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EUROPEAN SOCIAL CHARTER

15th National Report on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF GEORGIA

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

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THE GOVERNMENT OF GEORGIA

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

for the period 01/01/2017– 31/12/2020)

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Tbilisi, December 2021

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PREFACE

Georgia ratified the Revised European Social Charter on August 22 th 2005.

According to the Article C and Article 21 of Part IV of the Charter, Georgia hereby submits its fifteenth report on implementation of ratified (including some non-ratified) provisions of the European Social Charter (revised).

The Report has been prepared in compliance with the new reporting system, adopted by the Committee of Ministers and in effect since October 31 2007.

The Report provides information on the accepted provisions of the European Social Charter belonging to the thematic group ”Labour Rights”: Article 2§§ 1, 2, 5 and 7, Article 4 §§ 2, 3, and 4, Article 5, Article 6, Article 26 and Article 29. The Report also covers the implementation of the following non-accepted provisions of the Charter belonging to the same thematic group: Article 2 §§3, 4, and 6, Article 4§5, Article 21, Article 22, Article 28. Replies for each of the provisions are limited to specific and targeted questions as prescribed by the European Committee of Social Rights (as set out in an appendix to the letter from the Department to the European Social Charter, Council of Europe, dated 8 June 2021, – “Questions on Group 3 provisions (Conclusions 2022): “Labour Rights“)).

FOREWORD

Since the 2012 Parliamentary Elections, Georgia has been taking steps for almost a decade to re-establish workers' rights and protections in line with international labour standards. The current Government of Georgia has been working towards the restoration of labour regulations and mechanisms following aggressive deregulation reforms in the mid-2000s. For this purpose, the Georgian Labour Code underwent revision in 2013. This was conditioned by the pre-existing reality in the country – the Labour Code of 2006 was regarded as one of the world's most unfavorable towards employees (Jobelius, 2011).[1] Georgian labour law until 2013 was assessed by some observers as one of the most deregulated in Europe (Muller, 2012).

In 2015, the Government re-established a Labour Conditions Inspection Department, although with mandate limited to occupational safety (OSH) and health issues. There was still no enforcement body for labour legislation on issues related to general working conditions or employment relations (wages, employment contracts, etc.).

In 2019, a new Organic law "On Occupational Health and Safety" significantly expanded powers and mandate of the labour inspection - The department's mandate was expanded to cover all sectors of economic activity, vested with authority to conduct inspections and charge fines without a court order or prior consent from employers. Soon this was followed with the large-scale labour law reform. Within the reform, in 2021, the independent labour inspection mechanism was established and authorized to supervise all provisions of the labour legislation.

The labour law reform package of 2020 consisted of a law on "the Labour Inspection Service" and substantial amendments to the Labour Code. The amended Labour Code addresses important issues such as anti-discrimination and gender equality, overtime work, mandatory weekly rest, part-time work, limits on verbal employment contracts, collective redundancy, etc. The reform aimed at improvement of the labour regulatory framework and increasing compliance with the Georgia-EU Association Agreement's requirements and relevant international labour standards of the International Labour Organization (ILO). The reform seeks to address main protection gaps for workers created by the radical deregulation of labour institutions in the country in the mid-2000s.

The present Report will cover in details the above-mentioned developments in labour legislation, policies and practices in Georgia that occurred during the period of 1 January 2017 to 30 December 2020.

[1] See. https://library.fes.de/pdf-files/id/08135.pdf; https://ecommons.cornell.edu/bitstream/handle/1813/87650/ILO_Employment_Protection_Legislation_of_Georgia.pdf?sequence=1&isAllowed=y

Article 2 – The right to just conditions of work

Article 2§1
With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity ant other relevant factors permit.

During the reporting period, Labour law reform package was passed by the Parliament of Georgia, including extensive amendments to the Organic Law of Georgia "Labour Code"[2]. One of the central issues of the amendments to the code was the regulation of working time, minimum break and rest period entitlements, overtime work, and issues of shift work and night work. These changes were mainly based on the Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time.

Article 24 of the Labour Code gives legal definition of the working time. Namely, article defines standard working time as any period during which an employee is working at the employer's disposal and is carrying out his/her activities or duties. It further specifies that standard working time does not include breaks and rest periods. As for the weekly hours limit, the code determines that, a worker should not work more than 40 hours a week. The law provides for an opt out from the 40-hour week limit. Article 24, paragraph 3, states that the duration of standard working time in enterprises with specific operating conditions requiring more than 8 hours of uninterrupted production/work process shall not exceed 48 hours a week. The law obliges the Government of Georgia, after consulting social partners, to compile a list of industries with specific operating conditions. In this regard, the Government of Georgia is working on the new resolution and the process is still ongoing.

Article 24 sets out minimum break and rest period entitlements. According to the provision of the article, the duration of uninterrupted rest between working days (or shifts) shall not be less than 12 hours. As for minimum break entitlements, it states that an employee shall be entitled to a break, where the working day is longer than 6 hours. The same article provides that the duration of a break must be determined by agreement between the parties. In cases where the working day is no longer than 6 hours, the law establishes that the duration of a break shall be at least 60 minutes. The law requires employers to provide one hour of break time in a day for employees who are breastfeeding infants under the age of 12 months upon their request. It further

[2] https://matsne.gov.ge/en/document/view/1155567?publication=20

underlines that breaks for breastfeeding must be included in working time and must be paid.

The code places restrictions on working hours for minors. According to Article 24, paragraph 8, duration of working time for minors from the age of 16 to 18 must not exceed 36 hours per week, nor 6 hours per working day. The same article provides that duration of working time for minors from the age of 14 to 16 shall not exceed 24 hours per week, nor 4 hours per working day.

The law of Georgia “On Public Service” regulates working hours and holiday entitlement in public sector as given in the previous report of the Government of Georgia. As presented in the previous reporting cycle, according to Article 60 of the law, the work time of an officer is part of calendar time during which he/she is obliged to perform official duties. Pursuant to the law, an officer shall work five days a week and the duration of work time shall not exceed 8 hours a day and 40 hours per week. The third paragraph of the Article foresees that the rest time of an officer and public holidays shall be determined by the Organic Law of Georgia “Labour Code of Georgia”. As part of the amendments of the Labour Reform (2020), the fourth paragraph was added to this Article after the third paragraph. According to the new paragraph an officer, who is a legal representative or supporter of a person with a disability may, in addition to rest days determined by paragraph 3 of the Article, enjoy another paid rest day once a month, or agree with a respective public institution on working time other than that provided for by its internal regulations.

In response to the request of the European Committee of Social Rights (hereafter Committee) for an information about the activities of labour inspectorate related to the inspection of the working hours, including statistics on inspections and sanctions imposed, we hereby inform that it’s only since 1 January, 2021 the Labour Inspection Service has been authorized to secure compliance with the labour rights standards, including working hours. The newly amended Labour Code confers to the labour inspectorate power to impose administrative sanctions. The Labour Code determines administrative liability and administrative penelties for the violation of labour norms. According to Article 78 of the Labour Code the Labour Inspection Service is authorized to review cases of administrative offences related to the violation of labour norms and impose administrative sanctions provided for by Articles 77-80 of the Law and by the Organic Law of Georgia on Occupational safety. The Labour Inspection Service sanctions include warnings, monetary fine and suspension of activities.

According to the newly ammended Labour Code, violations of the provision of the code concerning working hours (Article 24) may result in a warning, or a fine. The amount of the penalties range for the type of violation from 200 to 800 GEL for an employer – natural person, from 200 to 1000 GEL for an employer – Legal entity. Article 77 of the code imposes fines based on income. The respective fine referred to in Article 24 is double the amount if the violation of the norm is committed with respect to a minor, a

pregnant woman or a person with a disability. The Labour Code provides that the commission of the same act within 1 calendar year after the imposition of an administrative sanction for a respective violation shell be punishable by a fine of double the amount of a fine.

It is noteworthy that since 2021 Labour Inspection Service's mandate applies to all workers including public officers. According to Article 75, paragraph 1, of the Labour Code the Labour Inspection Service is authorized to ensure effective application of the Constitution of Georgia, international agreements of Georgia, the Organic Law of Georgia the Labour Code of Georgia, the Organic Law of Georgia on Occupational Safety, the Law of Georgia on Public Service, provisions of the legislation of Georgia prohibiting forced labour and trafficking in the workplace, ordinances of the Government of Georgia, orders of Ministers, any other normative acts of Georgia on labour rights and employment conditions, employment agreements, collective employment agreements, as well as agreements reached as a result of mediation in collective disputes, and rules of arbitration awards ('labour norms'). The law introduces the notion of labour norms and concept of effective application of labour provisions, which is remarkably broader than enforcement.

In view of the request of the Committee for an information on enforcement measures and monitoring arrangements, in particular as regards the activities of labour inspectorate (statistics on inspections and their prevalence by sector of economic activity, sanctions imposed, etc.) to be included in the following report, we hereby inform that we cannot provide you with statistics on the observance of the right of workers to reasonable working hours, since only from January 1, 2021, the Labour Inspection Service has become authorized to supervise pratical implementation of all labour standards provided for by the legislation. Such information may be provided for the next reporting period, after some time elapses since the start of a full-fledged labour inspection service, so that it can produce comprehensive statistics on the basis of its activities.

In addition, pursuant to the information received from the Supreme Court of Georgia, during the reporting period, there were no cases discussed by the courts concerning reasonable daily and weekly working hours (Letter ნ/75-21 of the Supreme Court of Georgia, 18.10.2021). We also received no information on specific proactive action taken by the national human rights institutions and equality bodies to ensure the respect of reasonable working hours (Letter N12-1/9940 of the Public Defender of Georgia, 20.10.2021). The Public Defender of Georgia assesses the observance of the right to just conditions of work in the country in its annual parliamentary report and special reports. During the reporting period, the Public Defender of Georgia in its Annual Parliamentary Reports[3] critically assessed the gaps in the Labour Code and

[3]https://ombudsman.ge/eng/saparlamento-angarishebi

stressed the urgent need to expand the powers and mandate of the labour inspection. The Public Defender's Office actively participated in working groups and parliamentary discussions of the draft law "On Occupational Health and Safety" (2019) and the labour law reform 2020 (Letter N12-1/9940 of the Public Defender of Georgia, 20.10.2021).

Referring to a direct request from the Committee for information as regards to on-call time and service (including as regards zero-hours contracts), and how are inactive on-call periods treated in terms of work and rest time as well as remuneration, we hereby inform that that we do not possess such information. During the reporting period, the labour inspection was not authorized to supervise implementation of all labour standards. In particular, as mentioned earlier in this Report, until January 1, 2021, it had limited mandate to address issues related to health and safety, but not labour rights. Moreover, the definition of "on-call" and the rules for its application are not regulated. Herewith, we inform you that no agency has conducted studies to assess the situation in this regard. Thus, we are unable to provide any information and evaluation of the situation referred to by the Committee in the request.

With regards to Committee's request to provide information on the impact of the COVID-19 crisis on the right to just conditions of work and on general measures taken to mitigate adverse impact, we hereby inform you that we are unable to assess the situation, as the issue was not studied and no measure were taken to mitigate impact during the reporting period.

In addition, the Committee specifically requested for this reporting period to provide information on the enjoyment of the right to reasonable working time in the following sectors (as regards more specifically working time during the pandemic): health care and social work (nurses, doctors and other health workers, workers in residential care facilities and social workers, as well as support workers, such as laundry and cleaning staff); law enforcement, defence and other essential public services; education; transport (including long-haul, public transport and delivery services). In view of the request of the Committee we inform that no agency has conducted studies to assess the situation in this regard.

In connection with the above-mentioned request of the Committee, it must be mentioned that according to the Law of Georgia on Health Care, a medical institution is a legal entity, which carries out medical activities. The medical institution enjoys professional and financial independence in accordance with the rules established by the legislation of Georgia. As for the adoption of additional measures to regulate the working hours of health workers in a pandemic, during the reporting period, no such measures were taken.

The Committee requested additional general information on measures put in place in response to the COVID-19 pandemic intended to facilitate the enjoyment of the right to reasonable working time (e.g. flexible working hours, teleworking, other measures for working parents when schools and nurseries are closed, etc.). In connection with the Committee's request, we inform you that during the reporting period, no such measures were taken in response to the Covid-19 pandemic.

Article 2§2

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to provide for public holidays with pay.

Article 30 of the Organic Law of Georgia “Georgian Labour Code” defines holidays. Pursuant to Article 30, an employee may request other rest days instead of the holidays provided for by the law to be defined by an employment agreement. In addition to the holidays provided for by the Law, other days off may be determined by an ordinance of the Government of Georgia. The same article further provides that an employer may request that an employee perform the work, instead of the day off determined by an ordinance of the Government of Georgia, on his/her next rest day as referred to in Article 24(7) of the Code. If an employee works during the holidays referred to in paragraph 1 of the article, it shall be deemed overtime work and the terms for its compensation shall be determined in accordance with paragraph 2 and 3 of the Article 27 of the Code.

Article 27 (2) of the Code determines that overtime work must be paid for at an increased hourly rate of remuneration. The law provides that amount of the said payment must be determined by agreement between the parties. Pursuant to the Labour Code, overtime work must be paid for together with monthly remuneration payable after the performance of overtime work. The same article provides that parties may agree on granting an additional proportional rest period to an employee to compensate overtime work. Article 27 states that an employee must be granted an additional rest period not later than 4 weeks after the work has been performed, unless otherwise determined by agreement between the parties (Article 27 (3)).

Pursuant to Article 58 of the Law of Georgia „On Public Service“[4] which determines salary increment, an officer shall be paid a salary increment based on the overtime work performed on the instructions of a superior official. In addition, an officel shall be paid a salary increment when he/she is assigned additional functions, including for performing activities during night hours, on day off (in the sence of a weekly rest day)

[4] https://matsne.gov.ge/en/document/download/3031098/35/en/pdf

or holidays and under working conditions dangerous to health. According to the same article the Law of Georgia on "Remuneration in Public Institutions"[5] determines the total amount of a salary increment. Pursuant to the Article 26 of this Law, the one-off[6] amount of a salary increment shall not exceed the amount of one month's official salary provided by for a respective post/position, and the total amount of salary increments received during the year shall not exceed 20 % of the annual amount of an official salary. Further Article 27 of the same Law specifies that in public institutions, working overtime and during night hours, on days off/holidays or in working conditions containing health risks, must be remunerated according to worked hours and the official salary, in accordance with the procedure established by a respective public institution, within the limits provided for by the Law (this refers to the Law of Georgia on "Remuneration in Public Institutions").

The procedure for working in public service part-time, during night hours, on days off, holidays and under working conditions dangerous to health, and for exercising public service powers 24 hours continousely is determined by the Ordinance of the Government of Georgia N201[7] adopted on April 21, 2017 (Article 61 (5)).

The Labour Inspection Service inspects and supervises the proper application of the Article 30. Violations of the provision of the Code concerning public holidays with pay may result in a warning, or a fine. The amount of the penalties range for the type of violation from 200 to 800 GEL for an employer – natural person, from 200 to 1000 GEL for an employer – Legal entity. Article 77 of the code imposes fines based on income. The respective fine referred to in the Article 30 is double the amount if the violation of the norm is committed with respect to a minor, a pregnant woman or a person with a disability. The Code provides that the commission of the same act within 1 calendar year after the imposition of an administrative sanction for a respective violation shell be punishable by a fine of double the amount of a fine.

In response to the Committee's request for information on special arrangements related to the pandemic or changes to work arrangements following the pandemic, in particular with respect to public holidays with pay, we inform that no any special arrangements or changes were made to address the issue.

With regard to the activities of labour inspectorate (statistics on inspections and their prevalence by sector of economic activity, sanctions imposed, etc.), we inform that we cannot provide you with statistics on the observance of the right of workers to public holidays with pay, since only from January 1, 2021, the Labour Inspection Service has become authorized to supervise pratical implementation of all labour standards

[5] https://matsne.gov.ge/en/document/view/3971683?publication=12

[6] It is noteworthy that, according to the Civil Service Bureau, definition of 'day off' and the rules for its application are not regulated, however there is a practice of using at the level of internal regulations of state institutions (Letter Nპ11781, 12.10.2021. Civil Service Bureau) (Conclusions 2018; Conclusions 2014).

[7] https://matsne.gov.ge/en/document/view/3646097?publication=1

provided for by the legislation. Such information may be provided for the next reporting period, after some time elapses since the start of a full-fledged labour inspection service, so that it can produce comprehensive statistics on the basis of its activities.

