 2 under the European Social Charter) includes: the right to safe and healthy working conditions

⁶³ UN Women, *Low economic activity of women and involvement in the informal sector in Georgia*, 2018 page 34, available at: <https://bit.ly/36p3SDW>.

⁶⁴ UN Women, *Rapid Impact Assessment of the COVID-19 Situation in Georgia*, 2020, page 35, available at: <https://bit.ly/39AjXZr>.

⁶⁵ The Public Defender of Georgia, *Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia*, 2020, page 148.

⁶⁶ World Economic Forum, *Global Gender Gap Index*, available at: <https://bit.ly/3pfHeVM>.

⁶⁷ The aggregate of the World Economic Forum's 2020 data estimates the amount of income received by women and men in the country based on the share of men and women in the labor force, their relative wages, and Georgia's total gross domestic product.

⁶⁸ Inter-Parliamentary Union, *Monthly ranking of women in national parliaments*, available at: <https://bit.ly/3od2Sc0>.

(Article 3), the right to protection of health (Article 11), the right to social security (Article 12), the right to social and medical assistance (Article 13), the right to benefit from social welfare services (Article 14), the right of elderly persons to social protection (Article 23) and the right to protection against poverty and social exclusion (Article 30).

Georgia has accepted all provisions from the above-mentioned group except for Articles 3, 12§§2 and 4, 13, 23 and 30 of the European Social Charter.

The last Report concerning health, social security and social protection (14th report) was submitted by Georgia on 26 January 2021 and the Conclusions will be published in January 2022. The latest, already published Conclusions of the European Committee of Social Rights on Group 2 concern the reference period of 1 January 2012 to 31 December 2015 (Conclusions 2017) and include 4 conclusions of non-conformity with regards to Articles 11§1, 11§2, 11§3, 12§1 of the European Social Charter).

After the reference period, crucial amendments were introduced to the Labour Code that is the main act regulating employment relations. Moreover, the Organic Law of Georgia on Occupational Health and Safety (hereinafter, the Occupational Health and Safety Law⁶⁹) has been introduced and amended.⁶⁹

As to the non-accepted provisions from Group 2, the European Committee of Social Rights considered that there were no legal obstacles to the acceptance of Article 3§§1, 2 and 4 of the European Social Charter in 2012 and in 2015.

As a result of the discussions and information provided during the needs assessment meetings, two Group 2 areas have been identified as most needing support to adjust the Georgian legal and practical situation to the international standards of the Council of Europe, and especially to the standards of the European Social Charter. These are the right to safe and healthy working conditions in the area of national policy (Article 3§1 of the European Social Charter) and safety and health regulations (Article 3§2 of the European Social Charter).

⁶⁹ Parliament of Georgia, *Law of Georgia on Occupational Health and Safety*, 01.09.2019, available at <https://www.moh.gov.ge/uploads/files/2019/Failebi/08.06.2019.pdf>.

Under Article 3§1 of the European Social Charter, the right to safe and healthy working conditions implies to implement and periodically review a coherent occupational health and safety policy in consultation with social partners. The main objective of that policy must be to foster and preserve a culture of prevention, by opposition to a purely compensatory attitude towards accidents and risks, which implies that authorities, employers and workers are involved at the company level (i.e. in the assessment of risks specific to the workplace and the adoption of preventive measures) and at the public authorities level (i.e. in developing a system of public prevention, information campaigns, and awareness-raising as well as in the Labour Inspectorate sharing the knowledge about risks and prevention acquired during inspections and investigations). Such policy must be regularly assessed and reviewed in the light of changing risks, and public authorities must be involved in the training of qualified staff, information, quality assurance and research. Such policy must also be drawn up and implemented in consultation with employers' and workers' organisations, at national, sectoral and company level. Whereas mechanisms and procedures for consultation may work on a permanent or an ad hoc basis, they must be efficient in promoting social dialogue on occupational health and safety"⁷⁰.

In its last report on non-accepted provisions of the European Social Charter, the Georgian Government reported that “after years of discussion, a labour inspection system including an enforcement mechanism through mediation had been established by legislation. A department of labour inspection is currently being set up in the Ministry of Labour, Health and Social Affairs”⁷¹.

Given the above information, the European Committee of Social Rights gave a positive assessment of the situation in 2015, and recommended acceptance of Article 3§1 of the European Social Charter.

Since 2015, coherent occupational health and safety measures adopted in consultation with social partners have been introduced, which finally led to the establishment of the Labour Inspection Office as a legal entity of public law in January 2021.

Currently, under the National Strategy 2019-2023 for Labour and Employment Policy of Georgia (hereinafter, the “National Strategy”), improving the system of enforcement of workplace safety and protection of rights, is one of the main goals for the upcoming years. Within this goal there are four main tasks planned. These include ensuring the protection of labour rights in accordance with

⁷⁰ European Committee of Social Rights, *Second Report on the Non-Accepted Provisions of the European Social Charter*, Georgia, 2015, p. 13. European Committee of Social Rights, *Digest of the case-law of the European Committee on Social Rights*, December 2018, page 120 with the sources enumerated therein.

⁷¹ European Committee of Social Rights, *Second Report on the Non-Accepted Provisions of the European Social Charter*, Georgia, 2015, p.13.

internationally recognized standards, strengthening labour inspections, enhancing social dialogue and partnership, and the institutional strengthening of labour mediation. The strategy envisages strengthening the legal and institutional framework of labour inspection. In Georgia, as a country with a transitional economy with 1,763,300 workers, the minimal amount of labour inspectors has been determined as not less than 80 inspectors in line with the International Labour Organization methodology, meaning one inspector per 20,000 workers. The National Strategy also provides for the improvement of the selection process for inspections and the expansion of the mandate for the inspection of working conditions with regards to labour rights and law enforcement.

The findings presented above confirm the need to promote the acceptance of Article 3§1 of the European Social Charter by Georgia. Accepting the said provision will certainly contribute to further development of the country.

ARTICLE 3 § 2 RIGHT TO SAFE AND HEALTHY WORKING CONDITIONS. SAFETY AND HEALTH REGULATIONS

Under Article 3§2 of the European Social Charter, the right to safe and healthy working conditions implies to issue health and safety regulations providing for preventive and protective measures against workplace risks recognised by the scientific community and laid down in international regulations and standards. Such regulations must include framework legislation setting out employers' responsibilities and workers' rights and duties, as well as risk-specific regulations with regard to the establishment, alteration and upkeep of workplaces and equipment. Risk-specific regulations must also cover hazardous agents and substances as well as sectors under particular exposure⁷².

In its last report on non-accepted provisions of the European Social Charter, the Georgian Government reported that “appropriate regulations were currently being drafted in consultation with the social partners.”⁷³.

Given the above information, the European Committee of Social Rights gave a positive assessment of the situation in 2015 and recommended acceptance of Article 3§2 of the European Social Charter.

⁷² European Committee of Social Rights, *Second Report on the Non-Accepted Provisions of the European Social Charter, Georgia*, 2015, p. 13; European Committee of Social Rights, *Digest of the case-law of the European Committee on Social Rights*, December 2018, page 120 with the sources enumerated therein.

⁷³ European Committee of Social Rights, *Second Report on the Non-Accepted Provisions of the European Social Charter, Georgia*, 2015, p.13.

Since 2015, the regulations mentioned in the governmental report above have been established, implemented and later on improved. On 19 February 2019, the Georgian Parliament passed the mentioned Occupational Health Safety Law. The said new law came into force on 1 September 2019 and covered all areas of economic activity. The Occupational Health Safety Law, among many others, introduced a general obligation of employers to register the activities with associated with an increased risk, or heavy, hazardous and dangerous work (Article 4), to ensure that health and safety of employees and other persons present at the workplace do not face any threat because of chemical, physical and biological factors (Article 5§1c), to register any workplace accidents (other accidents), possible professional diseases, or dangerous incidents, and to inform employees and/or representatives of employees about them in case of a request (Article 5§1d); and to ensure the registration, investigation and reporting of accidents and occupational diseases at the workplace (Article 5§1e). The Labour Inspectorate was provided for the power to oversee labour safety and enforcement mechanisms and labour inspectors were allowed to access workplaces without undue restrictions.

Later on, the labour legislation reform in 2020 granted a full mandate for the oversight over the protection of labour rights to the Labour Inspectorate⁷⁴. Since 1 January 2021, the Labour Inspectorate has been empowered to inspect workplaces without employer's consent, with the aim to detect breaches of provisions of the Labour Code and the Public Service Law and to impose respective sanctions in case a violation was detected. The amendments must be seen as a huge step forward, however there are still some implementing regulations needed under the Occupational Health and Safety Law which have not been elaborated and adopted by the Government⁷⁵. In view of the particularly variable nature of the subject matter in the light of technological, ergonomic and medical advances, existing regulations shall constantly be adapted and adjusted to new circumstances⁷⁶. Except for that, detailed specific regulations are needed in sectors where health and safety of employees are at the highest risk.

The findings presented above confirm the need to promote the acceptance of Article 3§2 of the European Social Charter by Georgia. Accepting the said provision will contribute to further development of the country.