Article 2§3

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to provide for a minimum of four weeks' annual holiday with pay.

Article 31 of the Labour Code determines duration of leave. According to the Article, an employee shall have the right to enjoy paid leave of at least 24 working days annually. In addition, it provides an employee with the right to enjoy unpaid leave of at least 15 working days annually. Moreover, the same article envisages that an employee working under harm, harmful, or hazardous labour conditions shall be granted additional paid leave of 10 calendar days annually. It establishes that an employment agreement may define the terms and conditions different from those provided for by this article, but such terms and conditions shall not worsen the condition of an employee. The same article provides that 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 labour relations. The Labour Code determines that a term in an employment agreement that either denies or ignores the right to enjoy paid leave annually must be void (Article 31).

The Labour Code determines the procedure for granting leave. Namley, Article 31 entitles an employee the right to request leave after having worked for 11 months. However, this Article provides that by agreement between the parties, an employee may be granted leave even before the said period elapses. The same Article foresees that by agreement between the parties, beginning from the second year of work, an employee may be granted leave at any time during the working year. By agreement between the parties, an employee may use leave in parts. Pursuant to the article, leave shall not include a period of temporary incapacity for work, maternity or parental leave, newborn adoption leave, or additional parental leave. According to paragraph 5 of the Article 31, an employer may determine the sequence of granting paid leave to employees, unless otherwise determined by an employment agreement.

The Code determines an obligation of an employee to notify an employer before taking unpaid leave. Namely, Artivle 33 provides that when taking unpaid leave, an employee shall notify the employer thereof 2 weeks prior to taking the leave, unless such notification is impossible due to urgent medical necessity or family circumstances. As

for commencement of the right to request leave, Article 34 foresees that the period for calculating the commencement of the right to request leave shall include the time actually worked by an employee, as well as idle time through the employer's fault. According to the same Article, the period for calculating the commencement of the right to request leave shall not include the time of an employee's absence from work without a good reason or a period of unpaid leave of more than 7 working days.

The Labour Code stipulates exceptional cases of carrying over paid leave. Paragraph 1 of Article 35 establishes that if granting an employee paid leave for the current year may have a negative impact on the normal course of the work process, the leave may be carried over to the next year with the consent of the employee. The same Article determines special protection for children. According to the Article, a minor's paid leave shall not be carried over to the next year. Paragraph 2 of the Article establishes that paid leave must not be carried over for two consecutive years.

Article 36 of the Labour Code regulates leave pay. Paragraph 1 of the article evisages that an employee's leave pay shall be determined based on the average remuneration for the previous 3 months. According to the same paragraph, where the time worked by the employee from the start of work or after the last period of leave is less than 3 months, leave pay shall be determined based on the average remuneration of months worked. In addition, Paragraph 2 of the article provides that where an employee is paid fixed remuneration on a monthly basis, leave pay shall be determined based on the remuneration for the last month.

As for annual holiday with pay in area of the public sector, Article 62 of the Law "On Public Service" establishes that the officer shall enjoy an annual paid leave of 24 working days. Pursuant to the law, an officer is entitled to a leave after 11 months from his/her appointment to the position. However, the law provides that with the consent of the authorized person, an officer may be granted a leave before the expiration of the aforementioned period. After a year from appointment to the position, an officer shall be granted leave at any time of a calendar year (Article 62 (2)). In addition, according to paragraph 5 of the Article 62, officer may enjoy an unpaid leave for not more than one year, unless this contradicts the interests of the public institution. The law entitles an officer to enjoy the leave provided for by the law in parts (Article 62 (3)). An officer is also entitled to enjoy a paid leave that has not been used during the calendar year, in the following calendar year, agreeing the periodicity of the leave with the head of the public institution (Article 62 (4)).

Violations of the provisions of the Labour Code concerning annual holidays with pay may result in a warning, or a fine. The amount of the penalties range for the type of violation from 200 to 800 GEL for an employer – natural person, from 200 to 1000 GEL for an employer – Legal entity. Article 77 of the code imposes fines based on income. The respective fine referred to in Article 30 is double the amount if the violation of the norm is committed with respect to a minor, a pregnant woman or a person with a

disability. The code provides that the commission of the same act within 1 calendar year after the imposition of an administrative sanction for a respective violation shell be punishable by a fine of double the amount of a fine.

In response to the Committee's request for information on special arrangements related to the pandemic or changes to work arrangements following the pandemic, in particular with respect to minimum of four weeks' annual hollidays with pay, we inform that no any special arrangements or changes were made to address the issue.

With regard to the activities of labour inspectorate (statistics on inspections and their prevalence by sector of economic activity, sanctions imposed, etc.), we inform that we cannot provide you with statistics on the observance of the right of workers to minimum of four weeks' annual holiday with pay, since only from January 1, 2021, the Labour Inspection Service has become authorized to supervise pratical implementation of all labour standards provided for by the legislation. Such information may be provided for the next reporting period, after some time elapses since the start of a full-fledged labour inspection service, so that it can produce comprehensive statistics on the basis of its activities.

Article 2§4

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations.

Article 31 of the Labour Code envisages that in addition to paid leave of at least 24 working days annually, an employee working under arduous, harmful, or hazardous labour conditions shall be granted additional paid leave of 10 calendar days annually (as discussed above). In addition, Article 28 of the Labour Code establishes that the maximum working time shall not exceed 8 hours per 24-hour period for night workers who perform arduous, harmful or hazardous work. This rule does not apply to shift work.

According to the Ordinance of the Government of Georgia No 201 (Ibid) (Article 17) the public institution is obliged to minimize the number of employees under working conditions dangerous to health. Pursuant to the Ordinance, the transfer of an officer to working conditions dangerous to health is regarded as an extreme measure and only allowed if there is a necessity. It provides that an officer may be transferred to

such type of work on the basis of an individual administrative act adopted by the head of the institution. Meanwhile, an officer may be transferred to such working conditions only with his/her written consent. The same Ordinance determines that an officer transferred to working conditions dangerous to health shall be provided with complete information on the circumstances and factors threatening his health. The Ordinance specifies that it is inadmissible to transfer an officer to working conditions dangerous to health without undergoing a special training course.

As it was mentioned above, the law “On Public Service” entitles an officer with an annual paid leave of 24 working days (Article 62).

Violations of the above-mentioned provisions may result in a warning, or a fine. The amount of the penalties range for the type of violation from 200 to 800 GEL for an employer – natural person, from 200 to 1000 GEL for an employer – Legal entity. Article 77 of the code imposes fines based on income. The respective fine referred to in Article 30 is double the amount if the violation of the norm is committed with respect to a minor, a pregnant woman or a person with a disability. The code provides that the commission of the same act within 1 calendar year after the imposition of an administrative sanction for a respective violation shell be punishable by a fine of double the amount of a fine.

In response to the Committee’s request for information on special arrangements related to the pandemic or changes to work arrangements following the pandemic, in particular with regard to the right established under Article 2, Paragraph 4, of the European Social Charter, we inform that no any special arrangements or changes were made to address the issue.

With regard to the activities of labour inspectorate (statistics on inspections and their prevalence by sector of economic activity, sanctions imposed, etc.), we inform that we cannot provide you with statistics on the observance of the right provided under Article 2, Paragraph 4, of the European Social Charter, since only from January 1, 2021, the Labour Inspection Service has become authorized to supervise pratical implementation of all labour standards provided for by the legislation. Such information may be provided for the next reporting period, after some time elapses since the start of a full-fledged labour inspection service, so that it can produce comprehensive statistics on the basis of its activities.

Article 2§5

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to ensure a weekly rest period, which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest.

The Labour Code of Georgia entitles employees with weekly rest period in addition to the 12 hours' daily rest period. Namely, according to Article 24, Paragraph 7, employers shall ensure that, per each seven-day period, every employee is entitled to a minimum uninterrupted rest period of 24 hours. The same Article provides that, 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. Herewith, according to the law, specific categories, such as workers who are a legal representatives or supporters of a person with a disability may, in addition to rest days, enjoy another paid rest day once a month, or agree on working time other than that provided for by the internal labour regulations (Article 24 (10)).

According to the Georgian Trade Union Confedration (GTUC), enterprises where GTUC's member branch organizations unite employees, generally provide uninterrupted rest period of 1-2 days a week (Letter No 90/01-1 of the Georgian Trade Union Confederation, October, 12, 2021).

As regards to the officers of the public institutions, pursuant to the article 60 (3) of the Law of Georgia "On Public Service" the rest time of an officer and holidays are determined by the Organiuc Law of Gerogia "the Labour Code of Georgia".

Violation of the provisions of the Labour Code concerning weekly rest period may result in a warning, or a fine. The amount of the penalties range for the type of violation from 200 to 800 GEL for an employer – natural person, from 200 to 1000 GEL for an employer – Legal entity. Article 77 of the code imposes fines based on income. The respective fine referred to in Article 30 is double the amount if the violation of the norm is committed with respect to a minor, a pregnant woman or a person with a disability. The code provides that the commission of the same act within 1 calendar year after the imposition of an administrative sanction for a respective violation shell be punishable by a fine of double the amount of a fine.

In response to the Committee's request for information on special arrangements related to the pandemic or changes to work arrangements following the pandemic, in particular with respect to weekly rest period, we inform that no any special arrangments or changes were made to address the issue.

With regard to the activities of labour inspectorate (statistics on inspections and their prevalence by sector of economic activity, sanctions imposed, etc.), we inform that we cannot provide you with statistics on the observance of the right of workers to a weekly rest period, since only from January 1, 2021, the Labour Inspection Service has become authorized to supervise pratical implementation of all labour standards provided for by the legislation. Such information may be provided for the next reporting period, after some time elapses since the start of a full-fledged labour inspection service, so that it can produce comprehensive statistics on the basis of its activities.

Article 2§6

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship.

The Labour Code of Georgia establishes obligation for the employer to provide a job candidate with the information regarding the aspects of the contract at the stage of pre-contractual relationship. Namely, pursuant to Paragraph 6 of Article 11 an employer is obliged to provide a job candidate with the following information:

- the work to be performed;
- the form (oral or written) and the period (fixed-term or open-ended) of an employment agreement;
- the employment conditions;
- the legal status of an employee in labour relations;
- the remuneration.

Paragraph 7 of the same Article specifies that pre-contractual relations with a job candidate is considered completed when an employer has concluded an employment agreement with the candidate, or when the candidate has been informed of the refusal of employment. It is worth mentioning that pursuant to Article 11, Paragraph 9, in the 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.

With the Labour Code of Georgia, it is foreseen for the worker to conclude employment contract with the employer in which essential terms of the agreement are envisaged.

An employment agreement may be oral or written (Article 12 (1)). However, the Labour Code establishes that employer must conclude employment contract with the employee in writing if labour relations last longer than 1 month (Article 12 (2). According to Article 15 of the Labour Code, labour relations is commenced from the moment of actual commencement of work by an employee, unless otherwise determined by an employment agreement.

Pursuant to Article 14 (1) of the Organic law - Labour Code of Georgia, the employment contract must contain the following elements:

- information on the parties to the employment agreement;
- the employment commencement date and the duration of labour relations;
- the working time and rest periods;
- the place of work, and information on the different places of work of the employee if his/her regular or primary places of work are not determined;
- the post (where applicable, with an indication of a rank, a grade, a category, etc.), the type and description of work to be performed;
- the remuneration (with an indication of a salary and, where applicable, an increment), and the procedure for the payment thereof;
- the procedure for compensating overtime work;
- the duration of paid and unpaid leave and the procedure for granting said leav e;
- the procedure for the termination of labour relations by the employer and the employee;
- the provisions of a collective agreement, provided that the employment conditions of employees are regulated differently under said provisions.

An employment agreement may determine the internal labour regulations to be part of the employment agreement. In this case, according to Article 14 (3), an employer shall make the internal labour regulations (if any) available to a person for reading before concluding an employment agreement. The same Article provides that an employer shall make changes made to the internal labour regulations available to an employee for reading within 14 days of making such changes. It further foresees that a provision in an individual employment agreement concluded with an employee that contravenes the Labour Code of Georgia or a collective agreement with the same employee shall be void, except where the individual labour agreement improves the conditions of the employee (Paragraph 14).

Violation of the above discussed provisions may result in a warning, or a fine. The amount of the penalties range for the type of violation from 200 to 800 GEL for an employer – natural person, from 200 to 1000 GEL for an employer – Legal entity. Article 77 of the code imposes fines based on income. The respective fine referred to in Article 30 is double the amount if the violation of the norm is committed with respect to a minor, a pregnant woman or a person with a disability. The code provides that the

commission of the same act within 1 calendar year after the imposition of an administrative sanction for a respective violation shell be punishable by a fine of double the amount of a fine.

As for rules that apply in public institions, according the Law of Georgia “On Public Service” a public officer is appointed by an individual administrative act[8]. Article 43 (2) determines that an individual administrative act issued for the appointment of a candidate to an officer position shall comply with the official requirements determined by the General Administrative Code of Georgia and shall additionally include the following data:

- the name and surname of the appointee;
- the name of the public institution where the person is to be appointed;
- the position title, remuneration, and salary increment determined for the given class (if any);
- the date of appointment to the position;
- the duration of the probation period if a probation period is applied.

Persons are also recruited for public service on the basis of an agreement under public law. Pursuant to Article 78 (1) of the law, the following persons are recruited for public service on the basis of an agreement under public law:

- assistants to public political officials
- advisers to public political officials
- employees of the personal staff/secretariat/bureau of public political officials
- a representative of a municipality mayor or a person employed in an administrative unit within a municipality (except the Tbilisi municipality).

With the Law of Georgia “On Public Service”, it is foreseen that an agreement under public law entered into for the recruitment of persons for public service shall contain a detailed description of powers under public law to be exercised by them. The description shall correspond to the specific nature of the activities of the given public institution (Article 80 (1). The standard forms of an agreement under public law defined in Article 78(1) of the Law is approved by the Government of Georgia (Paragraph 2 Article 80). Pursuant to the law, an agreement under public law shall be made only in written form, in compliance with the procedures determined by the General Administrative Code of Georgia[9] (Article 81 (1).

The Law of Georgia “On Public Service” establishes a procedure for the recruitment for public service on the basis of an employment agreement. According to the Article

[8] http://gov.ge/index.php?lang_id=-&sec_id=469&info_id=60791
[9] https://matsne.gov.ge/en/document/view/16270?publication=33

84 (1), the rights and duties of persons recruited for public service on the basis of an employment agreement shall be defined in the employment agreements.

In response to the Committee's request for information on special arrangements related to the pandemic or changes to work arrangements following the pandemic, in particular with regard to the right provided under Article 2, Paragraph 6, of the European Social Charter (information or worktime arrangements), we inform that no any special arrangements or changes were made to address the issue.

With regard to the activities of labour inspectorate (statistics on inspections and their prevalence by sector of economic activity, sanctions imposed, etc.), we inform that we cannot provide you with statistics on the observance of the right provided under Article 2, Paragraph 6, of the European Social Charter, since only from January 1, 2021, the Labour Inspection Service has become authorized to supervise pratical implementation of all labour standards provided for by the legislation. Such information may be provided for the next reporting period, after some time elapses since the start of a full-fledged labour inspection service, so that it can produce comprehensive statistics on the basis of its activities.

Article 2§7

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

Night work is considered the work during night time and night time is the period between 22:00 and 6:00 next morning (Article 28, pargraphs 1). The Labour Code of Georgia defines a night worker as any worker who during night time works at least 3 hours of his/her standard working time as a normal course, and any worker who works during night time a certain proportion of his/her annual working time. The proportional rate of night work to annual working time is determined by the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia after consulting social partners (Article 28, pargraphs 2). On 7 September, 2021 the Minister issued Order #01-79/N[10] on determination of proportional annual working time of night work, and approval of frequency and the scope of the pre-employment and subsequent periodic medical examinations for a night worker. Pursuant to the Order, the proportional rate of night work to annual working time is at least one quarter of worker's annual working time during night time.

[10] https://www.matsne.gov.ge/ka/document/view/5251745?publication=0

The Law envisages a special protection for night workers who perform arduous, harmful or hazardous work. It provides that the maximum working time shall not exceed 8 hours per 24-hour period for such category of workers. (Article 28 (4)). This rule does not apply for shift work.

The law also detemines that minors, pregnant women and women who have recently given birth or are breastfeeding, shall not be employed for night work. It further provides that persons with disabilities or persons who have children under the age of 3 shall not be employed for night work without their consent (Article 28 (3)).

According to the same Article, upon the request of a night worker, the employer shall, at his/her/its own expense provide the night worker with preemployment and subsequent periodic medical examinations in compliance with the principle of medical confidentiality. The Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia determines frequency and the scope of the medical examinations after consulting social partners (Article 28, Paragraph 5). According to the Order #01-79/N, the night worker undergoes periodic medical examinations once a year, if necessary, upon recommendation of medical specialists with the right of independent medical activity, once every 6 months.

The Labour Code of Georgia forcesees other guaranties for the protection of the night workers. Namely, the law determines that if a night worker who, according to a medical report, has a health problem due to performing night work, the employer shall, where possible, transfer him/her to a suitable day job (Article, Paragraph 6).

The Ordinance of the Government of Georgia №201 adopted on April 21, 2017[11] determines the procedure for working in public institutions during night hours.[12] According to the Ordinance night work is a job in which an officer works from 22:00 to 06:00. The same Ordinace determines that the duration of the officer's working period during night hours should not exceed 7 hours. An employee working at night is entitled to a break.The duration of a break is 60 minutes and is included in working time and paid. According to Article 10 (5) of the Ordinance, an officer who works night shifts is given day off on the next working day of the shift. The Ordinance further specifies that the decision of the head of a public institution on the establishment of night work shall specify the work shedual at night.

An officer (Public Servant) may be transferred to work at night by the decision of the head of the institution and/or on the basis of officer's request. An officer may be trasferred to night work only with his/her consent. According to the Ordinance, the

[11] https://matsne.gov.ge/ka/document/view/3646097?publication=1

[12] See: The Law of Georgia "On Public Service", Article 61. Paragraph 5.

rights, guarantees and duties defined by the Law of Georgia “On Public Service” shall be maintained by an employee working at night.

Public officers who perform night work are entitled to salary increment for working at night. The Law of Georgia “On Remuneration in Public Institutions”[13] determines the total amount of salary increment of an officer for working at night. According to Article 9, an officer shall be paid a salary increment in cases provided for by the Law of Georgia on Public Service on the basis of a recommendation from a superior official (if any), by an individual administrative act of the head of a public institution or other duly authorised person, within the limit established by this Law and within the funds envisaged by the respective budget. Pursuant to the Article 26 of the Law, the one-off amount of a salary increment shall not exceed the amount of one month's official salary provided by for a respective post/position, and the total amount of salary increments received during the year shall not exceed 20 % of the annual amount of an official salary. Article 27 of the same Law further specifies that in public institutions, working overtime and during night hours, on days off/holidays or in working conditions containing health risks, shall be remunerated according to worked hours and the official salary, in accordance with the procedure established by a respective public institution, within the limits provided for by this Law.

In response to a direct request from the Committee for information on special arrangements related to the pandemic or changes to work arrangements following the pandemic, in particular on measures relating to night work and specifically health assessments, including mental health impact (2§7), we inform that no special arrangements or changes were made to address the issue.

With regard to the activities of labour inspectorate (statistics on inspections and their prevalence by sector of economic activity, sanctions imposed, etc.), we inform that we cannot provide you with statistics on the observance of the right provided under Article 2, Paragraph 7, of the European Social Charter, since only from January 1, 2021, the Labour Inspection Service has become authorized to supervise pratical implementation of all labour standards provided for by the legislation. Such information may be provided for the next reporting period, after some time elapses since the start of a full-fledged labour inspection service, so that it can produce comprehensive statistics on the basis of its activities.

[13] https://matsne.gov.ge/en/document/download/3971683/12/en/pdf

Article 4 – The right to a fair remuneration

Article 4§2

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake to recognize the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases.

With the Labour Code it is envisaged that the working hours cannot be longer than 40 hours during the week (Article 24), but Article 27 foresees that on request of the employer the worker can work beyond the working hours – overtime work. According to the Code, overtime work is defined as work performed by an employee by agreement between the parties for a period of time longer than the standard working time (article 27 (1)). In addition, the cases when working overtime can occur are determined. Namely, according to paragraph 5 of Article 27, an employee shall perform overtime work, to prevent natural disasters and/or eliminate their consequences (without overtime pay) and prevent industrial accidents and/or eliminate their consequences (with overtime pay).

The Law limits the maximal fund of working hours of overtime work for miners to 2 hours per working day, and up to 4 hours per working week (article 27 (1)).

As for overtime pay regulations, if the worker does overtime work, the Labour Code foresees that overtime work shall be paid for at an increased hourly rate of remuneration (Article 27 (2)).The amount of the said payment is determined by agreement between the parties. The law determines that overtime work must be paid for together with monthly remuneration payable after the performance of overtime work (Ibid).

The Labour Code envisages that the parties may agree on granting an additional proportional rest period to an employee to compensate overtime work. It further provides that an employee shall be granted an additional rest period not later than 4 weeks after the work has been performed, unless otherwise determined by agreement between the parties (Article 27 (3)). The law obliges employer to notify an employee of overtime work to be performed 1 week prior to such work, unless such notification is impossible due to the objective need on the part of the employer (Article 27 (4)).

The Labour Code of Georgia foresees the definition of remuneration. Definition of remuneration as set out in Article 41, paragraph 1, includes basic or minimum wage or salary, or any other pay, paid in cash or in kind and received, directly or indirectly,

by an employee from the employer in exchange for the performance of work. It is noteworthy that authors of the Labour Reform 2020 developed definition of the term based on the Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. The law (Article 41, Paragraph 4) implies obligation of employer to pay an employee 0.07% of the delayed sum for each day of any delayed payment or settlement (this rule does not apply to compensation for lost earnings as provided for by Article 48 (9) of the law).

Regulatory provisions for overtime work in the Labour Code of Georgia imply protection to special categories of workers. Namely, Article 27, paragraph 3, prohibits employment of pregnant women, "women who have recently given birth or are breastfeeding, persons with disabilities, minors, legal representatives or supporters of persons with disabilities, or persons who have children under the age of 3 years, to work overtime without their consent".

It is noteworthy that as part of Labour Reform 2020 Georgia implements a daily registry of employee's working hours. Namely, Labour Code of Georgia obliges employers to establish a system for recording the hours worked each day by employees. Pursuant to Article 24 (11), employers shall, in writing and/or electronically, keep a record of the hours worked by employees in the working day, and shall make available to the employee the monthly records of the working time (hours worked), unless this is impossible to do due to the specific nature of the organisation of work. The law requires from employers to store the records of working time (hours worked) for 1 year. In 2021, after consulting social partners, Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia determined the form of records of working time.

The enforcement of such registry makes it possible to determine the number of working hours worked each day and each week, number of overtime hours worked beyond normal working hours, etc. The Government of Georgia believes that implementation of the daily registry of working hours will facilitate both the proof of a breach of work's right and verification by the competent authorities and national courts of the observance of those rights.[14]

According to the article 61 (1) of the Law of Georgia "On Public Service", overtime work shall be performed by an officer only on the basis of a written instruction of by a superior official. The same Article (2, 3) provides that overtime work performed by an officer shall be remunerated at the option of the officer, either by paying the officer a salary increment or granting him/her additional rest time proportionate to the overtime work. The total duration of work time of an officer and overtime work time must not exceed 48 hours a week.

[14] https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-05/cp190061en.pdf

The regulatory provision for overtime work in the Law of Gerogia “On Public Service”, similarly to the Labour Code of Georgia, embodies protection to special categories of workers. Namely, Paragraph 1^1 of the Article 61 envisages that “an officer, who is a pregnant woman, a woman who has recently given birth or is breastfeeding, a person with a disability, a minor, a legal representative or supporter of a person with a disability, and/or a person who has a child under the age of 3 years, may be employed to work overtime with his/her written consent only” (Article 61).

Pursuant to Article 58 of the Law of Georgia „On Public Service“ which determines salary increment, an officer must be paid a salary increment based on the overtime work performed on the instructions of a superior official. The Law of Georgia “On Remuneration in Public Institutions”[15] determines the total amount of a salary increment. Pursuant to the Article 26 of the Law, the one-off amount of a salary increment shall not exceed the amount of one month's official salary provided by for a respective post/position, and the total amount of salary increments received during the year shall not exceed 20 % of the annual amount of an official salary. Article 27 of the same Law further specifies that in public institutions, working overtime and during night hours, on days off/holidays or in working conditions containing health risks, shall be remunerated according to worked hours and the official salary, in accordance with the procedure established by a respective public institution, within the limits provided for by the same Law.

The procedure for working in public service part-time, during night hours, on days off, holidays and under working conditions dangerous to health, and for exercising public service powers 24 hours continousely is determined by the Ordinance of the Government of Georgia N201[16] adopted on April 21, 2017 (Article 61 (5)).

With regard to a direct request from the Committee for information on the rules applied to on-call service, zero-hour contracts (including whether inactive periods of on-call duty are considered as time worked or as a period of rest and how these periods are remunerated), we hereby inform that we do not possess such information/data. Moreover, the definition of “on-call” and the rules for its application are not regulated.

Referring to the request of the Committee in this report to explain the impact of the COVID-19 crisis on the right to a fair remuneration as regards overtime and provide information on measures taken to protect and fulfil this right, we inform that no agency has conducted studies to assess this impact. Thus, we are unable to provide any information and evaluation of the situation referred to by the Committee in the request.

[15] https://matsne.gov.ge/en/document/view/3971683?publication=12

[16] https://matsne.gov.ge/en/document/view/3646097?publication=1

The same goes to the request of the Committee for the specific information on the enjoyment of the right to a fair remuneration/compensation for overtime for medical staff during the pandemic and on an assessment of how the matter of overtime and working hours was addressed in respect of teleworking (regulation, monitoring, remuneration, increased compensation). In particular, upon request, we inform that no agency has conducted research to assess the situation indicated in the request. Thus, we are unable to provide any information and assessment of the situation mentioned by the Committee in the request.

It is noteworthy here that Under the COVID-19 State Management Program, the salaries of medical personnel directly involved in the fight against COVID-19 have been increased by 50% since November 2020.

With regard to the Committee's direct request for information on any measures put in place intended to have effects after the pandemic, which affect overtime regulation and its remuneration/compensation, we report that no such measure has been taken by the Government of Georgia so far.

As for the information on cases related to the exercise of the right to an increased remuneration for overtime work (examples of increased hourly rates determined for overtime work) (Conclusions 2018), we inform that cases involving the issue were brought before the courts during the reporting period. For example, according to the Supreme Court of Georgia, during the reporting period, courts considered a case[17] involving the determination of remuneration for overtime work in the absence of a remuneration agreement (Letter No 75/21 of the Supreme Court of Georgia, October, 18, 2021). In particular, the plaintiffs in this case, after the expiration of the term of the employment contract, filed a lawsuit against an employer claiming the imposition of a sum of money for overtime work. According to the case file, the employees were in employment relationships with the employer. Their remuneration was determined by a fixed wage, and the work hours - "based on the performance of the work", i.e. the length of time that would be required to perform a particular job. The courts of lower jurisdiction unequivocally ruled on the fact that the plaintiffs performed overtime work, based on the evidence presented. According to the court, "in order to recognise the work performed by an employee as overtime, it is necessary that its performance is agreed by the parties and the time period established by law is exceeded" (normal hours of work) (Letter No 75/21 of the Supreme Court of Georgia, October, 18, 2021). The courts of lower jurisdiction also disagreed with the employer's position that the contractual remuneration includes payment for overtime work, since the existence of a fixed wage under an employment contract does not exclude an additional remuneration for overtime work. Based on Article 17(4) of the Labour Code of Georgia (this provision is from the previous edition of the code in force at the time of the court hearings), the Appeals Chamber explained that since the parties did not agree on the remuneration for overtime work, these conditions had to be determined on the basis of fairness, in accordance with Article 352(2) of the Civil Code of Georgia. Given that the plaintiffs were regularly required to work overtime, both after work hours and on

[17] Judgment of the Supreme Court of Georgia of 16 December 2019 in the case # ას-420-400-2015, 2019.

weekends, the Chamber concluded that the first-instance court had fairly determined the amount of remuneration for the overtime work. According to the case file, the fairness of this rule is confirmed by the rate set by the parties for overtime work in subsequent contracts, namely the so-called coefficient of 1.5 (Ibid). The Supreme Court of Georgia declared inadmissible the cassation appeal filed by the employer against the decision of the Court of Appeal to dismiss the claim by issuing a new decision (Letter No 75/21 of the Supreme Court of Georgia, October 18, 2021).

In another case[18], the cassation court dismissed a plaintiff's claim for the compensation of overtime work. In the opinion of the Court of Cassation, the fact of staying at work place outside of working hours could not in itself prove that additional time was needed to complete the work. In the Court's opinion, in order to pay for overtime work established by Article 17(4) of the Labour Code (this provision is from the previous edition of the code in force at the time of the hearings), the preconditions provided for in the third paragraph of the same provision must be met. According to the court, the presence of an employee at work place during non-working hours cannot be considered as overtime work, but the fact that he / she has performed the work must be established. According to the reasoning of the court, the employee requested to withdraw certain documents from the employer, but he/she could not reliably substantiate which documents were to be submitted if the motion was granted and how to prove the existence of the elements prescribed by law to consider overtime work performed. The Court of Cassation dismissed the employee's claim to determine the rate of remuneration for overtime work and considered that the conclusion of the appealed decision was justified and based on the employer's work, break and rest policy presented in this case and the fact that the employee, in accordance with the coefficient defined by this policy, had already been reimbursed once for overtime work by the employer. The court considered that despite the lack of employee's signature on the employer's work, break and rest policy, he was aware of these rules and the remuneration ratio for overtime work had to be determined in accordance with these rules. According to the decision this approach did not contradict the requirements of Article 6.9 (e) of the Labour Code and invalidated the party's argument that setting the coefficient at 1.5 would had been reasonable and fair (Letter No 75/21 of the Supreme Court of Georgia, October, 18, 2021).

As for the statistics from the Labour Inspection Service regarding the examples of the increased hourly rates at which overtime is paid, we cannot provide such examples/cases, since only from January 1, 2021, the Labour Inspection Service has become authorized to supervise pratical implementation of all labour standards provided by the legislation. Such information may be provided for the next reporting

[18] Judgment of the Supreme Court of Georgia of 3 June 2019 in the case # ას-1327-2018, 2019.

period, after some time elapses since the start of a full-fledged labour inspection service, so that it can produce comprehensive statistics on the basis of its activities.

With regard to cases/exampleses involving giving an employee time off (of increased duration) in lieu of remuneration for overtime (Conclusions 2018; Conclusions 2014), according to the Supreme Court of Georgia, during the reporting period, the courts did not consider cases involving the issue (Letter No 75/21 of the Supreme Court of Georgia, October, 18, 2021). Besides, we cannot provide statistics of the Labour Inspection Service on the issue, since in the reference period for this Report it did not have the authority to monitor the practical implementation of all labor standards stipulated by the legislation. Such information may be provided for the next reporting period. It is noteworthy here that the newly established Labour Inspection Service is authorized to control in every regular inspection and acting upon complaints the records of working time and overtime work.

Article 4§3

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake to recognize the right of men and women workers to equal pay for work of equal value.

The newly amended Labour Code establishes a set of principles that serve to eliminate and prohibit discrimination in labour and pre-contractual relations. To these ends, it extends the list of grounds for discrimination, defines direct and indirect discrimination, provides clear regulation of burden of proof, specifies scope of prohibition of discrimination, regulates special protection and assistance measures, and establishes the principle of reasonable accommodation.

The Labour Code envisages principle of equal pay for equal work. Namely, Article 4, paragraph 4, of the Code addresses the question of equal pay for men and women workers. It foresees that employer is obliged to ensure equal remuneration of female and male employees for equal work performed (Article 4 (4)). The violation by an employer of the principle of prohibition of discrimination covered by the Code, including the provision of equal remuneration for equal work may result in a warning, or a fine in accordance with the procedure established by Article 77(1) of the Labour Code, in triple the amount of a respective fine. The commission of the same act within 1 calendar year after the imposition of an administrative sanction for the violation provided for by paragraph 1 of article 78 may result in a fine of double the amount of a fine for a respective violation.