⁷⁴ *The Law of Georgia on the Labour Inspection Service*, 29.09.2020, available at: <https://matsne.gov.ge/en/document/download/5003057/0/en/pdf>; *The Organic Law of Georgia on the Amendments to the Organic Law of Georgia the Labour Code of Georgia*, 05.10.2020, available at: <https://bit.ly/3fs8JJJ>.

⁷⁵ Article 25 of the Law of Georgia on Occupational Safety, 19.02.2019, available at: [შრომის უსაფრთხოების შესახებ | სსიპ "საქართველოს საკანონმდებლო მაცნე" \(matsne.gov.ge\)](https://matsne.gov.ge)

⁷⁶ European Committee of Social Rights, *Digest of the case-law of the European Committee on Social Rights*, December 2018, page 76.

Article 3§3 of the European Social Charter implies examining the implementation of regulations in practice. In assessing the frequency and trends in occupational injuries, reference is made to the overall number of occupational accidents and the number of such accidents in relation to the workforce. The same applies to fatal occupational injuries. Assessing occupational accidents and diseases must be accurate and in line with accepted statistical methods. A persistent data record may establish a general failure in the system of reporting occupational injuries or the concealment of such injuries in practice.

Under Article A§4 of the European Social Charter, States Parties may choose a system of labour inspection which is appropriate with regards to national conditions. Furthermore, inspection services may be divided between several bodies having specialised jurisdiction, provided that the labour inspection is not deprived of its efficiency by an excessive division, a lack of resources, or imperfect cooperation. Allocated resources must allow to conduct a minimum number of regular inspections to ensure that the largest possible number of workers benefit from the protection afforded by the provision and that the risk of accidents is reduced to a minimum. Inspectors must be entitled to inspect all workplaces in all economic sectors, private as well as public, including on residential premises.

In its last report on non-accepted provisions of the European Social Charter, the Georgian Government reported that “as the labour inspection system had been established only recently, the situation was in a transition period”.

Given the above information, the European Committee of Social Rights gave a negative assessment of the situation in 2015, and recommended further work on adjusting the situation to the standards of the Council of Europe.

Since 2015, the regulations described in the report above have been established, implemented and later on improved. However, workplace safety and decent labour conditions still remain a persistent issue in Georgia.

Following the legislative amendments described in the previous parts of the report, practical issues arose which revealed challenges to the implementation in practise. In 2020, the Labour Conditions Inspection Department of The Ministry of Internally Displaced Persons from the Occupied Territories, Health, Labour and Social Affairs of Georgia (the predecessor of the Labour Inspection Office) performed its inspection of labour conditions based on the Occupational Health and Safety

Law for considerably less entities (169 sites) as compared to the previous year⁷⁷. However, it must be stressed in this context that 2020 saw particular challenges due to the COVID-19 pandemic, and lockdowns were announced and many companies were at least temporarily closed. Apart from that, pursuant to Article 2§2 of the Occupational Health and Safety Law, the provisions were not applicable to labour activities during the state of emergency. Furthermore, the Labour Conditions Inspection Department was in charge of monitoring the fulfilment of recommendations to prevent the spread of COVID-19 infections at workplaces⁷⁸. In 2020, the Labour Inspection Office carried out 89.111 activities (at 16.150 sites) which covered inspection and awareness raising campaigns, from which 88.731 activities related to COVID -19 prevention.⁷⁹

Though not many places were inspected in 2020, violations of occupational safety norms were identified at all those sites. According to the inspection reports, at sites involving heavy, harmful or dangerous jobs, the employers predominantly do not try to identify threats at workplaces and in the area of work or to assess and manage resultant risks. They do not provide trainings and instruction guidance and do not use personal protection gear either. Breaches of the Technical Regulations on Safety Requirements for Working at Heights approved under the Government of Georgia Decree Nr 477 of 27 October 2017 are frequent⁸⁰.

In 2020, 39 fatal occupational accidents and 249 occupational injuries were reported. Out of the occupational accidents 2 were grave, 57 were serious and 192 were moderate. It is important to note that for the past two years, following 2018, the indicator of fatalities at the workplace has been falling by 34% (there were 59 workplace fatalities in 2018 and 45 in 2019)⁸¹.

⁷⁷ In 2019, the Labour Conditions Inspection Department inspected 558 entities for occupational safety. Source: The Public Defender of Georgia, *Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia, 2020*, page 220.

⁷⁸ The Minister of the Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, Article 1§2 of *Order # 01-56/6 On the Approval of the Rules and Procedures for Monitoring and Control over the fulfillment of the recommendations developed by the Ministry of the Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia for the Prevention of the Spread of COVID-19 infection caused by the novel coronavirus (SARS-CoV-2) at workplaces, Annex N 1*, June 6, 2020.

⁷⁹ Labour Inspection Office, Annual Report, 2020, available at: <https://www.moh.gov.ge/ka/728/>.

⁸⁰ Public Defender of Georgia, *European Social Charter Comments by the Public Defender's (Ombudsman) Office of Georgia on the 14th National Report on the implementation of the European Social Charter submitted by the Government of Georgia, Articles 3, 11, 12, 13, 14, 23 and 30 of the European Social Charter for the period 2016 – 2019*, pages 5-6, available at: <https://rm.coe.int/rap-rcha-geo-14-2021-comments-by-public-defender/1680a2fff8>.

⁸¹ See the Labour Conditions Inspection Department, *Performance Reports 2018-2019*, available at: <https://bit.ly/2O52SPa>.

The highest number of workplace injuries happens in the processing industry sector⁸². According to authorities, for non-compliances identified during the inspection of the occupational safety norms, in all cases during the initial inspection the Labour Conditions Inspection Department used an administrative penalty. Such a penalty consists of a warning and the prescription of a reasonable timeframe to rectify the breaches. 8% of the entities inspected at a follow up inspection were found to have fully rectified non-compliances, but other entities were fined and were given a deadline for fixing the non-compliance. Over the past two years, along with other sanctions imposed on inspected entities, a decision to suspend the operations had to be made in 103 cases, due to critical non-compliance⁸³.

According to the Public Defender⁸⁴, the aforementioned data indicates that employers regularly fail to implement relevant preventive measures for occupational safety of employees and other individuals. Hence, the Public Defender noted that the Labour Inspectorate should ramp up its inspections to maximally reduce expected hazards. Furthermore, it is important to timely fulfil the Public Defender's recommendation regarding the staffing of the Labour Inspectorate, especially with regards to its territorial bodies, in order to ensure an effective performance⁸⁵. Up to date, the regional offices have been established and partially staffed.

In addition it must be noted that following the legislative amendments, practical issues arose which revealed the low capacities of the Labour Inspectorate resulting from insufficient financial and human resources. Apart from these, the Covid-19 pandemic has also influenced the daily functioning of the Labour Inspectorate, as its mandate was increased to monitor the compliance with pandemic regulations. Although the up-to-date work and functioning of the Labour Inspectorate must be generally assessed positively – and the Labour Inspectorate itself has been highly welcomed by the employees and the organisations representing their rights - it must be stressed that the identified shortcomings such as insufficient human resources, lack of sufficient funds or lack of proper high-level trainings for labour inspectors may negatively affect the level of their success and the assumed positive results of the labour inspection reform. In the light of the concerns raised above it is

⁸² The Labour Inspectorate, *LEPL Letter N 09/318*, 16.02.2021: The inquiry process into several accidents is ongoing and the referenced data may be modified.

⁸³ The Labour Inspectorate, *LEPL Letter N 09/318*, 16.02.2021: The inquiry process into several accidents is ongoing and the referenced data may be modified.

⁸⁴ The Public Defender of Georgia, *Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia*, 2020, page 222.

⁸⁵ Public Defender of Georgia, *European Social Charter Comments by the Public Defender's (Ombudsman) Office of Georgia on the 14th National Report on the implementation of the European Social Charter submitted by the Government of Georgia, Articles 3, 11, 12, 13, 14, 23 and 30 of the European Social Charter for the period 2016 – 2019*, page 6.

particularly worth to point out that in 2020 the number of labour inspectors was increased and material and technical resources of the Labour Inspection Office were upgraded⁸⁶. The problems mentioned above (insufficient human resources, lack of offices) however remain visible, especially in the regions.

The findings presented above confirm the need to promote the acceptance of Article 3§3 of the European Social Charter by Georgia. Accepting the said provision will contribute to further improvements of the health and safety conditions at work and will allow the country to reduce the number of accidents and injuries at the workplace.

ARTICLE 3 § 4 RIGHT TO SAFE AND HEALTHY WORKING CONDITIONS. OCCUPATIONAL HEALTH SERVICES

Under Article 3§4 of the European Social Charter, the right to safe and healthy working conditions implies the promotion of a progressive development of occupational health services for all workers with preventive and advisory functions. The Functions, organisation and conditions or operation of these services may be chosen to match national conditions. Such services may be run jointly by several companies, but where they are not established within all enterprises, public authorities must develop a strategy for that purpose. They must, in all cases, be efficient with regards to the number of occupational physicians over the total workforce, the rate of enterprises providing occupational health services or who share these services, and the trend in the rate of workers supervised by those services. Measures must be taken to allow achieving the set objectives within a reasonable time, with measurable progress, and to an extent consistent with the maximum use of available resources.