It is noteworthy that authors of the 2020 law reform developed amendments on the prohibition of discrimination in labour relations[19] based on the following three directives of the European Parliament and of the Council:

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

It should be also noted here that, prior to the Labour Reform 2020, the Parliament of Georgia adopted a set of amendments concerning prohibition of discrimination in labour relations already in 2019. The legislative package was prepared in compliance with EU directives (2000/78/EC, 2000/43/EC, and 2004/113/EC) and included following organic laws and laws of Georgia: Organic Law of Georgia "Georgian Labour Code", Law of Georgia on "Elimination of All Forms of Discrimination", Law of Georgia on "Public Service", Law of Georgia on "Gender Equality". These changes to the legislation are a result of the commitments taken under the EU Association Agreement[20], namely the Annex XXX that is related to employment, social policy and equal opportunities. The amdendments established additional legislative guarantees related to the elimination of discrimination. Namely, the amendments to the laws aimed at establishing those principles that serve to eliminate and prohibit discrimination in labour and pre-contractual relations (such as vacancy postings and interviews), employment and occupation based on religion or faith, disabilities, age, sexual orientation, racial or ethnic origin and apply to all persons employed in public and private sectors.

It is noteworthy here that in connection with the aforementioned amendments a new provision was added to the Law of Georgia on "Elimination of All Forms of Discrimination", according to which the principle of equal treatment is guaranteed in access to job promotion, terms of termination of Labor contract and remuneration, membership and activity of employer and employee organizations, ect.

In 2019, amendments were also made to the Oganic Law of Georgia "On the Public Defender". The amendments extended Ombundsman's mandate to discrimination in labour relations (incuding with regard to sexual harassment at the workplace). The public defender has clear legal basis for responding, within his/her powers, to instances of discrimination. Namely, with regard to the fact of discrimination, Public

[19] https://info.parliament.ge/file/1/BillReviewContent/247835
[20] https://old.infocenter.gov.ge/eng-euinfo-the-association-agreement/#1

Defender is entitled to request and receive written explanations from any official, officer, or equivalent person, and with regard to the cases of discrimination, from any individual, legal entity and / or other entities of private law on the issues under investigation. The public defender has the right, as a plaintiff, to file a claim in accordance with the Civil Procedure Code of Georgia, if a legal entity or other entity of private law does not respond to his/her recommendation or does not share this recommendation and there is sufficient evidence proving discrimination. In particular:

- Public Defender is authorized to apply to the court as an interested person, according to the Administrative Procedure Code of Georgia and request issuance of an administrative legal act or taking measures if an administrative body does not respond to or does not share his/her recommendation and there is sufficient evidence proving discrimination (Article 14^{1} (h, h^{1})).
- When conducting an inspection, the Public Defender of Georgia has mandate to request from a state authority, local self-government body, state institution or official, and in connection with a case of discrimination – also from an individual, legal entity, other organisational entity, an association of persons without creating a legal entity or an entrepreneur and receive immediately or not later than 10 days all certificates, documents and other materials necessary for conducting an inspection; and request also from any official, officer, or equivalent person and in connection with a case of discrimination - also from an individual, legal entity, other organisational entity, an association of persons without creating a legal entity or an entrepreneur and receive written explanations on the issues under investigation (Article 18(b,c));
- If the examination of a statement/appeal confirms the fact of discrimination, Public Defender of Georgia issues a recommendation based on the circumstances of the case, by which he/she offers discriminating a state or local self-government authority, an official, individual, legal entity, other organisational entity, an association of persons without creating a legal entity or an entrepreneur to take measures to eliminate discrimination and restore the equality violated by the discrimination without impairing the rights and legitimate interests of third parties (Article 20^{1}).
- Based on the results of an inspection, Public Defender of Georgia may, in order to restore violated human rights and freedoms, send proposals and recommendations to state and local self-government authorities, public institutions or officials, and in connection with a case of discrimination - an individual, legal entity, other organisational entity, an association of persons without creating a legal entity or an entrepreneur, whose actions caused a violation of rights and freedoms guaranteed by the State (Article 21(b)).

Article 23 of the law was also amended and the current version was approved, which establishes the obligation of a state and local self-government authorities, officials or legal entities to provide overall assistance to the Public Defender of Georgia, immediately submit materials, documents and other information necessary for the

Public Defender of Georgia to exercise his/her powers (Article 23(1)). The same article stipulates the obligation of a state body, official or legal entity, whose action or decision is being considered or appealed, to give explanations on the issue in question to the Public Defender of Georgia during the inspection process or at the request of the Public Defender of Georgia (Article 23 (2)). According to the new formulation, the requirements set out in paragraphs 1 and 2 also apply to individuals, other organisational entities, associations of persons without creating a legal entity and an entrepreneur only if the Public Defender of Georgia exercises his/her powers regarding the fact of discrimination.

Pursuant to Article 24, state and local self-government authorities, public institutions, officials, individuals, other organisational entities, associations of persons without creating a legal entity or entrepreneurs that receive recommendations or proposals of the Public Defender of Georgia are obligated to examine them and report in writing on the results of the examination to the Public Defender of Georgia within 20 days.

As for the legal basis of equal pay in the public sector, during the reporting period, the Government of Georgia was carrying out a public service reform which aims to establish fair remuneration system (information on the reform was included in the report from the previous reporting cycle).[21] The law of Georgia on "Public Service"[22] underwent several changes in the period of 2017-2020. In addition, within the reform, the law of Georgia "on Remuniration in Public Institutions" was addoptied on December 22, 2017 and came into force on January 1, 2018.[23] The Law regulates issues of the labour remuneration of persons employed in civil service institutions, including the state-political and political public officials, administrative and labor contract employees, defines the terms of labor remuneration of persons working part-time, at night, on holidays and weekends, in risky working conditions and determines the amount and conditions of supplements and monetary awards (bonus).

The Law of Georgia on "Public Service" envisages a general obligation of equal treatment according to which a public institution is responsable for the observance of equal treatment of employees. Namely, Article 56 (paragraph 3) of the law determines obligation of a public institution to take measurres for the equal treatment of persons employed by an institution, including obligation to enter anti-discrimination provisions into the bylaw and other documents of the public institution and to ensure their compliance. In addition, Article 57 (1) of the law regulates remuneration system, which provides that remuneration system for officers shall be based on the principles of transparency and fairness, which means equal pay for equal work performed. Remuneration of an officer includes an official salary, a class-based increment, a salary increment and a monetary reward (Article 57 (3)). At the same time, Article 3

[21] Report registered by the Secretariat on 3 November 2017. Available :< https://rm.coe.int/11th-national-report-from-georgia/168077630a> [Last accessed on December 14, 2020).

[22] https://matsne.gov.ge/en/document/view/3031098?publication=35

[23] https://matsne.gov.ge/en/document/view/3971683?publication=12

of the Law on „Remuneration in Public Service"determines the basic principle of issuing labour remuneration. Namely, according to the article, the system of remuneration rests on principles of equality and transparency which implies the receipt of equal pay for the performance of equal work in compliance with pre-established rules and with due consideration of the post/position responsibilities. Pursuant to the same law, determination of functions for specific positions is based on assessment of each case. Assessment of each case means that the entities evaluate different features such as level of responsibility, stress, relevant competencies, qualification and work experience.

Accordingly, determination of coefficients for each position is based not only essential/principal similarity of functions but above-mentioned factors – responsibility, complexity, relevant competencies, qualifications and work experience. This in aggregate implies evaluation of the value of work. In addition, this is to mention that coefficients are granted to the specific positions not persons, meaning that sex and other personal traits does not have any kind of influence on the scale of coefficient.

In terms of the question specifically asked by the the European Committee for Social Rights in its previous conclusion on Article 4 (Conclusion 2018), whether legislation establishes ceiling to compensation for pacunary and non-pacuniary damage that may be awarded to a victim of pay discrimination, we hereby inform that there is no ceiling for the damage. Civil Procedure Code of Georgia and the Law of Georgia (Article 363^2)[24] on the „Elemination of All forms of Discrimination" (Article 10)[25] entitle a recipient of discrimination to claim compensation for moral (non-pacunary damage) and/or material damage. Legislation does not establish ceiling to compensation for pacunary and non-pacuniary damage that may be awarded to a victim of pay discrimination.

In view of the request of the European Committee for Social Rights[26] to provide information regarding the percentage difference between hourly earnings of men and women, we inform that National Office of Statistics of Georgia (GEOSTAT) produces statistics on average monthly nominal earnings of employees and Gender pay gap by occupation once every four years. Namely, according to GEOSTAT, it conducts survey that is the source of the aforementioned information once every four year. The data from the GEOSTAT[27] given below presents average monthly nominal earnings of employees and gender pay gap by occupation.

[24] https://matsne.gov.ge/en/document/view/29962?publication=134

[25] https://matsne.gov.ge/en/document/view/2339687?publication=0

[26] See conclusion on Article 4 in respect of Georgia - Conclutions 2018.

[27] Letter of the National Statistics Office of Georgia N7-2051, 01/10/2021.

Average monthly nominal earnings of employees and GPG by occupation, 2017				
		Average monthly wage of **women**, GEL	Average monthly wage of **men**, GEL	GPG (Gender pay gap), %
	Total	**770.2**	**1197.4**	**35.7**
1	**Legislators, senior officials and managers**	**1651.1**	**2432.7**	**32.1**
11	Legislators and senior officials	2205.7	2636.9	16.4
12	Corporate managers	1809.7	2860.1	36.7
13	Managers of small enterprises	1406.5	1879.2	25.2
2	**Professionals**	**807.3**	**1242.0**	**35.0**
21	Physical, mathematical and engineering science professionals	1146.6	1650.8	30.5
22	Life science and health professionals	898.2	1375.0	34.7
23	Teaching professionals	622.2	768.1	19.0
24	Other professionals	946.1	1241.8	23.8
3	**Technicians and associate professionals**	**636.2**	**1148.0**	**44.6**
31	Physical and engineering science associate professionals	1157.9	1383.0	16.3
32	Life science and health associate professionals	603.2	941.7	35.9
33	Teaching associate professionals	407.8	648.6	37.1
34	Other associate professionals	679.3	1099.0	38.2
4	**Clerks**	**840.1**	**1131.9**	**25.8**
41	Office clerks	790.6	1201.2	34.2
42	Customer services clerks	895.7	1016.0	11.8
5	**Service workers and shop and market sales workers**	**522.5**	**810.4**	**35.5**
51	Personal and protective services workers	550.5	833.0	33.9
52	Models, salespersons and demonstrators	503.1	757.1	33.5
6	Skilled agricultural and fishery workers	479.2	538.0	10.9
61	Skilled agricultural and fishery workers	479.2	538.0	10.9
7	**Craft and related trades workers**	**572.3**	**1170.5**	**51.1**
71	Extraction and building trades workers	1117.4	1395.9	20.0
72	Metal, machinery and related trades workers	855.9	937.2	8.7
73	Precision, handicraft, craft printing and related trades workers	672.9	933.8	27.9
74	Other craft and related trades workers	541.0	962.0	43.8
8	**Plant and machine operators and assemblers**	**761.9**	**945.8**	**19.4**
81	Stationary plant and related operators	803.4	960.8	16.4
82	Machine operators and assemblers	615.5	928.6	33.7
83	Drivers and mobile plant operators	570.8	944.2	39.6
9	**Elementary occupations**	**388.6**	**700.8**	**44.5**
91	Sales and services elementary occupations	364.6	497.4	26.7
92	Agricultural, fishery and related labourers	441.1	433.0	-1.9
93	Labourers in mining, construction, manufacturing and transport	499.8	891.4	43.9
GPG (Gender Wage Gap) = (Average monthly wage of men – Average monthly wage of women)/ (Average monthly wage of men) x 100%				
Source: Surveys of enterprises and organizations.				

The principle of equal pay for equal work, established by the Labour Code of Georgia, requires further elaboration and writing of criteria. To achieve this goal, since 2018, the UN Women, together with the Permanent Parliamentary Gender Equality Council has been engaged in development of methodology for the calculation of pay gap and reducing inequality. During the reporting period, UN women developed a gender impact assessment for labour inspectors and employers in Georgia to implement the

Equal Remuneration Review and Reproting (EPRR) methodology, which will help each party to explore the issue more fully. It is noteworthy that, since 2018, the Permanent Parliamentary Gender Equality Council has been working on the new concept of genger equality and the Bill on Gender Equality.[28] The concept of gender equality was approved in 2006 and does not reflect the progressive changes that have already been made to the legislation.

In 2020, UN Women published a special report entitled „Analysis of the Gender Pay Gap and Gender Inequality in the Labour Market in Georgia", which is based upon the detailed study of the labour force survey carried out by the National Statistics Office of Georgia in 2017. The Report provides that according to monthly salaries, the gender pay gap in Georgia amounted to 37.2 per cent in 2017.[29] According to the report, this means that the monthly salaries of employed women made up only 62.8 per cent of the monthly salaries of employed men. As for wages, the gender pay gap amounted to 17.7 per cent. Authors of the report underline that these indicators do not reflect the likely differences that could exist between employed men and women based on their education, work experience and other personal characteristics. The report states that the adjusted gender pay gap in Georgia was 24.8 per cent in 2017, which was higher than the raw gender wage gap. According to the findings of the survey, the employed women earned less than the employed men for each hour of work even though the women possessed better professional characteristics (education and work experience). The report also discusses the legislative mechanisms designed to help eliminate the gender pay gap.

Referring to the Committee's inquiry from the previous conclusions (Conclusions 2014) about whether cases involving the right to equal pay for work of equal value[30] have been brought before the court, we inform on the basis of the letter from the Supreme Cour of Georgia (Letter No 75/21 of the Supreme Court of Georgia, October, 18, 2021), that during the reporting period, courts did not consider cases on the matter.

As for the statistics from the Labour Inspection Service regarding the implementation of the principle of equal pay for equal work, we cannot provide statistics on the matter since only from January 1, 2021, the Labour Inspection Service has become authorized to supervise pratical implementation of all labour standards provided for by the legislation. Such information may be provided for the next reporting period, after some time elapses since the start of a full-fledged labour inspection service, so that it can produce comprehensive statistics on the basis of its activities. It is noteworthy that the newly established Labour Inspection Service is authorized to control in every regular inspection and acting upon complaints the implementation of principle of equal

[28] https://parliament.ge/en/media/news/genderuli-tanastsorobis-sabchom-genderuli-tanastsorobis-akhali-kontseftsiisa-da-genderuli-tanastsorobis-shesakheb-kanonshi-shesatani-tsvlilebebis-proektebi-ganikhila

[29] UN Wonen, 2020. Available at:< https://georgia.unwomen.org/en/news/stories/2020/04/gender-pay-gap-remains-a-challenge-for-georgia>

[30] As demonstrated above, the Labour Code of Georgia establishes the principle of equal pay for equal work.

pay for equal work established under the Labour Code. As part of the Labor Reform 2020, the Labour Inspection Service was given appropriate sanctioning powers.

Referring to a Committee's request for information on the impact of COVID-19 and the pandemic on the right of men and women workers to equal pay for work of equal value (with particular reference and data related to the extent and modalities of application of furlough schemes to women workers), we inform you that we cannot give such an assessment, since the issue has not been studied. Regarding the data related to the extent and modalities of application of furlough schemes to women workers, we inform that during the reporting period, no such furlough schemes were initiated.

Article 4&4

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake to recognise the right of all workers to a reasonable period of notice for termination of employment;

Before moving to the analysis of the provisions establishing the procedure for terminating employment agreement, we will address the grounds for terminating employment agreements provided by the Labour Code of Georgia.

Pursuant to Article 47 (Grounds for terminating employment agreements) of the Organic Law of Georgia "Labour Code", the grounds for terminating employment agreements are:

- economic circumstances, and/or technological or organisational changes requiring downsizing;
- the expiry of an employment agreement;
- the completion of the work under an employment agreement;
- the voluntary resignation of an employee from a position/work on the basis of a written application;
- a written agreement between parties;
- the incompatibility of an employee's qualifications or professional skills with the position held/work to be performed by the employee;
- the gross violation by an employee of his/her obligations under an individual employment agreement or a collective agreement and/or of internal labour regulations;
- the violation by an employee of his/her 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 has already been taken against the employee during the last year;

- long-term incapacity for work, unless otherwise determined by an employment agreement, if the incapacity period exceeds 40 consecutive calendar days, or the total incapacity period exceeds 60 calendar days within a period of 6 months, and, at the same time, the employee has already used his/her leave under Article 31 of the Labour Code;
- the entry into force of a court judgment or other decision precluding the possibility of performing the work;
- a decision on declaring a strike illegal that was delivered by a court in accordance with Article 67(3) of the Code and that became final;
- the death of an employer who is a natural person, or of an employee;
- the initiation of liquidation proceedings against an employer who is a legal person;
- other objective circumstances justifying the termination of an employment agreement.

The Labour Code specifies that violation of an obligation under the internal labour regulations provided for by paragraph 1(g) and (h) of article 47 may serve as a basis for terminating an employment agreement only where the internal labour regulations are an integral part of the employment agreement.

The Labour Code also determines that in the event of termination of an employment agreement on the ground referred to in paragraph 1(n) of Article 47, an employer must substantiate in the written notification provided for by Article 48(1) and (2) of the Code the objective circumstance justifying the termination of the employment agreement. The same Article entitles the legal representatives of minors, or custody/guardianship authorities, right to request the termination of an employment agreement with a minor if continuing work endangers the life, health, or other significant interests of the minor.

As for the procedure for terminating employment agreements, Article 48 of the Labour Code of Georgia determines that in the event of termination of an employment agreement by an employer on any of the grounds referred to in Article 47(1)(a), (f), (i), or (n) of the same Code, the employer must notify the employee thereof in writing at least 30 calendar days in advance. According to the Code, in such case, the employee must be granted severance pay in the amount of at least 1-month's remuneration.

In cases where an employment agreement is terminated by an employer on any of the grounds referred to in Article 47(1) (a), (f), (i), or (n) of the Code, the employer may notify the employee thereof in writing at least 3 calendar days in advance. In such case, the employee must be granted severance pay in the amount of at least 2 month's remuneration (Artilce 48). Article 48 further provides that in the event of termination of an employment agreement on the initiative of an employee on the ground referred to

in Article 47(1)(d) of the Code, the employee must notify the employer thereof in writing at least 30 calendar days in advance.

The Labour Code entitles an employee right, to request in writing to be provided with a written substantiation of the grounds for terminating the employment agreement, within 30 calendar days from receiving an employer's notification about terminating an employment agreement (Article 48 (6)). In tern, the law obliges an employer to provide a written substantiation of the grounds for terminating an employment agreement within 7 calendar days after an employee submits a request. Pursuant to Paragraph 6 of Article 48, an employee may, within 30 calendar days from receiving an employer's written substantiation, appeal in court against the employer's decision on terminating the employment agreement. According to the same article, where a court refuses to accept or dismisses a claim filed by the employee, the employee may file again the same claim with a court within 30 calendar days from receiving a ruling on refusing to accept the claim or a ruling on dismissing the claim.

If an employer fails to provide a written substantiation of the grounds for terminating an employment agreement within 7 calendar days after an employee submits the request, the employee is entitled to appeal in court against the employer's decision on terminating the employment agreement within 30 calendar days after the period of 7 calendar days elapses (Article 48). In such case, the burden of proof for determining facts of the dispute rests with the employer. Where an employee does not request from an employer a written substantiation of the grounds referred to in paragraph 4 of Article 48, the employee may appeal in court against the employer's decision on terminating the employment agreement within 30 calendar days from receiving the employer's notification about terminating the employment agreement (Article 48 (7)).

Pursuant to the Labour Code, if an employer's decision on terminating the employment agreement is declared void by the court, the employer must, under the court decision, reinstate the person whose employment agreement was terminated, or provide the person with an equal job, or pay compensation in the amount determined by the court (Article 48 (8)).

According to Article 48 (9), an employee may, in addition to being reinstated, or to receiving an equal job, or receiving compensation in exchange therefor, as provided for by paragraph 8 of the same article, request compensation for lost earnings from the date when the employment agreement was terminated up to the date when the final court decision declaring void the employer's decision on terminating the employment agreement was enforced. The same Article specifies that in determining compensation for lost earnings, a court must take into account any severance pay granted to the employee by the employer in accordance with paragraph 1 or 2 of this article.

It is noteworthy that the Labour Code of Gerogia obliges an employer to pay an employee 0.07% of the delayed sum for each day of any delayed payment or settlement. This rule does not apply to compensation for lost earnings as provided for by Article 48(9) of the Labour Code.

As for rules establishing the procedure for the dismissal of officers working in public institutions, during the reporting period, there were no changes to the Law of Georgia "On Public Service"[31] in terms of the regulations related to the paragraph 4 of Article 4 of the European Social Charter.

The Organic Law of Georgia "the Labour Code of Georgia" applies to persons recruited for public service on the basis of an employment agreement, unless otherwise provided for by the legislation of Georgia. The Law of Georgia "On Public Service"[32] applies to persons employed on the basis of an employment agreement in cases directly provided for by the same law (Article 6; Article 84). Accordingly, the issue of compensation for termination of the employment contract of a person employed in the public service is regulated in accordance with the rules established by the Labour Code of Georgia.

As for judicial practice on the issue under consideration, according to the Court of Cassation, the obligation to send prior notice / warning of the upcoming dismissal on the part of the administration is a legal guarantee provided by the law for an employee to ready for facing the fact of dismissal, so that it does not come as a surprise to him/her[33] (Letter No 75/21 of the Supreme Court of Georgia, October, 18, 2021).

In accordance with the practice of the Supreme Court of Georgia, when discussing the legality of dismissal of an employee, the Labour Code must be used together with international instruments that protect an employee from dismissal without prior notice and without any justification, including Article 4.4 of the European Social Charter (Letter No 75/21 of the Supreme Court of Georgia, October, 18, 2021). The Court states in its decision of May 2017, that based on the Charter, in order to exercise the right to fair remuneration of work, parties shall undertake to recognise the right of each worker to a reasonable period of notice for termination of employment. Accordingly, the court recognizes dismissal of an employee without notification and explanation of the reasons inadmissible[34]. According to the Court, the exception to the rule is a serious misconduct, which makes it inexpedient to extend an employment contract with him/her and, as a result, there is no need to receive a justified response from the employee. The Court notes that seriousness of the misconduct depends on what the result of the misconduct was or what the result might have been for the employer.[35] In

[31] See: Chapter XII (Dismissal of Officers) of the Law of Georgia "On Public Service" (Article 107; Article 114-15).
[32] Ibid.
[33] Judgment of the Supreme Court of Georgia of 11 Ocober 2017 in the case # ას-864-831-2016.
[34] Judgment of the Supreme Court of Georgia of 31 May 2017 in the case # ას-456-438-2016;
[35] Ibid.

addition, according to the case law of the court, the lack of prior notice cannot be a reason for cancelling the dismissal order if lawfulness of the actual or legal grounds for terminating the employment contract are legally established.[36] In its decision of October, 2017 the Supreme Court of Georgia notes that for a breach of the employment contract termination procedure, an employer may be liable for compensation, the amount of which must be determined in each specific case, depending on the circumstances of the case and the nature of the procedural violation.[37] As for the determination of compensation upon termination of the labour contract by an employer on the grounds established by law, its amount depends on the notice period.[38]

With regards to the Committee's direct request for information on any specific arrangements made in response to the COVID-19 crisis and the pandemic in relation to the realization of the right of all workers to a reasonable notice for termination of employment, we inform that during the reporting period, no specific arrangements were made by the Government of Georgia regarding the issue.

Article 4§5

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

Article 43 of the Labour Code of Georgia provides that an employer may deduct from an employee’s remuneration overpayments, or any sums payable by the employee to the employer under labour relations. The same Article determines that the total amount of a lump-sum deduction from remuneration must not exceed 50% of the remuneration.

The Law of Georgia “On Public Service” envisages deduction from wages only as the disciplinary measure. Namely, Article 96 (1) provides that if an officer has committed act of disciplinary misconduct, he/she may be subjected to deduction of 10 to 50 per cent of official salary for a period of one to six months. The same article also establishes other disciplinary measures, such as warning, reprimand and dismissal. If

[36] Judgment of the Supreme Court of Georgia of 11 October 2017 in the case # ას-864-831-2016
[37] Ibid.
[38] Ibid. Also, see: Judgment of the Supreme Court of Georgia of 2 June 2017 in the case # ას-167-157-2017

an officer commites several acts of disciplinary misconduct, he/she may me subjected to one disciplinary measure for the more serious discipniary misconduct.

Article 5 – The right to organise

Article 5

With a view to ensuring the effective exercise or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

In relation to the request of the European Committee for Social Rights in its previous conclusions (Conclusion 2018; Conclusion 2016) for information referring to the procedure for registration of a trade union and the set fees, we hereby inform that pursuant to the Organic Law of Georgia "On Trade Unions" trade union is a non-entrepreneurial (non-commercial) legal person that is founded in accordance with the rules established by the Civil Code of Georgia[39]. For the registration of trade unions in the Register of Non-Business (Non-Commercial) Legal Entities, only a registration fee (service fee) is required. The cost of registration of a non-entrepreneurial (non-commercial) legal entity is 100 GEL (200 GEL fee for accelerated service).[40] Employers' organizations go though the same procedures for the registration. A trade union or a federation (association) of trade unions acquire the status of a legal person upon the registration of their charters in accordance with the procedure established by the legislation of Georgia.[41]

It is noteworthy that as part of the Labour Reform 2020, the minimum number of members in order to form a trade union was reduced from 50 to 25. The recommendations of the Committee of Experts of the International Labour Organisation (ILO) was taken into account when developing the amendments and, accordingly, the Law of Georgia "On Trade Unions" established that a trade union can be founded at the initiative of at least 25 persons (Article 2(9)). This brings Georgian legislation in line with the International Labour Organisation Convention No. 87

[39] https://www.matsne.gov.ge/en/document/view/31702?publication=115;
[40] https://napr.gov.ge/p/617
[41] Article 7 of the Organic Law of Georgia "On Trade Unions".

concerning Freedom of Association and Protection of the Rights to Onganise (1948, entered into force 1950).

Article 5 of the Organic Law of Geogia “On Trade Unions”stipulates that trade unions and federations (associations) of trade unions are independent from state and local self-government bodies, employers, employers' confederations (unions, associations), political parties and organisations, and are not accountable to or controlled by them, except as provided for by the legislation of Georgia. The same article provides that trade unions shall not form or belong to any political party (or alliance).

The legislation of Georgia guarantees freedom of association,[42] which implies right of a person to establish, join and participate in trade unions activities. “Affiliation to trade unions” is one of the grounds of discrimination listed in Paragraph 1 of Article 4 of the Organic Law of Georgia “Labour Code”. Furthermore, Article 5 of the Code determines the scope of prohibition of discrimination. Namely, it prohibits discrimination in labour relations and pre-contractual relations (including when publishing a vacancy and at a selection stage), and in employment and occupation. According to the same article, the prohibition of discrimination apply to membership of, and involvement in, an employees’ association, an employers’ association, or any organisation whose members carry out a particular profession, including the benefits provided for by such organisations. Pursuant to the law, the prohibition of discrimination also apply to:

- selection criteria and employment conditions in pre-contractual relations, as well as access to career advancement, at all levels of the professional hierarchy and whatever the sector or branch of activity;
- access to all types of vocational guidance, advanced training, vocational training and retraining (including practical work experience) at all levels of the professional hierarchy;
- labour conditions, remuneration conditions, and conditions for the termination of labour relations;
- conditions of occupational social protection, including social security and health care conditions.[43]

[42] See: Artricle 22 (Freedom of Association) of the Constitution of Georgia; Available:< https://matsne.gov.ge/en/document/view/30346>; Chapter XI (Freedom of Association) of the Labour Code of Georgia.

[43] The Labour code determines that in the event of a dispute relating to the prohibition of discrimination, where a job candidate or employee alleges facts and/or circumstances, which give rise to a reasonable belief that an employer has violated the prohibition against discrimination, the burden of proof shall rest with the employer (Article 7).

Apart from that, the Law “On Elemination of All Froms of Discrimination” also extends the principle of equal treatment to labour and pre-contractual relations, including the membership and activity of trade unions (Article 2).

Chapter XI of the Labour Code provides that employees and employers may form associations and/or join other associations without any preliminary permission. According to Article 52, employers’ associations or employees’ associations may develop their own charters and regulations, establish management bodies, elect representatives, and administer their activities. The same Article further determines that employers’ associations or employees’ associations may form federations and confederations and may join them. Such association, federation or confederation may join an international employers’ association or an international employees’.

Article 53 prohibits disctimination on the ground of membership of trade unions. Namely, it prohibites discrimination against employees for being members of an employees’ association or for participating in the activities of such association, and/or to perform any other act aiming at hiring employees or retaining jobs for them in exchange for their refusal to join, or withdrawal from, an employees’ association. Apart from that the same article prohibites discrimination against employees for being members of an employees’ association or for participating in the activities of such association, and/or to perform any other act aiming at terminating labour relations with or otherwise persecuting employees for being members of an employees’ association or for participating in the activities of such association. Article 53 envisages employees’ right to participate in the activities of an employees’ association during working time in agreement with employers.

Article 54 prohibits interference in the activities of employers’ associations and employees’ associations. Pursuant to the article employers’ associations and employees’ associations, and their members and representatives, shall not interfere in each other’s activities in any way. For the purposes of the same article, interfering in the activities of employers’ associations or employees’ associations includes any act aimed at impeding the activities of such association through financial or other means in order to exercise control over it.

The Labour Code of Georgia provides for liability for discrimination on the grounds of trade unionism and violation arising from collective labour relations under Articles 78 and 80 of the Labour Code.

In terms of question posed by the European Committee for Social Rights, whether in order to conclude collective agreements trade unions must fulfill certain criteria (Conclusions 2018), we hereby inform that there is no a required set criteria and procedure for the recognitation of representativeness of trade unions in collective bargaining. In addition, there is no set criteria and the procedure for recognition of representativeness of trade union organisations participating in tripartite bodies at

national level. There is not specific criteria for participation in tripartite bodies at national level but in this regard the Government of Georgia follows[44] the meaning of representative organization implied in the Tripartite Consultation (International Labour Standards) Convention, 1976 (No.144). In the Convention, the term 'representative organization' means the most representative organization of employers and workers enjoying the right of freedom of association.[45]

It is noteworthy to mention in this discussion that the Labour Code of Georgia (Article 3) defines the subjects of labour relations as an employer or an employers' association, and an employee or an employees' association established for the purposes of, and under the procedures provided for by, the Organic Law of Georgia on Trade Unions, and Conventions No 87 and No 98 of the International Labour Organisation ('an employees' association').

The Labour code of Georgia determines that in order to conclude or terminate a collective agreement, or change its conditions, or to protect the rights of employees, an employees' association shall act through its representative. According to Article 56 of the Code, representation is confirmed in accordance with a procedure determined by a respective employees' association. A representative of an employees' association may be any legally capable natural person. Pursuant to the same Article, a representative of an employees' association shall act in the interests of only those employees who granted him/her the right of representation.

In view of the request from the Committee for an information about the restrictions on the right to organize applicable to those employed in internal affairs, customs and taxation, in judicial bodies and the office of the public prosecutor (Conclusion 2018), we hereby inform that employees of the institutions enjoy the right to organise. Pursuant to the Constitution of Georgia, everyone has the right to establish and join trade unions in accordance with the organic law (Article 26 (2)). The Organic Law of Georgia "On Trade Unions" envisages that the specific features of the establishment of trade unions within the bodies of the Ministry of Defence, the Ministry of Internal Affairs, within tax and judicial authorities, and the bodies of the Prosecutor's Office, must be determined in accordance with the legislation of Georgia related to these authorities and services (Article 4 (2)). Despite the presence of this provision in the law, in the special legislation of the aforementioned bodies and services there is no such norm limiting or restricting the right to form trade unions and join them.

As we informed you in the previous report, the legislation of Georgia puts restriciton on the political party membership of persons enlisted in the Defence Forces or bodies responsible for state and public security, and those appointed as judges. Furthermore, it is noteworthy here that freedom of assembly is restricted for those

[44] https://matsne.gov.ge/ka/document/view/2037256?publication=4
[45] https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C144

enlisted in the Defence Forces or bodies responsible for state and public security . [46] As presented above, trade unions are non-commercial legal persons and not political associations under Georgian legislation. The Government of Georgia reiterates in this Report that members of the police and those employed in internal affairs, customs and taxation, in judicial bodies and the office of the public prosecutor enjoy the right to establish and join trade unions.