In its last report on non-accepted provisions of the European Social Charter, the Georgian Government reported that “occupational health services were provided by the newly established labour inspectors. These were currently trained on their duties and contributions by international organisations and experts were welcomed. An awareness-raising campaign used materials from European Agency for Safety and Health at Work and it was intended to progressively implement more EU best practices”.

Given the above information, the European Committee of Social Rights gave a positive assessment of the situation in 2015, and recommended acceptance of Article 3§4 of the European Social Charter.

⁸⁶ The Ministry of the Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, *Letter # 01/902*, 22 January 2021; The Labour Inspectorate, *LEPL Letter # 09/525*, 12.03.2021: according to the letter there are 112 positions of labour inspectors (of these, 26 under territorial offices). At the time the information was received, 54 labour Inspectors were employed.

Since 2015, the regulations described in the report on non-accepted provisions of the European Social Charter have been established, implemented and later on improved, however, their functioning in practice remains challenging. According to occupational health and safety objectives, each employer, taking into account the specifics of the work activity and the size of the enterprise, is obliged to designate one or more employees as an occupational safety specialist, or set up a unit with this purpose. The occupational safety specialist and the employee representative can be the same person. Employers having less than 20 employees can personally fulfil the professional duties of an occupational safety specialist, provided that they have completed the accredited programme⁸⁷. In case of 20 to 100 employees, the employer is obliged to appoint at least one occupational safety and health specialist. In case the number of employees is over 100, a special occupational safety and health unit needs to be set up, with no less than two occupational safety and health specialists. Occupational safety and health specialists or the unit should be equipped with the respective technical appliances and instruments and appropriate time should be dedicated to performing the duties to avoid the interruption of the production process. The aforementioned will be considered as work time and will be remunerated. Occupational safety and health specialists should not be put in worse occupational safety and health conditions compared to other employees (Article 7 of the Occupational Health and Safety Law).

Employee consultations and participation with regards to issues of occupational safety and health at the enterprise must be ensured. The rights and responsibilities of both parties of the employment relationship are strictly regulated. The registration, investigation or reporting of accidents and occupational diseases at work have also been included in the occupational safety and health provisions. The responsibility for a violation of occupational safety and health norms is defined by the Occupational Health and Safety Law and other Georgian laws and by-laws, while the issues related to administrative offence proceedings are also regulated by the General Administrative Code of Georgia, unless the law provides otherwise.

As to the implementation of the provisions described above, due to the relatively short time of the functioning of the Labour Inspection Office and the spread of the COVID-19 pandemic which influenced its functioning, it must be said that some positive effects are visible, however is too early to fully assess its effectiveness.

⁸⁷ For the latest programme changes see: <https://matsne.gov.ge/ka/document/view/5255143?publication=0>.

The findings presented above confirm the need to promote the acceptance of Article 3§4 of the European Social Charter by Georgia. Accepting the said provision will certainly contribute to further improvements of the health and safety conditions at work.

LABOUR RIGHTS (GROUP 3)

Labour rights (Thematic Group 3 under the European Social Charter) covers: the right to just conditions of work (Article 2), the right to a fair remuneration (Article 4), the right to organise (Article 5), the right to bargain collectively (Article 6), the right to information and consultation (Article 21), the right to take part in the determination and improvement of the working conditions and working environment (Article 22), the right to dignity at work (Article 26), the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28), and the right to information and consultation in collective redundancy procedures (Article 29).

Georgia has accepted all provisions from the above-mentioned group except for Articles 2§3, 2§4, 2§6, 4§1, 4§5, 21, 22 and 28 of the European Social Charter.

The last report concerning labour rights (11th National Report on the implementation of the European Social Charter) was submitted by Georgia on 3 November 2017.⁸⁸ The reference period was 1 January 2013 to 31 December 2016. Conclusions relating to these provisions were published in March 2018. The European Committee of Social Rights concluded at the time that Georgia is not in conformity with ten chapters of the revised European Social Charter (Articles 2§1, 2§2, 2§5, 2§7, 4§3, 4§4, 5, 6§1, 6§2, 6§4, 26§1, 26§2, 29), notably those concerning the right to collective action of workers as well as sexual and moral harassment in the workplace.

After the reference period crucial amendments were introduced to the Labour Code which is the main piece of legislation regulating private labour relations.

⁸⁸ The Government of Georgia, *11th National Report on the implementation of the European Social Charter*, 03.11.2017, available at: <https://rm.coe.int/11th-national-report-from-georgia/168077630a>.

As to the non-accepted provisions of Group 3 rights under the European Social Charter, the European Committee of Social Rights considered in 2012 and in 2015 that there were no legal obstacles to the acceptance of Article 2§3, 4§5, 21 and 22 of the European Social Charter.

With regards to Group 3 rights, as a result of discussions and information provided during the needs assessment meetings **the following areas have been identified as most needing support** to adjust the legal and practical situation in Georgia to international standards of the Council of Europe, and especially to the standards of the European Social Charter:

- the right to just conditions of work in the areas related to: reasonable working time (Article 2§1), public holidays with pay (Article 2§2), annual holiday with pay (Article 2§3), weekly rest period (Article 2§5);
- the right to fair remuneration in the area concerning decent remuneration (Article 4§1), overtime (Article 4§2), equal pay for equal work (Article 4§3),
- the right to dignity at work in the area concerning sexual harassment (Article 26§1) and moral harassment (Article 26§2).

ARTICLE 2 § 1 RIGHT TO JUST CONDITIONS OF WORK. REASONABLE WORKING TIME

Article 2§1 of the European Social Charter guarantees workers the right to reasonable limits on daily and weekly working hours, including overtime. The aim is to protect worker's safety and health. To this end, a reasonable work period, including overtime, must be guaranteed through legislation, regulations, collective agreements or any other binding means. In order to ensure that the limits are respected in practice, an appropriate supervisory authority must be in place. The European Social Charter does not expressly define what constitutes reasonable working hours. Situations are therefore assessed on a case-by-case basis. Working overtime must not simply be left to the discretion of the employer or the employee. The reasons for overtime work and its duration must be subject to regulation.

In its last report on provisions concerning Group 3 rights of the European Social Charter, the Georgian Government reported that “[t]he Labour Code and Public Service Law define the limits of working time. [...] [T]he duration of working time shall not exceed 40 hours per week. In enterprises having specific operating conditions, which require more than eight hours of uninterrupted production/work process, the weekly working time shall not exceed 48 hours. [...] [T]he duration of rest between working days (or shifts) must be at least 12 hours”.

Given the above information, the European Committee of Social Rights concluded in 2018 that the situation in Georgia was not in conformity with Article 2§1 of the European Social Charter. It's conclusion was based on the ground that there was no appropriate authority that supervised whether daily and weekly working time limits were respected in practice.

Since 2017, the Labour Code provisions on working time have been amended. Currently, pursuant to Article 23 §§ 1 and 2 of the Labour Code, the duration of a working week, the start and end of a working day, the duration of shifts in the case of shift work and the duration of breaks may be the subject to internal labour regulations which employers may establish in their enterprises. However, standard rules have been established in Articles 24 to 26 of the Labour Code. Under the said provisions, the standard working time shall not exceed 40 hours a week and in enterprises with specific operating conditions requiring more than 8 hours of uninterrupted production/work process it shall not exceed 48 hours a week. The duration of uninterrupted rest between working days (or shifts) shall not be less than 12 hours.

Under Article 27§1 of the Labour Code, the total overtime work performed by minors shall not exceed 2 hours per working day, and 4 hours per working week. The limit for total overtime work performed by adults has not been established. This must be perceived as opposing to Article 2§1 of the European Social Charter.

The Labour Inspection Office has been entrusted with the supervision of the application of rules concerning working time. Due to the short time of its functioning and the COVID-19 pandemic, the effectiveness of this supervision could not be assessed, yet.

The findings presented above confirm the need to support Georgia in adjusting its situation to the standards of Article 2§1 of the European Social Charter.

ARTICLE 2 § 2 RIGHT TO JUST CONDITIONS OF WORK. PUBLIC HOLIDAYS WITH PAY

Article 2§2 of the European Social Charter, guarantees the right to payed public holidays, in addition to weekly rest periods and annual leave. Public holidays may be specified in law or in collective agreements. As a rule, work should be prohibited during public holidays. However, work can be carried out on public holidays under specific circumstances set by law or collective agreements. To assess whether the compensation for work performed on public holidays is adequate, various levels of compensation in the form of increased salaries and/or compensatory time off as provided for by law

or a collective agreement in force are taken into account. For example, a compensation corresponding to a regular wage increased by 75% is not sufficiently high to constitute an adequate level of compensation for work performed on a public holiday⁸⁹.

In its last report on provisions concerning Group 3 rights under the European Social Charter, the Georgian Government reported that “public holidays are paid as part of a monthly remuneration and that following a 2013 amendment to the Labour Code work performed during public holidays shall be deemed to be overtime and accordingly be remunerated at an increased rate of hourly pay. The amount of the compensation shall be determined by agreement of the parties. Furthermore, the parties can also agree to compensate work on public holidays by additional time off”.

Given the above information, the European Committee of Social Rights concluded in 2018 that the situation in Georgia was not in conformity with Article 2§2 of the European Social Charter on the ground that it has not been established that the Georgian law ensures that the work performed during public holidays is adequately compensated.