With reference to the question if trade unions are entitled to perform their activities without interferences from authorities and/or employers (Conclusions 2018), we inform that the law "On Trade Unions" obliges employer to create the necessary condition for the activities of the trade union. Namely, according to article 25 of the law an employer, administration of an enterprise, institution and organization are obliged to create the necessary conditions for the activities of a trade union within the existing material and financial capabilities. The same article determines that ensurance of the additional material conditions for the activities of trade unions must be regulated by a collective agreement. In addition, the Labour Code of Georgia envisages a provision prohibiting interference in the activities of employers' associations and employees' associations. Pursuant to Article 54 of the Labour Code, employers' associations and employees' associations, and their members and representatives, shall not interfere in each other's activities in any way. For the purposes of this article, interfering in the activities of employers' associations or employees' associations includes any act aimed at impeding the activities of such association through financial or other means in order to exercise control over it.

Article 26 of the Organic Law of Geogia "On Trade Unions" determines that the State must ensure the protection of the rights of trade unions in accordance with the legislation of Georgia, and the case of violation of the right granted to a trade union by the legislation of Georgia shall be considered by a court (Article 26). Pursuant to the Article 5 of the same law, trade unions and federations (associations) of trade unions are independent from state and local self-government bodies, employers, employers' confederations (unions, associations), political parties and organisations, and are not accountable to or controlled by them, except as provided for by the legislation of Georgia. Furthermore, article 21 (4) of the law provides that various representative (elected) bodies of enterprises, institutions and organisations may not be used to limit the lawful activities of trade unions.The law entitles trade unions, federations (associations) of trade unions, trade union committees and trade union members with right to raise an issue of liability of officials, or file a claim or complaint with a court against officials who violate this Law, other legal and normative acts on trade unions, or who fail to fulfil obligations set out in general agreements, sectoral (tariff) agreements or collective agreements (Article 27(2)).

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[46] Constitution of Georgia (1995) Article 21 (1) and Article 23 (2), Parliamant of Georgia, Registration Code: 010.010.000.01.001.000.116; Consolidated publications: 29.06.2020. Available:< https://matsne.gov.ge/en/document/view/30346?publication=36> [Last accessed: 16.11.2021].

In addition, the Law of Georgia “Georgian Criminal Code”[47] prohibits interference with the establishment of political, public or religious associations or with their activities. Namely, according to the Article 166 of the law, unlawful interference with the establishment of political, public or religious associations or with their activities committed with violence, threat of violence or the use of official position is punished by a fine or corrective labour for a term of up to one year or house arrest for a term of six months to two years, or by imprisonment for a term of up to two years.

Referring to the request of the Committee to provide data on the trade union membership prevalence across the country and across sectors of activity, we inform that we do not possess such data. We can only provide you with data from the Confederation of Trade Unions of Georgia. According to the letter of the Confederation of Trade Unions of Georgia (GTUC), as of December 31, 2020 Georgian Trade Union Confederation affiliated member organizations (trade unions) have 138 854 employees in various sectors across the country (Letter No 90/01-1 of the Georgian Trade Union Confederation, October, 12, 2021).

With reference to the request of the Committee for information on the right to trade unions to access to the workplace and to hold meetings, as well as any information on cases involving interference in trade union activities, we inform that newly amended Labour Code obliges an employer to allocate a suitable place for an assembly (meeting) of employees organised by an employees’ association. The law provides for sanctions in the event of infigement of this right. Namely, according to Article 80 of the code, an employers’ refusal to allocate a suitable place for, or hindering, an assembly (meeting) of employees organised by an employees’ association shall result in a warning, or a fine in accordance with the procedure established by Article 77(1) of the Code, in the amount of a respective fine.

As for the direct request of the Committee for information on measures taken to promote unionisation and membership (with specific reference to areas of activity with low level of unionisation, such as knowledge workers, agricultural and seasonal workers, domestic workers, catering industry and workers employed through service outsourcing, including cross border service contracts), we inform that no such measures were taken by the Government of Georgia during the reporting period. In addition, for the reporting period, Committee reqested information on measures taken or considered to proactively promote or ensure social dialogue, with participation of trade unions and workers organisations, in order to take stock of the COVID-19 crisis and pandemic and their fallout, and with a view to preserving or, as the case may be, restoring the rights protected under the Charter after the crisis is over. In connection with this request, we report that no such measures were taken or considered by the Government of Georgia during the reporting period.

[47] https://matsne.gov.ge/en/document/view/16426?publication=235

With reference to the request from the Committee (Conclusions 2018) on cases before the courts regarding discrimination on grounds of trade union membership, we report in accordance with the study “Cases of Discrimination in National Judicial Practice”[48] prepared by the Analytical Department of the Supreme Court of Georgia that cases of alleged discrimination on grounds of trade union membership were identified in approximately 17% of labour disputes between 2017 and 2018 (Letter ნ/75-21 of the Supreme Court of Georgia, 18.10.2021). According to the letter of the Supreme Court of Georgia, the result of the study revealed that the alleged cases of discrimination frequently identified in judicial practice is based on the grounds of political, gender and trade union membership.

For example, in one of the cases of 2018[49] related to discrimination on the basis of trade union membership, the Court of Cassation did not share an employer’s position on the absence of discriminatory treatment against an employee. The Court of Cassation explained that “according to the Labour Code of Georgia, discrimination is prohibited on the basis of founding and joining trade unions (Letter ნ/75-21 of the Supreme Court of Georgia, 18.10.2021). Besides, in its judgmentent court refers to the Constitution of Georgia and reasoning of the Constitutional Court of Georgia in the relevant decisions. In its reasoning court relied on the established principles of the Freedom of Association and Protection of the Right to Organise Covnention, 1948 (No.87), European Convention of Human Rights, etc. In particular, the judgment says the following:

> […] the right to equal treatment has been violated. In particular, it is undeniable that [the employee] took an active part in the protests of the enterprise [employees] on 17 May 2016. On 18 May of the same year, the founding general meeting of the primary trade union organization was held at the enterprise. The meeting established the primary trade union at the enterprise and elected [the employee] as a member of the committee along with four other members. After that, at the end of May 2016, the contract with 53 employees expired at the same time, but the company did not renew labour contracts for only 6 employees – the members of the trade union committee and ordinary members. This is also confirmed by the testimony of the witnesses. On the contrary, the company continued to employ people who were not members of the trade union organization. The publicly expressed position of the head of the employing company further gives rise to the opinion about the discriminatory attitude towards some

[48] See:<https://www.supremecourt.ge/files/upload-file/pdf/diskriminaciastan-dakavshirebuli-saqmeebi-erovnul-sasamartlo-praqtikashi.pdf >

[49] Judgment of the Supreme Court of Georgia of 14 December 2018, case # ას-1263-2018.

employees (including the plaintiff) in relation to the employee's social activity in connection with his / her membership in the trade union.[50]

In view of the above, the Court of Cassation agreed with the arguments of the Court of Appeal about discriminatory treatment against [an employee] on the ground of the trade union membership, arguing that contrary to this, the employer failed to present a legitimate aim to justify differential treatment". According to the Court of Cassation, "It is impossible to imagine a public, political, economic and social system without the unions guaranteed by the Constitution. They play a key driving role in the functioning of the state, especially associations, creative unions, trade unions and political parties" (Letter ნ/75-21 of the Supreme Court of Georgia, 18.10.2021).

With regard to the imposition of compensation on an employer, the Court of Cassation agreed with the arguments of the Court of Appeal and clarified that according to a one-year employment contract, the imposition of 11-month compensation on the employer in favour of the employee was justified. The Court stated that "in the case under consideration, the illegal dismissal of an employee was established, which is the basis for the invalidity of the illegally issued order on his dismissal".[51] The Court noted that, concidering the annual agreement between the parties it was impossible to restore the original condition. With regard to the amount of compensation, in the court's opinion, the compensation calculated by the Court of Appeal, taking into account the average monthly salary, was fair and adequate (Letter ნ/75-21 of the Supreme Court of Georgia, 18.10.2021).

Another example of dismissal on discriminatory grounds can be considered here from judicial practice, when the freedom of expression of an employee became the basis for discriminatory treatment against him in the course of his activities in the trade union. According the facts of the case[52], plaintiff had worked since 1986 in various positions in the respondent organization (Letter ნ/75-21 of the Supreme Court of Georgia, 18.10.2021). The employee argued that only once while working, he received a warning - on 11 February 2015 - for unexcused absence within working hours and for being at a meeting with a non-governmental organization of the trade union. On the initiative of the employer, the employment contract with the employee was terminated on the basis of article 37(1)(a) of the Labour Code (provision from the previous edition/version of the code in effect at the time) - economic circumstances, technological or organizational changes that necessitate a reduction in the workforce. The employee argued before the court that his dismissal was illegal on this basis, since he was actually discriminated against due to his participation in various public events (including trade unions) and objective criticism of the employer's activities. According

[50] Ibid.
[51] Ibid.
[52] Judgment of the Supreme Court of Georgia of 29 September 2017 in the case # ას-247-235-2017.

to the plaintiff, after the establishment of the trade union, special control was exercised over him (Ibid).

Discussing discrimination on the grounds of trade union membership, the Supreme Court of Georgia clarified that "both the Constitution of Georgia and Article 10 of the European Convention on Human Rights recognizes the principle of freedom of expression, which includes freedom of a person to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers…"[53] The court noted that there is a negative duty of the state in relation to this right - not to interfere with its implementation, if it is not directly provided for by law (Letter ნ/75-21 of the Supreme Court of Georgia, 18.10.2021). The theory of margin of appreciation applies to the restriction of the right, and the restriction of the right must be justified by "necessity in a democratic society…to protect the rights and freedoms of others".[54] In the Court's view, "right to hold opinion", as an area protected by Convention, enjoys an absolute protection, and interference is allowed in an area that is protected not by opinion, but by the right to express one's opinion".[55] Consequently, court concidered that "the application of a sanction to a person is inadmissible on the basis of an opinion alone".[56] According to the Court, "criticism of the employee towards the employer, presented as evidence in the case, was expressed on June 7, 2015, which was quite close in time to the employer's decision to reorganize" (Letter ნ/75-21 of the Supreme Court of Georgia, 18.10.2021). Accordingly, the court found discrimination on the basis of trade union membership.

The committee previously asked for information on the observance of the right of trade unions to access to the workplace and to hold meetings, as well as any information on cases involving inteerfarance in trade union activities, we hereby inform that we cannot provide such information, since such practice was not studied during the reporting period. Herewith, we report that in the reference period for this Report there were no such matters considered by the courts (Letter ნ/75-21 of the Supreme Court of Georgia, 18.10.2021).

As for the statistics from the Labour Inspection Service regarding the implementation of the right to organise, in this case too we cannot provide you with statistics on this issue, since only from January 1, 2021, the Labour Inspection Service has become authorized to supervise pratical implementation of all labour standards provided for by the legislation. Such information can be provided for the next reporting period, after some time elapses since the start of a full-fledged labour inspection service, so that it can produce comprehensive statistics on the basis of its activities.

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[53] Ibid.
[54] Ibid.
[55] Ibid.
[56] Ibid.

ARTICLE 6 – Right to bargain collectively

Article 6§1
With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake to promote joint consultation between workers and employers.

Promotion of joint consultation at different level is one of the priorities of the Government of Georgia. As reported earlier, in Georgia the Tripartite Social Partnership was introduced in 2013 by the Organic Law of Georgia "Georgian Labour Code". According to the Labour Code, Tripartite Commissions' functions includes, inter alia, facilitatating the development of social partnership and social dialogue at all levels in Georgia between employees, employers and the Government of Georgia, and encouragement of agreement and consensus among the members of the Tripartite Commission (Article 84).

Development of Social Partnership at the regional level is one of the priorities of GoG. To this end, based on the decision made at the TSPC meeting (February 10, 2017) Tripartite Social Partnership Commission of Autonomous Republic of Adjara was set up in 2018. The commission held two meetings in 2019. It established the working group in the same year.

We inform that according to the Labour Code of Georgia an opportunity for running a social dialogue on sectoral level and on enterprise level is provided. Namely, Article 55 (1) of the Code provides that a collective agreement must be concluded between one or more employers/one or more employers' associations and one or more employees' associations. It is noteworthy that, with Article 3 of the Law of Geogia "On Trade Unions" it is foreseen that a collective agreement is made between an employer, an enterprise, an institution or an organization and a trade union and it regulates labour, social and professional relationships between the parties. The same article defines the sectoral and general agreements. Namely, it envisages that secrtoral agreements are made between the relevant bodies of the executive authority, trade unoions and employers (enterpreneurs). According to the definition provided by the law, sectoral agreements regulate labour and social economic relationships between the parties. From this, we can conclude that the employers' associations and those of the workers also have the opportunity for collective consultations on bipartite grounds. In the frames of the process of collective agreement, consultations may be realized among the workers and employers.

As for general agreement, pursuant to the law of Georgia "On Trade Unions", they are made between the Government of Georgia, trade unions' and entrepreneurs' national general associations. According to the same law, it regulates labour and social

economic relationships between the parties. It is noteworthy that no such agreement exists throughout the country.

It must be mentioned here that in 2018, in order to strengthen its commitment to tripartite negotiations and social dialogue Georgia ratified ILO Convention on Tripartite Consultation, 1976 (No 144). The recent amendments to the Organic Law of Georgia "Georgian Labour Code" empoweres the Tripartite Commission to set up permanent or temporary sub-committees and working groups to review specific issues. According to Article 88 of the law a permanent sub-committee must be set up within the Tripartite Commission. Such sub-committee must hold consultations on issues related to international labour standards provided for by Convention No 144 concerning tripartite consultations to promote the implementation of international labour standards, adopted at the 61st Session of the International Labour Conference (Geneva, 21 June 1976). Pursuant to the above-mentioned provision of the Code a decree of the Minister of IDPs, Labour, Health and Social Affairs of Georgia on setting up a permanent sub-committee within the Tripartite Commission was adopted. The sub-committee consists of representatives of the Ministry of Labour, GTUC and Georgian Employers' Association (GEA). The Decree was adopted in 2020.

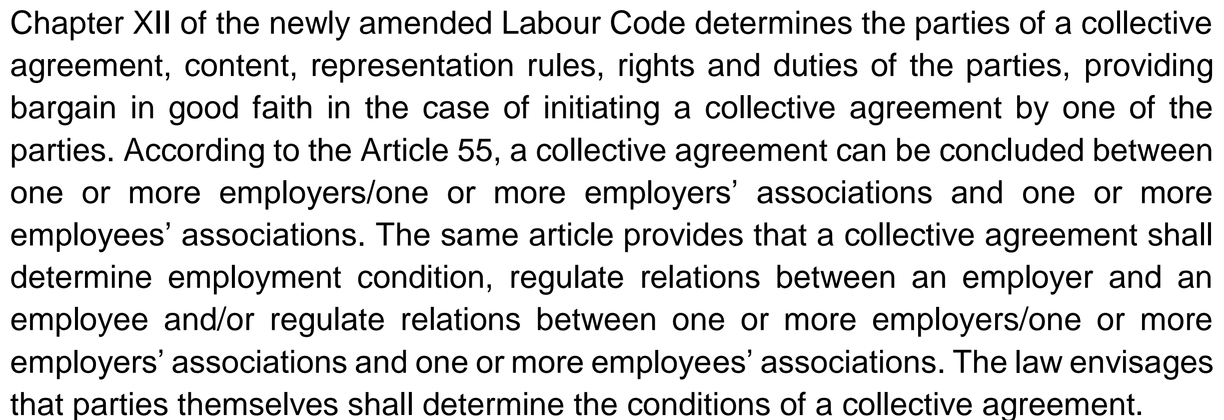
As to the general tripartite consultations, 5 meetings were carried out during the period from 2017 to 2020. The working group under the tripartit commission held 16 meetings during reporting period (2017-2020).

In view of the request (Conclusions 2018; Conclusions 2014) from the Committee for information on issues of interpretation of collective agreements, we inform that there is not any specific mechanism dealing with the issues of interpretation of collective agreements. Since there is no joint consultation or specific mechanism in place regarding the interpretation of collective agreements, in this case the Confederation of Trade Unions of Georgia resorts to the judicial mechanism (Letter No 90/01-1 of the Georgian Trade Union Confederation, October, 12, 2021).

As for the issue of joint consultations in the public sector (Conclusions 2018), we inform you that no changes have occurred in this regard, namely, the practice of joint consultations in the public sector, was not observed in the reporting period.

Article 6§2

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.



Chapter XII of the newly amended Labour Code determines the parties of a collective agreement, content, representation rules, rights and duties of the parties, providing bargain in good faith in the case of initiating a collective agreement by one of the parties. According to the Article 55, a collective agreement can be concluded between one or more employers/one or more employers' associations and one or more employees' associations. The same article provides that a collective agreement shall determine employment condition, regulate relations between an employer and an employee and/or regulate relations between one or more employers/one or more employers' associations and one or more employees' associations. The law envisages that parties themselves shall determine the conditions of a collective agreement.