Since 2018, the regulations of the Labour Code regarding public holidays have been amended, however the deficiencies of assessed provisions have not been addressed. The payment issues are currently covered by Article 30§4 of the Labour Code. Pursuant to the latter, if an employee works during the holidays enumerated in Article 30§1 of the Labour Code, the working hours shall be deemed overtime work and the terms for their compensation shall be determined in accordance with Article 27§§2 and 3 of the Labour Code. That is, overtime work shall be paid for at an increased hourly rate of remuneration together with the monthly wage that is due after the performance of overtime work. The amount of the said payment shall be determined by an agreement between the parties who may also agree on granting an additional proportional rest period to an employee to compensate the overtime work. The rest period shall be granted not later than 4 weeks after the work has been performed, unless otherwise determined by agreement between the parties.

The findings presented above confirm the need to support Georgia in adjusting its situation to the standards of Article 2§2 of the European Social Charter.

⁸⁹ European Committee of Social Rights, *Conclusions XX-3 (2014), Greece*.

Under Article 2§3 of the European Social Charter the right to just conditions of work implies to provide a minimum of four weeks of annual holiday with pay. The taking of annual holiday may be subject to the requirement that the twelve working months for which the annual holiday is due have fully elapsed. Generally, at least two weeks of uninterrupted annual holidays must be used during the year the holidays were due. Workers who suffer from illness or injury during their annual holiday are entitled to take the days lost at another time so that they receive four weeks annual holiday with pay. Annual holiday may not be replaced by financial compensation and workers must not have the option to waive their annual leave. However, this principle does not prevent the payment of a lump sum at the end of employment in compensation for the paid holiday which a worker was entitled to but which was not taken.

In its last report on non-accepted provisions of the European Social Charter, the Georgian Government reported that “as amended, the Labour Code now provides for a minimum of 24 working days of annual holiday with pay.”

Given the above information, the European Committee of Social Rights gave a positive assessment of the situation in 2015, and recommended acceptance of Article 2§3 of the European Social Charter. However it requested more information with regards to the required two weeks of uninterrupted annual holiday per year and the treatment of illness or injury during the annual holiday.

Since 2017, the regulations of the Labour Code considering working time and annual holiday have been amended. Currently the issue is regulated under Article 31§§1-6 of the Labour Code. Pursuant to the said provisions, an employee is entitled to paid leave of at least 24 working days annually and to unpaid leave of at least 15 working days annually. An employee working under arduous, harmful, or hazardous labour conditions shall be granted additional paid leave of 10 calendar days annually. An employment agreement may deviate from the Labour Code with regards to the definition of terms and conditions, however the a deviating definition of terms and conditions shall not worsen the employee’s working conditions. If an employment agreement is terminated on the initiative of an employer, the employer shall compensate the employee for the unused leave in proportion to the duration of the employment relationship. Any clause in an employment agreement that either denies or ignores the right to enjoy paid annual leave shall be void.

However, Article 35§1 of the Labour Code allows for the leave to be carried over to the next year if granting an adult employee paid leave for the current year may have a negative impact on the normal course of the work process and if .the employee consents to it. This opposes the interpretation of Article 2§3 of the European Social Charter which requires a minimum of four weeks' annual holiday

with pay. Moreover, a minor's paid leave shall not be carried over to the next year. In this regard it shall be noted that, under Article 35§2 of the European Social Charter, paid leave shall not be carried over for 2 consecutive years.

The procedure for granting the leave is regulated by the Labour Code. Pursuant to Article 32§§3 and 4 of the Labour Code, the leave shall not include a period of temporary incapacity to work, maternity or parental leave, newborn adoption leave, or additional parental leave. However, it is only by the agreement between the parties, that an employee may use the leave in parts.

The findings presented above confirm the need to promote the acceptance of Article 2§3 of the European Social Charter by Georgia. Accepting the said provision will certainly contribute to the further improvement of Georgian legislation and will support Georgia in establishing provisions that will contribute to increasing the work efficiency in the future.

ARTICLE 2 § 5 RIGHT TO JUST CONDITIONS OF WORK. WEEKLY REST PERIOD

Article 2§5 of the European Social Charter, guarantees a weekly rest period, which insofar as possible, shall coincide with the day traditionally or normally recognised as a day of rest in the concerned country or region. The right to a weekly rest period may not be replaced by compensation and workers may not be permitted to give it up. However, the rest period can be taken on a day other than the traditional day when the type of activity requires it, or for reasons that are of economic nature. In all cases, another day of rest during the week must be provided for. Periods of on-call duty during a weekly rest period and during which an employee has not been required to work cannot be regarded as a weekly rest period.

In its last report on provisions concerning Group 3 rights under the European Social Charter, the Georgian Government reported that “under the Labour Code, the provision of rest time is an essential feature of a labour agreement however the conditions of rest time may be defined according to the preferences of the parties. The report further states that Article 14 of the Labour Code stipulates a daily rest period of 12 hours”.

Given the above information, the European Committee of Social Rights concluded in 2108 that the situation in Georgia was not in conformity with Article 2§5 of the European Social Charter on the ground that it has not been established that a weekly rest period is guaranteed.

Since 2017, the regulations of the Labour Code concerning the weekly rest period have been amended. Currently, in addition to the 12-hour daily rest period, employers must ensure that each employee is entitled to a minimum uninterrupted rest period of 24 hours in each seven-day period. By agreement between the parties, the employee may enjoy a rest period of 24 hours twice in a row within not more than 14 days.

The findings presented above confirm the need to support Georgia in further improving its legislation standards and bringing it closer to the standards of Article 2§5 of the European Social Charter.

ARTICLE 4 § 1 RIGHT TO A FAIR REMUNERATION. DECENT REMUNERATION

Under Article 4§1 of the European Social Charter, the right to a fair remuneration implies the recognition of a remuneration that gives workers and their families a decent standard of living. The concept of “decent standard of living” goes beyond merely material basic needs and includes resources necessary to participate in cultural, educational and social activities.

In its last report on non-accepted provisions of the European Social Charter, the Georgian Government reported that “the issue of decent remuneration was political [and] directly linked to financial possibilities, which required more consultations in the [Georgian] Tripartite Commission”.

Given the above information, the European Committee of Social Rights gave a negative assessment of the situation in 2015, and recommended adjusting the situation to the standards of the European Social Charter.

Since 2017, the situation has not improved much. The level of minimum wage in Georgia has been raised as one of the most urgent social issues that have not been solved, yet. Since 1 January 1999 the minimum wage for the private sector has been 20,00 GEL (7 EUR)⁹⁰, which is too low and outdated. Since its introduction in 1999, it has never been adjusted to changing consumer prices (inflation), wages (increase in average monthly earning), or the standard of living in Georgia. The subsistence minimum (which is 205.6 GEL for men of working age according to data from May2021), the level of pensions for the elderly, and all other social benefits in Georgia are much higher than the current minimum wage⁹¹.

The findings presented above confirm the need to support Georgia in adjusting its situation to the standards of Article 4§1 of the European Social Charter.

⁹⁰ As set in *Presidential Decree #351*, 04.06.1999.

⁹¹ See more: Davit Darsavelidze, *Impact of Possible Growth of Minimum Wage in Georgia*, January 2019, p. 5; available at: <http://library.fes.de/pdf-files/bueros/georgien/14970.pdf>.

The principle of Article 4§2 of the European Social Charter is that work performed outside normal working hours should be paid at a rate higher than the normal wage because it requires an increased effort on the part of the worker.. This increase must apply in all cases. Granting leave to compensate for overtime instead of granting an increased remuneration is in conformity with Article 4§2 of the European Social Charter, on the condition that this leave is longer than the overtime worked. Therefore, it is not sufficient to offer employees leave of equal length to the number of overtime hours worked.

In its last report on provisions concerning Group 3 rights under the European Social Charter, the Georgian Government reported that “the Labour Code defines overtime as working time in excess of 40 hours per week”.

Given the above information, the European Committee of Social Rights deferred its conclusions in 2018 and demanded further information.

Since 2017, the regulations of the Labour Code considering overtime work have been amended. Currently, under Article 27§2 of the Labour Code, overtime work shall be paid for at an increased hourly rate of remuneration. The amount of the said payment shall be determined by agreement between the parties. The parties may agree on granting an additional proportional rest period to an employee to compensate overtime work not later than 4 weeks after the work has been performed, unless otherwise determined by the agreement.

The amendments introduced in September 2020 must be seen as a huge step forward, bringing Georgian regulations closer to European standards, however there is still room for improvement. First of all, it shall be stressed that the legislation does not define the limit of the overtime work for adult employees. The maximum limit of 2 hours per working day and 4 hours per working week has only been introduced for minors⁹². Secondly, it shall be noted that although Article 27 of the Labour Code requires overtime work to be paid for at an increased hourly rate of remuneration, the amount of the said payment is left to be determined by agreement between the parties, may lead to differences between employees. According to the findings of the Advocacy for Evidence-Based Labour Rights in Georgia Project regarding court practice, the amount of the hourly rate for overtime work is 125% of

⁹² The report does not include an analysis of the right of children and young persons to protection (Article 7 of the European Social Charter) and therefore does not cover the issue of protection of the work of minors.

the standard hourly rate⁹³. Moreover, under Article 27 § 3 of the Labour Code, the parties may agree on granting an additional proportional rest period to an employee to compensate overtime work, however the law does not specify any rules in this regard (e.g. the law does not require the leave to be longer than the overtime worked).