Paragraph 5 of the same article establishes obligation of the parties to provide each other with information about issues relating to the bargain. Meanwhile, the law establishes the principle of confidentiality in the process of negotiations. Namely, it envisages that a party may not provide the other party with confidential information, and where confidential and/or other information is/are provided, the party may require that the other party keep the information confidential. Also, Article 55 (6) prohibites state or municipal bodies to interfere in the process of concluding collective agreements. The law provides that an agreement concluded as a result of their interference shall be void.

The Labour Code (Article 56) establishes that in order to conclude or terminate a collective agreement, or change its conditions, or to protect the rights of employees, an employees' association can act through its representative. It provides that representation shall be confirmed in accordance with a procedure determined by a respective employees' association. The law determines that a representative of an employees' association may be any legally capable natural person. It obliges a representative of an employees' association to act in the interests of only those employees who granted him/her the right of representation.

Article 57 of the Labour Code envisages that a collective agreement can be concluded only in writing. The same article provides that a collective agreement can be fixed-term or open-ended. It establishes that a fixed-term collective agreement must include the date it comes into effect and the expiry date. An open-ended collective agreement must contain clauses for its revision, modification, and termination.

The Labour Code determines that the existence of a collective agreement must not limit employers' or employees' rights to terminate labour relations. That fact must not result in the termination of labour relations with other employees being parties to the said agreement.

Acording to the Labour Code (Article 56 (6)), a collective agreement must specify the subjects of the agreement. Paragraph 7 of Article 56 establishes that obligations under a collective agreement shall apply to the parties to the agreement. It provides that if a collective agreement is concluded between an employer and one or more employees' associations, and over 50% of the employees of the enterprise concerned are members of said employees' association, other employees of the same enterprise may submit a written request to the employer to also become a party to the collective agreement. An employer must grant the said written request within 30 calendar days from receiving it. The law does not prohibit any other employees' association with less than 50% of the employees of the enterprise concerned from separately negotiating with the employer and from concluding a separate collective agreement.

The Labour Code determines that (paragraph 8 of Artilce 56) the provisions of a collective agreement shall be an integral part of the individual employment agreements of the employees under the collective agreement. It declares void the provisions of a collective agreement that contravene the Law.

As of today, one sectoral agreement exists thoughout country that was singed between the Educators and Scientists Free Trade Union of Georgia and the Ministry of Education, Science, Culture and Sport of Georgia. Under this agreement at the level of the primary trade union organization in the educational institutions there existes 2315 collective agreements. As for collective agreements at the enterprise level (outside the education sector), 59 collective agreements were signed with the trade unions throughout Georgia of which 26 were signed or extended in 2017-2020. As a whole, 105 098 employees are involved in these agreements. In addition, one collective bargaining agreement was concluded with the member unions of the new association of independent trade unions (founded on 20 January 2020), which involves 450 employees.

In the following, the detailed information on the collective agreements provided by the GTUC is given (Letter No 90/01-1 of the Georgian Trade Union Confederation, October, 12, 2021).

Annex 1			
Trade union affiliates	**Total number of employees covered by the collective bargaining agreement**	**Number of collective bargaining agreements in force**	**Number of collective bargaining agreements concluded / extended in 2017-2020**

Trade Union of Service, Communication and Banking Workers	10435	5	**2**
Trade Union of Energy Workers	7584	4	**1**
Trade Union of New Railway Workers	12500	2	
Trade Union of Metallurgical, Mining and Chemical Industry	3175	3	**3**
Trade Union of Communications' Workers	3129	3	**3**
Trade Union of Tbilisi Metro	6800	1	
Trade Union of Oil and Gas Workers of Georgia	4000	5	**1**
Trade Union of Agriculture, Light, Food and Processing Industry	1190	3	
Trade Union of Medicine, Pharmacy and Social Security	10449	9	
Trade Union of Transport and Roads	2426	3	
Trade Union of Art Workers	1060	19	**16**
Batumi Seaport	350	1	
Free Trade Unions of Teachers and Scientists of Georgia	42000	1	
Total:	**105098**	**59**	**26**

With regard to the conclusions 2018, we inform that it is established by the law that an employer may not unilaterally disregard a collective agreement (Conclusions 2018). The binding nature of collective agreements is established by legislative means. Namely, article 75 of the Labour Code of Georgia determines state supervision over compliance with the labour legislation of Georgia. It entitles the Labour Inspection Service with power to ensure the effective application of labour norms, including, employment agreements, collective employment agreements, agreements reached as a result of mediation in collective

disputes, and rules of arbitration awards and etc. In addition, the law provides for sanctions in the event of violation of rules under the Labour Code concerning collective agreements (Article 77 of the Labour Code).

The legal framework allows for the participation of employees in the public sector in the determination of their working conditions (see above discussion on Article 5 of the Charter).

In view of the request of the Committee for the Government of Georgia to provide information on specific measures taken during the pandemic to ensure the respect of the right to bargain collectively, we hereby inform that no specific measures were taken in this regard during the pandemic. With regard to information on the situation and arrangements in the sectors of activity hit worst by the crisis (whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services), we are unable to provide such information as no systematic analysis of the practice has been carried out.

It is noteworthy that, amendments made to the Organic Law of Georgia - the Labour Code of Georgia in 2020 dealt, among other things, with the norms governing collective bargaining disputes, in particular, the mechanisms for the enforcement of an agreement reached as a result of mediation, the right of a party to a dispute to apply to court for the enforcement of this agreement, etc (this information is related to paragraph 3 of Article 6 of the Charter). The law states that if an agreement on a collective bargaining dispute has been reached through mediation, a party to the dispute shall have the right to go to court to enforce that agreement (Article 69). In addition, the law provides for sanctions in the event of violations arising from collective labour relations (Article 80).

It shoul also be noted that in 2017-2020, there were 31 conciliation procedures (mediation) on collective bargaining disputes, 12 of which were completed by agreement of the parties.

In 2019, with the support of the International Labour Organisation (ILO), a Certification Course in Collective Bargaining Disputes was held, which was attended by acting mediators, representatives of social partners and representatives of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia and nominees (15 participants in total).

In 2020, the registry of mediators was updated. To provide availability of mediators, the registry was composed by 17 instead of 11 mediators.

Article 6§4

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake and recognize the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

With regard to the Committees' question of whether in relation to minimum or essential services there were any measures introduced in connection with the COVID-19 crisis or during the pandemic to restrict the right of workers and employers to take industrial action, we report that such measures were not introduced by the Government of Georgia. Also, during the pandemic, no specific measures were taken to ensure the right to strike.

In view of the question (Conclusions 2018) regarding the right to call a strike and whether this right is reserved to trade unions, we infom that the Labour Code entitles trade unions and a group of at least 20 employees to call a strike (Article 48^1).

As a result of the changes introduced in 2020, it was determined that if human life and health or the safety of the natural environment, or the work of critical service providers, is jeopardised, the court may postpone, on one occasion only, the start of a strike or a lockout for a maximum of 30 days, or suspend a started strike or lockout for the same period (Article 63).

Article 66 (1) of the Labour Code states that "in no case shall an employee fully exercise the right to strike if he/she performs work to carry out activities which, if completely interrupted, would pose an obvious and imminent threat to the life, personal safety, or health of society-at-large or a certain part of society". According to the same article the list of critical services (in the narrow sense of this term) involving such activities and the limits of a minimum service shall be determined by the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia after consulting social partners. The law provides that employees working for critical service providers may exercise the right to strike if they ensure that a minimum service is provided. Article 66 of the Code specifies that in determining the limits of a minimum service, the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia shall only take into account the work processes which are necessary for the protection of the life, personal safety, or health of society-at-large or a certain part of society. Employees who cannot fully exercise the right to strike may request that a collective dispute be resolved through conciliation proceedings, mediation and/or arbitration, in accordance with Article 63 of the Labour Code (Article 66).

On Septerber 7, 2021, the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia (hereafter Minister) issued #01-78/N order “On Approval of the List of Essential Services”. According to the Order, organization of the minimum service and related subjects (including the minimum number of workers providing the service) should be negotiated and agreed between the subjects of collective labour dispute which shall take place before sending the notification on strike to the Minister. The same Order provides that any disagreement on the issue should be settled by the court.

Under the new order the list of essential services is as follows:

a) work for the emergency assistance medical service;
b) work for the stationary hospital and/or for the urgent assistance service of dispensary hospital;
c) work for the production, distribution, transmission and control of electricity;
d) work for waterworks and drain system;
e) work for telephone communication system;
f) work for services securing the safety of aviation, railway, maritime and road movement;
g) work for services securing state defense, rule of law and justice, including:
g.a) work for the Ministry of Defense and its system body;
g.b) work for the Ministry of Internal Affairs and its system body;
g.c) work for the Ministry of Justice and its system body;
h) work for the court organs;
i) work for municipal cleaning service;
j) work for the fire-fighting and rescue service;
k) work for the transportation and distribution of natural gas.

Regarding the Committee's question on the right of members of the police force to strike (Conclusions 2018), we inform that the Law of Georgia "On Police"[57] prohibits a police officer from striking or participating in meetings and demonstrations.

The law of Georgia “On Public Service” provides that Articles 63-69 (Chapter XIV – Disputes) of the Organic Law “Labour Code of Georgia” apply to public servants.

Article 64 (1) of the Labour Code defines a strike as an an employee's temporary and voluntary refusal, in the case of a dispute, to fulfil, wholly or partially, the duties under an employment agreement. According to the Code, a dispute is a disagreement arising during the course of labour relations. Article 61 states that “the resolution of disputes is in the legal interests of the parties to an employment agreement” (Article 61). The grounds for a dispute may be:

[57] https://matsne.gov.ge/en/document/view/2047533?publication=28

- the violation of human rights and freedoms under the legislation of Georgia;
- the violation of the conditions of an individual employment agreement or a collective agreement, or the violation of employment conditions;
- a disagreement between an employer and an employee over the essential conditions of an individual employment agreement and/or the conditions of a collective agreement; According to the law, such disagreement must be resolved in compliance with the conciliation procedures provided for by Article 62 or 63 of the Code.

The Labour Code determines that in the case of a collective dispute, the right to strike shall arise upon the lapse of 21 calendar days after the Minister is notified in writing in accordance with Article 63(3), or after the Minister appoints a dispute mediator on his/her own initiative in accordance with Article 63(4) of the Labour Code. The same law obliges employees to notify employer and the Minister in writing of the time, place, and type of strike, and the number of persons participating in a strike, not later than 3 calendar days before the strike or the lockout (Article 64 (4)).

The Labour Code provides that if one of the parties avoides participating in conciliation procedures and stages a strike, the strike must declared illegal (Article 67). According to paragpraph 3 of Article 67, "A court shall deliver a decision on declaring a strike illegal and it shall be executed without delay".

Referring to the committee's request (Conclusions 2018) regarding the practical circumstances in which courts actually postpone or suspend a strike, we hereby inform that in 2018 there was a high-profile ruling of the Tbilisi Civil Court on postponing strike which was administered by the independent professional union of the metro employees (most members of the union are underground drivers) called "Ertoba-2013" NNLE. Namely, the underground workers announced a strike on May 3, 2018, which was postponed by the Tbilisi City Court for 30 days (Decision N2425047-18 of May 2, 2018). The decision came after Tbilisi Transport Company Ltd appealed to the court. Company claimed that metro transported 327,000 people daily on average and if shut down, it would also paralyse the rest of Tbilisi's public transport infrastructure. A few weeks later, Tbilisi Transport Company Ltd filed a new lawsuit to the court demanding an indefinite ban on the strike of the subway drivers. The court forbade the drivers to strike during working hours by its decision N2453275-18[58] of May 18, 2018. The court argued that paralysis of the Tbilisi Metro, 'the cheapest and fastest means of transportation, used daily by about 400,000 passengers', would cause the 'collapse of road infrastructure', endangering not only commuters, but also personnel from essential public health, fire, and other services. According to the ruling, the court tried to balance the right to strike of the metro drivers with the implementation of the rights

[58]https://socialjustice.org.ge/uploads/products/pdf/%E1%83%92%E1%83%90%E1%83%9C%E1%83%A9%E1%83%98%E1%83%9C%E1%83%94%E1%83%91%E1%83%90_1526916254.pdf

of citizens guaranteed by the Constitution of Georgia, including the right to life, health, and a safe environment.

Despite the court decision, the striking members of “Ertoba 2013” went on strike within the law. They started the strike and hunger protest on June 3. The subway drivers, who were banned from striking during working hours, were able to go on strike due to fatigue and hunger, since they failed to show satisfactory results on a standard health check. This resulted in the termination of Tbilisi subway operations. The 3-day strike ended with oral negotiations. Since 2019, the salaries of the union members, as well as all employees of the transport company, have increased by 10, 15 and 30%.[59]

ARTICLE 21 – Right to information and consultation

Article 21

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

a. to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and

b. to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

The issue of informing and consulting the workers is addressed by the amendments to the Law of Georgia “Labour Code” of 2020, which harmonized this issue with the relevant legislation of the European Union. Namely, Article 70 (1) provides that in undertakings regularly employing at least 50 employees, employers must ensure the provision of information and consultation in accordance with the procedure established by chapter XV (Provision of Information and Consultation in the Workplace). For the purposes of the mentioned chapter, consultation means the exchange of views, and a dialogue, in good faith, between the employer and the employees’ representatives,

[59] https://publika.ge/article/2-weli-istoriuli-gaficvidan/

with a view to reaching a possible agreement for deciding a relevant issue to the extent possible (71).

The law envisages that the right of employees to information and consultation may be exercised through employees' representatives. For the purposes of the chapter XV of the Labour Code, an employees' representative may be one of the following persons:

- a representative of an employees' association referred to in Article 3 of the Labour Code, namely a person who is empowered to represent an employees' association under the charter of the employees' association;
- an authorised employees' representative elected in accordance with paragrap h 3 Article 70.

According to Paragraph 3 of Article 70, employees can elect an authorised employees' representative for a fixed term, by a majority of votes, at a meeting that is attended by not less than half of the employees of the undertaking concerned. The same paragraph provides that the number of authorised employees' representatives must be determined directly by the employees in accordance with the following principle: "where from 50 to 100 employees are employed in an undertaking, the employees shall elect at least 3 authorised employees' representatives, and where more than 100 employees are employed in an undertaking, the employees shall additionally elect 1 authorised employees' representative per 100 employees. Where there is a written request from at least 10% of the employees employed in an undertaking, the employer shall ensure the possibility of electing authorised employees' representatives" (Article 70).

Paragraph 4 of Article 70 envisages that in an undertaking where there is one or more employees' associations and where there are authorised employees' representatives of the employees, for a joint consultation with the employer they shall designate authorised representatives in proportion to the number of the members represented by them, so that at least 1 authorised representative is ensured per such member. Paragraph 5 of the same article determines that where an undertaking has both a representative of an employees' association and an authorised employees' representative, the employer shall, if necessary, take appropriate measures to ensure that the presence of an authorised employee's representative does not weaken the position of the employees' association or their representatives, as well as to promote cooperation between the authorised employees' representative and the employees' association on all relevant issues.

Employers must provide employees' representatives with information and consultatin on th following issues:

- the recent and probable development of the undertaking's activities and economic situation;

- the situation, structure and probable development of employment within the undertaking and on any anticipatory measures envisaged which might significantly affect the employees' remuneration and employment conditions, and/or pose a threat to the continuation of labour relations;
- decisions likely to lead to substantial changes in work organisation.

The law obliges employer to provide relevant information to employees' representatives within a reasonable time, but not later than 30 days before the employer makes a decision that might affect the interests of the employees. Article 71 (2) determines that said information must be provided in writing and the content of information shall enable employees' representatives to conduct an adequate study and prepare for consultation.

Pursuant to Article 71 (4), consultation shall take place through meetings between the director of an undertaking, or a representative of relevant management line (if any), and the employees' representatives. The same article determines that the duration and periodicity of such meetings must be adequate. Said meetings shall enable employees' representatives to obtain information about the employer's responses to the opinions and recommendations of the employees and on the reasons for such responses.

The Labour Code states that the employer and the employees' representative may agree in writing on practical mechanisms for providing information and consultation. Where this is not already required by special law, a collective agreement may provide for a mechanism to establish a committee on site for the provision by an employer of information and consultation to an employees' representative (Article 71 (5)).