The findings presented above confirm the need to support Georgia in adjusting its situation to the standards of Article 4§2 of the European Social Charter.

ARTICLE 4 § 3 RIGHT TO A FAIR REMUNERATION. EQUAL PAY FOR EQUAL WORK

Article 4§3 of the European Social Charter guarantees the right to equal pay without discrimination on grounds of sex. The principle of equality should cover all the elements of pay, meaning wages or salary plus all other benefits paid directly or indirectly in cash or kind by the employer to the worker as part of the employment relationship. It must apply between full-time and part-time employees.

In its last report on provisions concerning Group 3 rights under the European Social Charter, the Georgian Government reported that “the new Public Service Law was adopted in 2015, [...] [and] provides in its Article 57§1 that the remuneration system shall be based on the principles of transparency and fairness, which means equal pay for equal work performed.”.

Given the information, the European Committee of Social Rights gave a negative assessment of the situation in 2018 on the ground that the statutory guarantee of equal pay only existed in public service.

Since 2017, the regulations of the Labour Code considering equal pay for equal work have been amended. The new edition of the Labour Code, as amended in September 2020, directly establishes the obligation of the employer to ensure equal pay for equal work performed by male and female employees in Article 4§4. The Law of Georgia on Civil Service of 2015 that came into force on 1 July 2017 provides in Article 57 that the public service remuneration system must be based on the principles of transparency and fairness, which means equal pay for equal work. Apart from that, the principle of equality and transparency in the remuneration system, which means “equal pay for the performance of equal work” is laid down in Article 3 of the Law of Georgia on Remuneration in Public

⁹³ People in Need, *Basic Rights and Obligations of Employees and Employers*, 2021, p. 15, available at: <https://georgia.peopleinneed.net/en/handbook-basic-rights-and-obligations-of-employees-and-employers-7890gp>.

Institutions, which came into force on 1 January 2018.⁹⁴ However, it must be stressed that none of the laws enumerated above expressly include the concept of “work of equal value”.⁹⁵

Nevertheless, according to the 2020 Global Gender Gap Index⁹⁶, Georgia ranks 73 out of 153 countries in terms of equal pay. According to official statistics by the National Statistics Office of Georgia, the average monthly nominal earnings of employees by sex differed greatly and accounted for 952,2 GEL for females and 1 407,7 GEL for males in 2020. The difference was even bigger in various specific sectors: in manufacturing it reached 826,9 GEL for females and 1.269,9 GEL for males, in financial and insurance activities it reached 1.643,3 GEL for females and 3.016,0 GEL for males, and in professional, scientific and technical activities it reached 1.518,6 GEL for females and 2.166,3 GEL for males.

The findings presented above confirm the need to support Georgia in adjusting its situation to the standards of Article 4§3 of the European Social Charter.

ARTICLE 26 § 1 RIGHT TO DIGNITY AT WORK. SEXUAL HARASSMENT

Article 26§1 of the European Social Charter requires States Parties to take appropriate preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat sexual harassment. Workers must be afforded an effective protection against harassment which in first place requires a shift in the burden of proof, making it possible for a court to find in favour of the victim on the basis of sufficient *prima facie* evidence and the personal conviction of the judge or judges. Victims of sexual harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim’s pecuniary and non-pecuniary damage and act as a deterrent to the employer.

In its last report on provisions concerning Group 3 rights under the European Social Charter, the Georgian Government reported that “pursuant to Article 6§1.b of the Law of Georgia on Gender Equality (hereinafter, the Gender Equality Law), as amended in May 2014, any unwanted verbal, non-verbal or physical behaviour of sexual nature with the purpose or effect of violating the dignity of a person or creating for [them] an intimidating, hostile, or offensive environment is

⁹⁴ Parliament of Georgia, *Law of Georgia on Remuneration in Public Institutions*, 1 January 2018, available at: <https://matsne.gov.ge/en/document/download/3971683/4/en/pdf>.

⁹⁵ See more: International Labour Organization, *Observation (CEACR) - adopted 2020, published 109th ILC session, 2021*, available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:4057609.

⁹⁶ World Economic Forum, *Global Gender Gap Index*; available at: <https://bit.ly/3pfHeVM>.

prohibited. [...] Under Article 14 of the Law [on Gender Equality], the Public Defender, within the scope of [their] authority shall monitor the protection of gender equality and provide [an] appropriate response in cases of violation". The report did not provide detailed information on how the legislative framework is actually implemented, in particular as regards the violations found in relation to sexual harassment and the measures taken in response to such violations.

Given the above information, the European Committee of Social Rights gave a negative assessment of the situation in Georgia in 2018.

In the last three years Georgia has made significant progress and improved its regulations that protect against harassment in the workplace. In particular with the changes made in 2019, legal grounds and mechanisms for combating discrimination and sexual harassment in labour relations were introduced. In 2019, prohibitive norms emerged in the Elimination of Discrimination Law and in the Labour Code. Under the Elimination of Discrimination Law, sexual harassment has been defined as a form of discrimination and described as an unwanted physical, verbal, or non-verbal action of sexual nature, the aim or result of which is degradation of a person, or creation of a hostile environment for that person. Since 2020 the employer has the obligation to respond to sexual harassment⁹⁷.

Although the scope of the Elimination of Discrimination Law includes all areas of public life, with labour relations as one of them, it must be stressed as important that prohibiting norms have been introduced in parallel to the Labour Code to underline that labour relations are one of the most frequent sources of sexual harassment. Moreover, the employer has been obligated under the Labour Code to reflect the norms prohibiting discrimination and relevant response mechanisms in internal regulations. This shall contribute, on one hand, to the effective response to and prevention of sexual harassment in the workplace and, on the other, to help to hold the employer responsible for their inaction in response to sexual harassment⁹⁸.

Since 2019 sexual harassment committed in public space has been considered an administrative offence under Article 166 of the Administrative Offences Code of Georgia. The mandate of responding to the above offence is granted to the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia. While the independent consideration and

⁹⁷ Parliament of Georgia, *Organic Law of Georgia Labour Code*, 01.01.2021, note Article 78§2: "Imposing liability on an employee who commits harassment and/or sexual harassment does not exempt the employer from liability. The employer may be held liable if he/she was aware of harassment and/or sexual harassment and did not report it to the Labour Inspector's Office and/or did not take appropriate measures to prevent such an action."

⁹⁸ The Public Defender of Georgia, *Special Report of the Public Defender of Georgia on Combating and Preventing Discrimination and the State of Equality*, 2019, page 7, available at: <https://www.ombudsman.ge/res/docs/2020031712325453928.pdf>

regulation of sexual harassment in public space must be seen as a positive change, it is the effective implementation of the discussed provision that shall be seen as of crucial importance⁹⁹.

Under the amendments of 2019 the Public Defender has been granted the mandate to review cases of sexual harassment in a workplace. According to his survey, many public agencies as well as private companies still do not have internal legal mechanisms against sexual harassment and discrimination¹⁰⁰. **According to the Public Defender's 6th Annual Report on the State of Equality** published on 7 May 2021, the problem of sexual harassment was still common in 2020 and mainly detected in the workplace.¹⁰¹ At the same time, the number of persons applying to the Public Defender has relatively increased after the introduction of the legislative regulation of sexual harassment in 2019, which shows a raise of awareness in the discussed area. However, a 2020 study conducted by the Public Defender among women employed in the health sector showed that they had an extremely low level of awareness about sexual harassment in the workplace, its nature and the response mechanisms. According to the information provided to the Public Defender by the respondents of the survey, women had not had any information on who they should turn to if they faced this problem, and the employer had not discussed this issue with them¹⁰².

The cases reported to and examined by the Public Defender show that sexual harassment is particularly severe when it occurs in the workplace and when the harassers use their position of power. The harasser's behaviour includes verbal, non-verbal and physical actions of sexual nature. In particular, the harasser touches certain parts of the victim's body and makes intimate comments, talks about sexual experiences and preferences, offers sexual intercourse, etc. It should be noted that harassers or third parties often refer to the victim's intoxication, sexual orientation or other personal characteristics to justify the harasser's sexual behaviour. Accordingly, the Public Defender is particularly sensitive when examining the cases of sexual harassment in order to avoid repeated victimization¹⁰³. To improve the situation, several initiatives have been started, e.g. an online course on prevention of sexual harassment has been offered by the Public Defender's Office, which has become mandatory at the Ministry of Defence¹⁰⁴.

⁹⁹Public Defender of Georgia, *Recommendation to the Minister of Internal Affairs of Georgia*, 22.01.2020, available at: <https://bit.ly/360FPLH>.

¹⁰⁰ Georgian Young Lawyers Association, *Assessment Of Women's Rights*, 2020, available at: <https://gyla.ge/en/post/saia-s-shefaseba-qalta-uflebrivi-mdgomareobis-shesakheb>.

¹⁰¹ The Public Defender of Georgia, *The 6th Annual Report on the State of Equality*, 7 May 2021, page 3-4.

¹⁰² The Public Defender of Georgia, *Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia*, 2020, page 152.

¹⁰³ The Public Defender of Georgia, *Special Report of the Public Defender of Georgia on Combating and Preventing Discrimination and the State of Equality*, 2019, page 7.

¹⁰⁴ The Public Defender of Georgia, Online course is available at: <http://sexualharassment.ombudsman.ge/ka/login>.

Unlike previous years, in cases where the Public Defender, in 2020, established the occurrence of sexual harassment, employers responded to the cases by dismissing the harasser or enshrining provisions prohibiting sexual harassment in their internal regulations. In addition, it was a positive trend in 2020 that a number of private companies proactively expressed a desire to introduce an internal organizational mechanism for the prevention of sexual harassment. At the same time, with the involvement of the Human Rights Secretariat of the Government of Georgia, internal sexual harassment mechanisms were introduced in public institutions. This should help to properly inform employees of specific organizations and prevent sexual harassment in the workplace, and enable the organization's management to review the cases of alleged harassment themselves¹⁰⁵.

The findings presented above show significant progress made by Georgia in the assessed area, however, they also confirm the need to support Georgia in further adjusting its situation to the standards of Article 26§1 of the European Social Charter.

ARTICLE 26 § 2 RIGHT TO DIGNITY AT WORK. MORAL HARASSMENT

Article 26§2 of the European Social Charter establishes the right to protection of human dignity against harassment creating a hostile working environment related to a specific characteristic of a person. States Parties are required to take all necessary preventive and compensatory measures to protect individual workers against recurrent reprehensible or distinctly negative and offensive actions directed against them at the workplace or in relation to their work, since these acts constitute humiliating behaviour.

In its last report on provisions concerning Group 3 rights under the European Social Charter, the Georgian Government referred to the Gender Equality Law, which prohibits any unwanted verbal, non-verbal or physical behaviour of sexual nature with the purpose or effect of violating the dignity of a person or creating for them an intimidating, hostile, or offensive environment. It also referred to the Elimination of Discrimination Law and to the role of the Public Defender under both instruments. The report did not contain any information concerning preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) which would have been taken in order to combat moral (psychological) harassment in the workplace.

¹⁰⁵ The Public Defender of Georgia, *Special Report of the Public Defender of Georgia on Combating and Preventing Discrimination and the State of Equality*, 2019, pages 10-11.

Given the above information, the European Committee of Social Rights gave a negative assessment of the situation in 2018.

Recently, the legislative amendments of 19 February 2019 defined harassment as a form of discrimination, which implies persecution and coercion of a person on any ground, or an undesirable behaviour against a person, the aim or result of which is degradation of a person, and creation of threatening, hostile, humiliating, degrading or abusive environment for that person.

According to the 2019 Special Report of the Public Defender of Georgia on Combating and Preventing Discrimination and the State of Equality the main forms of harassment in employment in 2019 were the use of unethical and abusive forms of communication, the lack of communication between the supervisor and the employee for a long period, as well as the placement in a separated, uncomfortable room¹⁰⁶. In other cases, applicants argued that they had asked the supervisor to establish transparent criteria in order to exclude the use of a biased incentive mechanism, after which one of the applicants was dismissed on the motive of reorganization, while another applicant was dismissed on the ground of expiry of the contract.

According to Article 12 of the Elimination of Discrimination Law, "[a]ny kind of ill-treatment of or influence on any person because the latter had filed an application or a complaint with any agency, or cooperated with that agency to protect him- or herself against discrimination, is prohibited." In 2019, the Public Defender identified victimization in labour relations for the first time. Namely, in one of the cases, the employer explained the dismissal of the employee by the fact that the latter had applied to the Public Defender. As it was rightly stressed by the Public Defender in the 2019 Special Report on Combating and Preventing Discrimination and the State of Equality, the dismissal of a person on the above ground creates a dangerous precedent, which may have a chilling effect on other persons in the future and become a terrifying circumstance for the use of legal remedies¹⁰⁷.

The findings presented above show that significant progress was made by Georgia in the assessed area, however, they also confirm the need to support Georgia in further adjusting its situation to the standards of Article 26§2 of the European Social Charter.

CHILDREN, FAMILIES AND MIGRANTS (GROUP 4)

¹⁰⁶ The Public Defender of Georgia, *Special Report of the Public Defender of Georgia on Combating and Preventing Discrimination and the State of Equality*, 2019.

¹⁰⁷ The Public Defender of Georgia, *Special Report of the Public Defender of Georgia on Combating and Preventing Discrimination and the State of Equality*, 2019, pages 20-21.

Children, families and migrants (Thematic Group 4 under the European Social Charter) includes: the right of children and young persons to protection (Article 7); the right of employed women to protection of maternity (Article 8); the right of the family to social, legal and economic protection (Article 16); the right of children and young persons to social, legal and economic protection (Article 17); the right of migrant workers and their families to protection and assistance (Article 19); the right of workers with family responsibilities to equal opportunity and treatment (Article 27); the right to housing (Article 31).

Georgia has accepted all provisions from the above-mentioned group except for Articles 8§§1 and 2, 16, 17§2 and 31 of the European Social Charter.

The last report concerning children, families and migrants (12th report) was submitted by Georgia on 31 October 2018. The reference period was 1 January 2014 to 31 December 2017. The European Committee of Social Rights declared 5 conclusions of conformity and 19 conclusions of non-conformity (Article 7§1, 7§2, 7§3, 7§4, 7§5, 7§6, 7§8, 7§9, 7§10, 8§4, 8§5, 17§1, 19§1, 19§4, 19§6, 19§10, 19§11, 27§1, 27§2 of the European Social Charter). In respect of the other 5 situations the European Committee of Social Rights deferred its conclusions stating that it needed further information in order to assess the situation.

With regards to the non-accepted provisions from Group 4 rights under the European Social Charter, the European Committee of Social Rights found in 2012 and in 2015 that there were no legal obstacles to the acceptance of Article 8§1, 8§2 and Article 17§2 of the European Social Charter.

With regards to the Group 4 rights under the European Social Charter, as a result of discussions and information provided during the needs assessment meetings the following areas have been identified as most needing support to adjust the legal and practical situation in Georgia to international standards of the Council of Europe, and especially to the standards of the European Social Charter:

- the right of employed women to protection of maternity in the area concerning payment for parental leaves (Article 8§1 of the European Social Charter) and in the area concerning the protection against dismissal (Article 8§2 of the European Social Charter)

Article 8§1 of the European Social Charter recognises the right of employed women to maternity leave of at least 14 weeks and adequate maternity benefits which must be accompanied by the continued payment of the individual’s remuneration or by the payment of social security benefits or benefits from public funds. The modality of compensation is within the margin of appreciation of the States Parties and may either be a paid leave (continued payment of wages by the employer), or social security maternity benefits, or any alternative benefits from public funds, or a combination of such compensations. Regardless of the modality of payment, the level shall be adequate. It should not be reduced substantially compared to the previous wage, and be not less than 70% of that wage¹⁰⁸.

In its last report on non-accepted provisions of the European Social Charter, the Georgian Government reported that “the law provided for 180 days of paid maternity leave. Some adjustments were needed, however, on aspects of social security and benefits that as such were unproblematic, but that needed consultations with the social partners.”¹⁰⁹

Given the above information, the European Committee of Social Rights gave a positive assessment of the situation in 2015 and recommended acceptance of Article 8§1 of the European Social Charter. However, it requested more information on the implementation of the right to maternity leave in practice, in particular with regards to the continued payment of the worker’s remuneration or equivalent benefits.

Currently, as a result of the amendments made to Article 37 of the Labour Code in 2020, an employee shall, upon her request, be granted paid maternity leave of 126 calendar days, and in the case of complications during childbirth or the birth of twins, maternity leave of 143 calendar days. Employees may distribute this period of leave at their discretion over the pregnancy and postnatal periods. Additionally, an employee shall, upon their request, be granted parental leave of 604 calendar days (which added to maternity leave is 730 days) and in the case of complications during childbirth or the birth of twins, a parental leave of 587 calendar days (which added to maternity leave is 730 days). 57 calendar days of the leave shall be paid. The period of parental leave may be enjoyed in whole or in parts by the mother or the father of the child, while the enjoyment of maternity leave is an exclusive right of the mother of the child, although the father of the child has a right to enjoy the days of said leave which have not been used by the mother of the child.

¹⁰⁸ European Committee of Social Rights, *Conclusions 2015, Statement of Interpretation on Article 8§1*.

¹⁰⁹ European Committee of Social Rights, *Second Report on the Non-Accepted Provisions of the European Social Charter, Georgia*, 2015, p. 28.

Employees who have adopted an infant under the age of 12 months shall, upon their request, be granted a period of newborn adoption leave of 550 calendar days from the birth of the child. 90 calendar days of the leave shall be paid.

Maternity leave, parental leave, and newborn adoption leave shall be paid from the State Budget of Georgia, in accordance with the procedures established by the legislation of Georgia. The cash allowance for a period of paid maternity leave and paid parental leave, as well as paid newborn adoption leave shall be a maximum of GEL 1.000 in total. Employers and employees may agree on extra pay for said periods of leave.

The regulation is different for public officers. Under Article 64 of the Public Service Law, officers shall be granted a maternity leave of 730 calendar days on the basis of their application. 183 calendar days of maternity leave, or 200 calendar days in the case of complicated childbirth or twin birth, shall be compensated. Compensation shall be paid from the budget of the public institution concerned, based on the officer's official salary and class-based increment, and an officer with a military rank or a special rank shall be paid a length-of-service increment and a rank salary in addition to their official salary. Officers may distribute the period of the leave between the pregnancy and postnatal periods, as they consider necessary. Officers who have adopted a child under the age of 12 months shall, at their request, be granted an adoption leave of 550 calendar days from the birth of the child. 90 calendar days of this leave shall be compensated. Compensation shall be paid from the budget of the public institution concerned, based on the officer's official salary and class-based increment, and an officer with a military rank or a special rank shall be paid a length-of-service increment and a rank salary in addition to their official salary.

Comparing the two systems it must be stressed that in the private sector the employee receives a cash allowance for a period of paid maternity leave and paid parental leave, as well as paid newborn adoption leave, at a maximum of GEL 1.000 in total, while in the public service, the officer is entitled to receive the compensation paid from the budget of the public institution concerned based on the officer's official salary and class-based increment. However, the Public Service Law does not establish the possibility to distribute the days of pregnancy and childbirth leave and parental leave between mother and father.

It must be stressed that since the last reporting period on non-accepted provisions, no changes have been introduced to the maternity pay in the private sector and it still depends on the employer to pay the wage beyond the 1.000 GEL assistance set by the State¹¹⁰. Most companies regulate the issue

¹¹⁰ The Public Defender of Georgia, *The 6th Annual Report on the State of Equality*, 7 May 2021, page 10, available at: <https://ombudsman.ge/res/docs/2021051313265374968.pdf>.

by internal regulations. Most companies' approaches are more or less similar and they generally provide for a paid leave for 6 months, 4 months, or 3 months or an unpaid maternity leave. In addition, in case of a 6-month paid leave, the companies mostly calculate the difference between the receivable amount and the 1.000 GEL to be paid by the State and give the amount of the difference to the employee. Certain companies pay 50% (3 months) or 25% (3 months) of the employee's salary. A few private companies use the length of employee's service in their company as a prerequisite for determining the amount of maternity pay. In some cases, the type of employment contract matters. Namely, if the contract is of a definite term or is a service contract, the company does not pay anything at all"¹¹¹.

The findings presented above confirm the need to promote the acceptance of Article 8§1 of the European Social Charter by Georgia.

ARTICLE 8 § 2 RIGHT OF EMPLOYED WOMEN TO PROTECTION OF MATERNITY. ILLEGALITY OF DISMISSAL

According to Article 8§2 of the European Social Charter, the right of workers to maternity protection implies that it shall be considered unlawful for an employer to terminate a woman's employment during the period between the notification of pregnancy to the employer and the end of maternity leave, or to terminate her employment at a time when the termination would expire during that period. A notification of dismissal during the period of protection does not, as such, amount to a violation of the provision, provided that the period of notice and any related procedures are suspended until the end of the period of protection. The same rules apply to the notice of dismissal prior to the period of protection. Domestic law must provide for adequate and effective remedies in cases of illegal dismissal. Whereas reinstatement of the woman concerned should be the rule, exceptionally, if this is impossible or she does not wish to be reinstated, adequate compensation must be ensured.

In its last report on non-accepted provisions of the European Social Charter, the Georgian Government reported that “the law provided for protection of the woman from dismissal during maternity leave. Some remaining questions, however, needed to be solved, which needed more consultations with the social partners”¹¹².

¹¹¹ The Public Defender of Georgia, *Special Report of the Public Defender of Georgia on Combating and Preventing Discrimination and the State of Equality*, 2019, pages 9-10.

¹¹² European Committee of Social Rights, *Second Report on the Non-Accepted Provisions of the European Social Charter, Georgia*, 2015, p. 29.

Given the above information, the European Committee of Social Rights gave a positive assessment of the situation in 2015, and recommended acceptance of Article 8§2 of the European Social Charter. However, it requested more information on the implementation of that protection in practice.

Currently, as a result of the amendments made to the Labour Code in 2020, protection against dismissal during paternal leaves has been guaranteed under Article 46§2g and 47§5c. According to Article 46§1 of the Labour Code, a suspension of the employment relationship means the temporary non-performance of work under an employment agreement which does not result in the termination of the employment relationship. Under Article 46§2g of the Labour Code, the ground for suspending an employment relationship is i.a. maternity leave, parental leave, newborn adoption leave, or additional parental leave. Pursuant to Article 47§5c of the Labour Code, terminating the employment relationship shall be inadmissible during the period under Article 46§2g of the Labour Code. The inadmissibility period starts the moment the female employee notifies her employer about her pregnancy. Exceptions regarding the termination of an employment agreement are listed in the Labour Code and include the expiry of an employment agreement (Article 46§1b), the completion of the work under an employment agreement (Article 46§1c), the voluntary resignation of an employee from a position on the basis of a written application (Article 46§1d), a written agreement between the parties (Article 46§1e), a gross violation by an employee of their obligations under an individual employment agreement or a collective agreement and/or of internal labour regulations (Article 46§ 1g), a violation by an employee of their obligations under an individual employment agreement or a collective agreement and/or of internal labour regulations, if any of the disciplinary steps under the said individual employment agreement or collective agreement and/or internal labour regulations have already been taken against the employee during the last year (Article 46§1h), the entry into force of a court judgment or other decision precluding the possibility of performing the work (Article 46§1j), and the death of an employer who is a natural person, or of an employee (Article 46§1l).

The findings presented above confirm the need to promote the acceptance of Article 8§2 of the European Social Charter by Georgia.

In Georgia, several challenges related to the realisation of employees' rights have been identified over the years. The main mechanisms for monitoring and the execution of employees' rights, apart from initiating court proceedings are the initiation of proceedings by the Public Defender, the mechanisms of the Labour Inspection Office, and the mediation procedures.

The mechanisms for the resolution of disputes concerning individual and collective labour and employment disputes have been established in Articles 61 to 69 of the Labour Code as the result of the amendments accepted in September 2020.

The Public Defender has no powers to directly respond to the cases of violation of labour rights in the private sector, except for cases of discrimination¹¹³. Pursuant to the regulations applicable prior to 1 January 2021, the Labour Conditions Inspection Department of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs (the predecessor of the Labour Inspection Office) did not have the mandate of effective oversight over the protection of labour rights (other than occupational safety norms) either, and thus court procedures were the only mechanism for the protection of labour rights of workers. The situation changed following the labour legislation reform in 2020 which granted a full mandate for the oversight over the protection of labour rights to the Labour Inspection Office. Since 1 January 2021, the Labour Inspection Office has been empowered to inspect workplaces without employer's consent, with the aim to detect breaches of the provisions of the Labour Code and the Public Service Law and to impose respective sanctions in case a violation is detected.

Following the legislative amendments practical issues arose, which revealed low capacities of the Labour Inspectorate resulting from insufficient financial and human resources. Although the up-to-date work and functioning of the Labour Inspectorate must be generally assessed positively, and the Labour Inspectorate itself has been highly welcomed by employees and the organizations representing their rights, it must be stressed that identified shortcomings such as, insufficient human resources, lack of sufficient funds, or lack of proper high-level trainings for labour inspectors may negatively affect the level of their success and assumed positive results of the labour inspection reform. In light of the concerns raised above it is particularly noteworthy to point out that in 2020 the number of labour

¹¹³ Article 3§1 of the Organic Law of Georgia on the Public Defender of Georgia.

inspectors was increased and material and technical resources of the Labour Inspection Office were upgraded¹¹⁴.

As a result of the examination of the state of labour rights in 2020, it has been identified that the most common violation was the non-payment of salaries to employees. Furthermore, 12% of breaches entail the alteration of substantive provisions of labour contract without a prior agreement with an employee. As a result of monitoring conducted by the competent authority based on the consent of employers, the following cases were also detected: failure to pay workers for sick leave, infringements of the regulations on taking leave, employees were not familiar with the content of contracts, and/or internal regulations of the organization, and failure to pay employees for overtime hours worked. Relevant recommendatory directions were issued to each inspected entity and only two companies acted upon those directions¹¹⁵.

Pursuant to the findings of the Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia 2020 (hereinafter, the “2020 Human Rights and Freedoms Report”)¹¹⁶, there was frequent information about the violation of workers’ rights in the private sector due to COVID-19 related restrictions in the country. Examples are, *inter alia*, sending employees on unpaid leave for an unspecified period, cases of dismissal without justification and/or without compensation, unilaterally altering substantive provisions of a labour contract, and assigning overtime work without remuneration. Nevertheless, according to the 2020 Human Rights and Freedoms Report, only 32 complaints have been registered with regards to breaches of labour rights at the Ministry of Labour, Health and Social Affairs Labour Conditions Inspection Department in 2020¹¹⁷. However, it must be noted that the low number of complaints might be due to the limited mandate of the Labour Conditions Inspection Department of the Ministry of Labour, Health and Social Affairs. In particular, prior to 1 January 2021, the authority in charge of the protection of labour rights did not have the power to monitor the protection of labour rights (except for the occupational safety norms) without the consent of employers. Moreover, even when it performed such monitoring, its authority was limited to issuing non-binding recommendations. In 2020, the inspection authority inspected 14 companies where employers agreed to the monitoring. Of these, 6 companies operate in

¹¹⁴ The Ministry of the Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, *Letter # 01/902*, 22 January 2021; The Labour Inspectorate, *LEPL Letter # 09/525*, 12.03.2021: according to the letter there are 112 positions of labour inspectors (of these, 26 under territorial offices). At the time the information was received, 54 labour Inspectors were employed.

¹¹⁵ The Labour Inspectorate, *LEPL Letter N 09/318*, 16.02.2021: The inquiry process into several accidents is ongoing and the referenced data may be modified.

¹¹⁶ The Public Defender of Georgia, *Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia, 2020*, page 223.

¹¹⁷ The Labour Inspectorate, *LEPL Letter N 09/318*, 16.02.2021.

the healthcare sector, 3 operate in the wholesale and retail trade sector, 2 are construction and installation companies, and the remaining ones operate in the production and service sector¹¹⁸.

CONCLUSIONS AND KEY RECOMMENDATIONS

The substantive areas of concern identified above deserve immediate attention from the authorities of Georgia and they are all areas in which cooperation with the Council of Europe would be justified to strengthen capacity and ensure legislative reforms which shall contribute to the full implementation of social rights under the European Social Charter and the other standards of the Council of Europe in the field of social rights. The characteristics of the priorities differ, meaning that in some areas, the priority is to improve the implementation of existing legislation whereas, in others, legislative reforms and/or substantial budgetary commitments are required. Therefore, the recommendations below will be divided according to the areas they concern.

INTERNATIONAL COMMITMENTS:

a) In the context of reforms (both legislative as well as at the policy level) that the authorities have been implementing to strengthen the protection of social rights (especially labour and employment rights), Georgia shall be encouraged to accept the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints as a tool, not only to enhance the protection of social rights but also to promote social dialogue and empower civil society institutions.

b) In the context of the assessments conducted by the European Committee of Social Rights and the reforms (both legislative and at the policy level) that the authorities have been implementing to strengthen the protection of social rights (especially labour and employment rights), Georgia shall be encouraged to resume the discussion concerning the acceptance of further provisions of the European Social Charter as a tool to enhance the protection of social rights (especially Article 3, Article 8§§1,2, Article 9, Article 10§§1,3).

c) In the context of the assessments conducted by the European Committee of Social Rights, Georgia shall be encouraged to make further efforts to improve the quality of its reporting on the European Social Charter provisions in order to enable the Committee to fully assess the situation. This

¹¹⁸ The Public Defender of Georgia, *Report of the Public Defender of Georgia On the Situation of Protection of Human Rights and Freedoms in Georgia*, 2020, page 223.

will allow the European Committee of Social Rights, as a result, to provide comprehensive conclusions to help policymakers take better-informed legislative and policy steps.

LEGISLATIVE REFORM:

Legislative reforms seem required in the following areas:

a) Amendments to the Labour Code should be introduced:

- to guarantee that the amount of allowance/compensation for maternity leave because of pregnancy and childbirth, child care, and adoption of a newborn will substantially approach the standard established by the Public Service Law, and that it will not be substantially reduced compared to the previous wage and not be less than 70% of that wage;

- to guarantee the minimum amount of remuneration paid for overtime;

- to guarantee that employees do not have the option of waiving their annual leave;

- to guarantee that at least two weeks uninterrupted annual holidays must be used during the year the holidays were due; to achieve this goal, the provision of Article 35§1 of the Labour Code allowing the carrying over of paid leave in exceptional conditions shall be amended in such a way that only annual holidays exceeding two weeks may be postponed in particular circumstances defined by the law (the nature of the circumstances should justify the postponement);

- to establish a maximum limit for total overtime work performed by adults;

- to establish a legal minimum requirement for granting an additional proportional rest period to an employee to compensate overtime work, especially a legal requirement that the leave has to be longer than the overtime worked.

b) The Presidential Decree Nr. 351 of 4 June 1999 which established a minimum wage of 20 GEL shall be abrogated and new provisions establishing a minimum wage at a level that is adjusted to international standards shall be introduced.

EXECUTIVE ACTION:

Executive action shall be performed:

a) in order to fully implement all the amended provisions of the Labour Code, and special attention shall be paid to the proper implementation of Article 4§4, 27§2, 30§4, 31§§1,3, 47§§1-5 of the Labour Code.

b) to further combat vertical and horizontal occupational segregation and the gender pay gap, including by developing salary comparisons across companies in the private sector.

c) to promote the professional development of women entrepreneurs living in municipalities and their economic empowerment by training and equipping them with project management skills;

d) to monitor and assess the effectiveness of the Labour Code amendments introduced in September 2020 and their implementation in practice;

e) in order to **enhance the capacity of the Labour Inspection Office**. In this area, the activities shall include:

- timely completing the staffing of the Labour Inspectorate, including its territorial offices, and ensuring the number of inspectors relevant to perform their tasks effectively;
- introducing strict procedures in cases of detected violations, including follow-up procedures to monitor the situation of enterprises in which violations happened;
- providing high-level training for labour inspectors;
- providing trainings for employers on both, employment and labour rights and duties (including the rights and duties regarding the employment of persons with disabilities) and the functioning and mandate of the Labour Inspection Office;
- drawing lessons from the COVID-19 pandemic: providing strict procedures enabling the Labour Inspection to perform its primary function and preventing the possibility of limiting its functioning to implementing procedures applied in connection with the pandemic;
- institutional assessment of the Labour Inspection Office (in consideration of existing challenges in the labour market and the implementation of regulatory norms) and drafting of recommendations based on the assessment;
- assessing private and State business sectors with regards to their knowledge of the Labour Code amendments that were introduced in September 2020, their capacity and knowledge on implementing labour norms in practice, and their perception of the Labour Inspection, and drafting recommendations based on the assessment.

INCREASED BUDGETARY COMMITMENTS:

Increased budgetary commitments should be made in order:

- a) to increase the access to vocational education and training institutes (including online courses) for both youths and adults, including persons with disabilities and persons with other special needs, especially from the regions and rural areas; in order to achieve this goal it is advisable to expand the territorial scope of the functioning of the existing institutions e.g. by creating regional branches while also providing people from the regions in which there are no such institutions with programmes supporting them to access the existing, far-away institutions (providing financing, transport, dormitories, and internet access);
- b) to conduct comprehensive labour market research in order to adjust the vocational education and training programmes to the needs of the labour market and to eliminate the discrepancy between the demand and supply of the workforce;
- c) to strengthen the capacity of the Labour Inspection Office to perform its duties in the area of health and safety and the area of monitoring the implementation of employment and labour rights.

TRAININGS AND AWARENESS RAISING ACTIONS :

Training and awareness raising actions shall be provided in the following areas and to the following groups:

a) In collaboration with the Georgian Bar Association and the High School of Justice, **the training of judges and lawyers** should in the future focus on:

- improving awareness and understanding of the provisions of the European Social Charter, the case-law of the European Committee of Social Rights, and on the various techniques through which the justiciability of economic and social rights can be ensured; in order to achieve this goal, online training courses offered at the CoE HELP platform and the coursebook “Training Programme for Judges. European Social Charter and case law of the European Committee of Social Rights” by Monika Smusz-Kulesza, Anahit Manasyan and Alla Fedorova, published in February 2021,¹¹⁹ might be used;

- encouraging and promoting the reading of the Labour Code and the Elimination of Discrimination Law in line with European and international standards, and especially taking into

¹¹⁹ Council of Europe, *Training Programme for Judges*, available online at: <https://rm.coe.int/15-judges-training-eng-soft/1680a39c11>.

consideration the standards of protection against discrimination while entering an employment relationship (when job vacancies are announced), adequacy of compensation for discrimination that has occurred, and the accuracy of remuneration for overtime work;

- effectively enforcing the principle of equal remuneration for women and men, based on the relevant provisions of the Labour Code that are read in the light of the standards of the European Social Charter as interpreted in the case-law of the European Committee of Social Rights.

b) In collaboration with social partners (trade unions and employers' associations), **the awareness-raising campaigns** should in the future focus on:

- raising awareness of the society in general, and among employers and employees and job applicants in particular, about the amendments introduced to the Labour Code in September 2020;

- intensive campaigns and activities to raise the awareness of employees about the mandate of the Labour Inspectorate in the area of the protection of labour rights applicable from 1 January 2021 and to build the trust among this particular group with regards to the effectiveness of the Labour Inspectorate and its capability to stand up for employees' rights. To achieve this goal, it is advisable to, *inter alia*, establish a reader-friendly webpage providing detailed information on the legal basis and the functioning of the Labour Inspection in practice; additionally, developing a guide book on the most frequent decisions of labour inspectors shall also be considered, as it would allow entrepreneurs to better understand and learn through real-life examples and make adjustments accordingly;

- raising the awareness of the rights of various groups of the population, in particular of vulnerable groups, leading to better advocacy of their rights;

- raising the awareness of employees' representatives, and especially of trade unions, about the European Social Charter, to facilitate the acceptance of the provisions that Georgia is currently not bound by, especially Articles 3, 8§§1,2,9, and 10§1,3 of the European Social Charter;

- raising the awareness of national stakeholders about the collective complaints procedure to facilitate its acceptance.