Article 72 deals with the protection of confidential information. It obliges employees' representatives, and any experts who assist them, not to reveal to employees or third parties any confidential information which, in the legitimate interest of the undertaking, has been provided to them. The same article provides that an employer may refuse to provide information or consultation when the nature of that information or consultation is such that, according to objective criteria, it would seriously harm the functioning of the undertaking or would be prejudicial to it. In turn, employees' representatives may appeal against such refusal in court.

In view of the direct request from the Committee for information on specific measures taken during the pandemic to ensure the respect of the right to information and consultation, we hereby inform that no specific measures were taken in this regard during the reporting period.

The Labour Code provides for sanctions in case of violations related to the provision of information and consultation as provided for by Chapter XV of the Law, including refusal to provide information or participate in consultation (Article 81)

Article 22 – The right to take part in the determination and improvement of the working conditions and working environment

Article 22 – The right to take part in the determination and improvement of the working conditions and working environment
With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

a to the determination and the improvement of the working conditions, work organisation and working environment;

b to the protection of health and safety within the undertaking;

c to the organisation of social and socio-cultural services and facilities within the undertaking;

d to the supervision of the observance of regulations on these matters.

After the amendments made in 2020, a new chapter was added to the Organic Law of Georgia "Labor Code of Georgia" - providing information and consulting in the workplace. This chapter regulates the obligation of employers to provide information to employees' representatives and to consult with them on the activities and economic situation of the undertaking and on the employment situation in the enterprise, as well as **on the decision that may lead to substantial changes in labor organisation.**

The employer is obliged to carry out information and consultation procedures in the undertaking, where no less than 50 employees regularly work.

Employee representatives can be:

Employees' union established for the purposes of and in accordance with the Organic Law of Georgia on Trade Unions and the International Labor Organisation Conventions №87 and №98 or An authorized representative of the employees, who is elected by the employees for a fixed term, by a simple majority of votes at a meeting attended by no less than half of the employees in the undertaking.

In an undertaking where there is both a representative of the employees' union and an authorized representative of the employees, the employer shall, if necessary, take appropriate measures to ensure that the presence of an authorized representative of the employees does not weaken the position of the employees' union or their representatives, as well as to encourage the cooperation of the authorized representative of the employees and the employees' union on all relevant issues.

Consultation involves the conscientious exchange of positions and dialogue between the employer and the employees' representatives in order to resolve the issue as far as possible with the intention of reaching an agreement.

The consultation should take place through meetings between the director of the undertaking or a representative of the relevant management (if any) and the employees' representatives. The duration and frequency of meetings should be adequate. These meetings should enable employee representatives to obtain information about the employer's response and the basis for that response according to the employees' feedback and recommendations.

Article 26 – The right to dignity at work

Article 26&1
to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;

Amendmens to the Georgian legislation have addressed issues of workplace harassment, including sexual harassment. In 2019, amendments were made to the laws of Georgia "On Gender Equality" and "On the Elimination of All Forms of Discrimination." As a result of the amendments, the terms "harassment" and "sexual harassment" have been clarified within the framework of the obligations set out in Annex XXX to the Association Agreement - Employment, Social Policy and Equal Opportunities. In particular, in accordance with the provisions of Council Directive 2000/43/EC of 29 June 2000 "on the implementation of the principle of equal treatment between persons irrespective of racial or ethnic origin", of Council Directive 2000/78/EC of 27 November 2000 "on the establishment of a general framework of equal treatment in employment and cooperation", and of the Council Directive 2004/113 / EC of 13 December 2004 "on ensuring the implementation of the principle of equal treatment between men and women in in the access to and supply of goods and services."

In 2020, amendments were made to the Organic Law of Georgia "Labor Code of Georgia" and Article 4 was dedicated to the concept of labor discrimination.

For the purposes of this Law, discrimination is the intentional or negligent discrimination or exclusion of a person, or giving him/her a preference, on the grounds of race, skin colour, language, ethnic or social affiliation, nationality, origin, property or titular status, employment status, place of residence, age, gender, sexual orientation, disability, health status, religious, public, political or other affiliation (including affiliation to trade unions), marital status, political or other opinions, or on any other grounds, with the purpose or effect of denying or breaching equal opportunities or treatment in employment and occupation (M4(P1)).

Harassment in the workplace (including sexual harassment) is a form of discrimination, in particular, unwanted behaviour towards a person on any of the grounds referred to

in paragraph 1 of article 4, with the purpose or effect of violating the dignity of the person concerned, and creating an intimidating, hostile, degrading, humiliating or offensive environment for him/her.

Sexual harassment shall be conduct of a sexual nature towards a person, with the purpose and/or effect of violating the dignity of the person concerned and creating an intimidating, hostile, degrading, humiliating or offensive environment for him/her. Discrimination in labour relations and pre-contractual relations (including when publishing a vacancy and at a selection stage), and in employment and occupation, shall be prohibited. The prohibition of discrimination shall apply, inter alia, to:

a) selection criteria and employment conditions in pre-contractual relations, as well as access to career advancement, at all levels of the professional hierarchy and whatever the sector of activity;
b) access to all types of vocational guidance, advanced training, vocational training and retraining (including practical work experience) at all levels of the professional hierarchy;
c) labour conditions, remuneration conditions, and conditions for the termination of labour relations;
d) membership of and involvement in an employees' association or any organisation whose members carry out a particular profession, including the benefits provided for by such organisations;
e) conditions of occupational social protection, including social security and health care conditions.

The enforcement of labor legislation is supervised by the LEPL Labor Inspection Service in accordance with the Law of Georgia on Labor Inspection, adopted in 2020.

According to the same law, the purpose of the Labor Inspection Service is to ensure the effective application of labor norms and to achieve this goal, it uses various mechanisms, including providing information to the public to promote labor standards and raising awareness through information campaigns and other effective measures, receiving and reviewing complaints related to possible violations of labor norms, inspecting, etc.

In the conclusions of 2018, the committee focused on informing and raising awareness of employees. About the promotion of awareness and information campaigns, Georgia actively started spreading information by social media, by commercials on Georgian TV Channels in order to rise awareness about the protection of the dignity at work. From 2021 LIO is actively involved in an awareness-raising campaign "Labor Dictionary" aimed at disseminating information about the updated Labor Code, raising awareness among employees and employers about changes to the Labor Code. The campaign provides information on the activities and role of labor inspection and promotes the establishment of new standards in labor culture.[60]

In accordance with the Organic Law of Georgia on the Public Defender, the public defender of Georgia implements measures to raise public awareness on discrimination issues.

[60] See https://www.facebook.com/LabourDictionary

In the period of 2017-2020, the Office of the Public Defender of Georgia conducted a number of events to raise awareness of equality issues. Trainings on equality and non-discrimination, as well as anti-discrimination legislation and enforcement mechanisms were provided to employees of private companies, representatives of the Ministry of Internal Affairs and local self-government bodies, public school teachers, journalists, and representatives of the LGBT + community. Furthermore, in December 2017, within the framework of Human Rights Week, the Public Defender held street rallies in various cities of Georgia, aimed at disseminating information on equality issues.

In 2019, the staff of the Department of Equality conducted about 50 information meetings and trainings throughout Georgia, during which special emphasis was placed on sexual harassment, among other issues. Within this period, the target groups additionally included labor inspectors, representatives of the employers' association, trade unions and various public agencies.

In addition, the analysis of the statements in the proceedings of the Department of Equality revealed issues that required not only a legal response from the Public Defender, but also closer communication with the public. To this end, videos were prepared that were disseminated through television and the Internet. One of the videos was dedicated to spreading information about sexual harassment - what legal mechanisms a victim of sexual harassment can use and what can be the evidence[61] in the case. During informational meetings, the representatives of the Public Defender mostly focus on trends of the year, including persistent labor harassment and sexual harassment. Also, after the direct formulation of these forms of discrimination in the anti-discrimination law (2019), the audience will be provided with information on the mentioned legislative change and related issues. It is noteworthy that the Public Defender will include preventive measures in the recommendations on identifying discrimination in the form of harassment and sexual harassment. Moreover, he calls on employers to incorporate non-discrimination provisions into labor regulations, collective agreements and other documents, and to take proactive steps to raise awareness of the prohibition of harassment and sexual harassment.[62]

It is noteworthy that during the pandemic, the Public Defender's Office actively pursued educational activities, during which online meetings on sexual harassment issues were held with students, private companies and other stakeholders. However, in order to protect the right to dignity in the workplace during the pandemic, the Public Defender actively disseminated information about the possibility of contacting the hotline of the Office in case of rights violations.[63]

On April 29, 2020, the Public Defender of Georgia became a part of the joint statement of the European National Human Rights Institutions on the need for human rights protection and solidarity in Europe under the new Coronavirus pandemic, which

[61] See https://bit.ly/3mIVwOK

[62] See https://ombudsman.ge/eng/gadatsqvetilebebi

[63] See https://ombudsman.ge/eng/akhali-ambebi/informatsia-dasakmebulisa-da-damsakmeblebis-ufleba-movaleobebis-taobaze

provided significant information on the importance of human rights protection and non-discrimination during the pandemic.[64]

On May 1, the Public Defender responded to the International Workers' Day and emphasized the need to provide decent working conditions for employees.[65]

It should be noted that on November 6, 2020, the Public Defender of Georgia presented the opinion of a friend of the court on a case of alleged discrimination on the grounds of health status, in which, together with the harassment detection test, he focused on the impact of the pandemic on employment equality.[66]

Article 26&2
to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

In the conclusions of 2018, the Committee requested information on employer liability and legal protection mechanisms in cases of moral (psychological) harassment in the workplace. The above mentioned issue was addressed in the amendments made in 2020 and sanctions were provided by legislation for violations of the principle of non-discrimination by the employer, and it was established that violations of the principle of discrimination, including of the regulation on direct discrimination and indirect discrimination, harassment and sexual harassment in the workplace, the principle of prohibition, the principle of reasonable accommodation, equal pay for equal work – shall result in a warning or a fine in the amount of three times the fine prescribed by law.

In case of harassment and/or sexual harassment, the imposition of liability on an employee violating labor law as defined by labor law does not relieve the employer of any other relevant liability.

The employer may be held liable if he became aware of the fact of harassment and/or sexual harassment and he did not report this fact to the labor inspectorate and/or did not take appropriate measures to prevent such action.

The law prohibits the termination of an employee's employment contract and/or any kind of ill-treatment and influence on the employee due to the fact that the employee has applied to or cooperated with the relevant body to protect himself/herself from discrimination.

[64] See https://ombudsman.ge/eng/akhali-ambebi/adamianis-uflebata-erovnuli-institutebis-evropuli-kselis-ennhri-gantskhadeba-pandemiastan-dakavshirebit

[65] See https://ombudsman.ge/eng/akhali-ambebi/200501023834sakhalkho-damtsvelis-gantskhadeba-mshromelta-saertashoriso-dghestan-dakavshirebit

[66] See https://ombudsman.ge/eng/akhali-ambebi/sakhalkho-damtsvelis-sasamartlos-megobris-mosazreba-janmrtelobis-mdgomareobis-nishnit-savaraudo-diskriminatsiis-faktze

In addition, in 2019, an amendment was made to the Law of Georgia **"Administrative Offenses Code of Georgia".** A new article 166^1 has been added to the law, according to which unwanted sexual behavior towards a person in public, aimed at and/or infringing on his or her dignity and creating a terrifying, hostile, humiliating, degrading or abusive environment for him/her, will result in a fine.

The amendments also touched upon the **Organic Law of Georgia on the Public Defender and the Civil Procedure Code of Georgia**, which set out the authority of the Public Defender to send proposals and recommendations for the restoration of violated human rights and freedoms to the state agency, municipal authority, public institution or an official, and in case of discrimination - to a natural person, legal entity, other organisational entity, association of persons without creating a legal entity or entrepreneurial entity, whose actions have led to a violation of human rights and freedoms guaranteed by the state; The above mentioned person, who receives the proposals or recommendations of the Public Defender of Georgia, is obliged to review them and notify the Public Defender of Georgia in writing of the results of the review within 20 days.

The Public Defender has the right, as a plaintiff, to file a lawsuit with the court while performing the function of supervision over the elimination of all forms of discrimination and ensuring equality imposed on him/her by the legislation of Georgia, if a legal entity, other organisational entity, association of persons without creating a legal entity or an entrepreneur has not responded to his/her recommendation or has not shared that recommendation and there is sufficient evidence to prove discrimination.

The Public Defender of Georgia is also entitled to file a lawsuit with the court and demand that the legal entity, other organisational formation, association of persons without creating a legal entity or an entrepreneur implement his/her recommendation, who, according to the Public Defender of Georgia, committed a discriminatory act and did not respond to his/her recommendation or did not share this recommendation.

Under the changes, a lawsuit can be filed in court within 1 year after a person has heard or should have heard about the circumstances that he or she considers to be discriminatory.

A person who considers himself a victim of discrimination has the right to file a lawsuit even if the employment relationship in which the discriminatory act was committed against him is terminated. The court shall make a decision on the confirmation of the fact of discrimination and on the satisfaction of the claim of the victim of discrimination in whole or in part, or on the decision to reject the claim of the victim of discrimination.

Based on the appeal of the Public Defender of Georgia in connection with the discrimination case, the court shall issue a decision on confirmation of the fact of discrimination and implementation of the recommendation issued by the Public Defender of Georgia to a legal entity, other organisational formation, association of individuals without forming legal entity or an entrepreneurial entity, or decision on rejecting the claim of the Public Defender of Georgia.

Applications related to labor rights are reviewed by the Public Defender's Office according to the standard procedure. The application will be reviewed by the relevant

thematic department and as a result of the study, either a letter will be sent to the relevant institution/agency, or a recommendation/proposal of the Public Defender will be issued.

Statistical information about online applications and responses

Year	Statement on labor rights, quantity
2017	77
2018	61
2019	40
2020	54

In total 232

Year	Recommendations issued, quantity
2017	10
2018	4
2019	4
2020	9

The vast majority of the recommendations (except for two related to COVID19 safety and changes in labor legislation) relate to the restriction of labor rights - reinstatement in work, legalization of competitions, violation of rights in employment contracts.

In the framework of the implementation of the Law of Georgia on the “Elimination of All Forms of Discrimination”, the Public Defender of Georgia has examined 31 cases of harassment in the workplace in 2017-2020. In response to the identified violations, 5 recommendations[67] were issued and 3 court friend opinions were submitted[68]. With the recommendations, employers were asked to take specific measures to end/eliminate harassment, to create an equal work environment for employees in accordance with human dignity, and to prevent similar incidents in the future.

From the above, the employers shared and implemented the following recommendations: regulating the terms of disciplinary action and dismissal; Establishing a supervising and monitoring service that ensures timely and effective response to both employee misconduct and employee grievances.

In the opinion of a friend of the court, the Public Defender focused on harassment in labor relations as a form of discrimination; Considered the test of harassment as one form of discrimination and the components that should be taken into account during harassment; The issue of distribution of the burden of proof between the parties in discrimination cases was also discussed.

Up to 250 inspections were carried out by the Labor Inspectorate during 10 months, which includes detection of violations of the principles prohibiting discrimination and appropriate response to them. More specifically, violations of prohibition provisions at the pre-contractual stage were identified. Also, the provisions and mechanisms

[67] Within the framework of the anti-discrimination mechanism, ithe solutions issued by the Public Defender are available: https://ombudsman.ge/eng/gadatsqvetilebebi

[68] Within the framework of the anti-discrimination mechanism, the opinions of a friend of the court submitted by the Public Defender are available: https://ombudsman.ge/eng/sasamartlos-megobris-mosazrebebi

prohibiting discrimination are not widely observed in the internal labor relations documents of organizations/companies.

Also it should be noted, based on the inspectioin conducted by LIO the fact of moral (psychological) harassment in the workplace has not revealed.

As for the transfer of the burden of proof in accordance with the 2018 conclusions and the application of the prima facie principle in case law, in the event of a dispute over non-discrimination under the Labor Code, the burden of proof rests with the employer, if the candidate or employee points to the facts and/or circumstances which creates a basis for a reasonable presumption that the employer has violated the requirement to prohibit discrimination.

In case law, there are often cases when the courts directly refer to one of the most important procedural guarantees when considering discrimination cases, which is the procedure for transferring the burden of proof to the defendant. For example, in one of the cases (Tbilisi Court of Appeal decision of 12 July 2018 in case N2ბ / 6368-17) the plaintiff stated that he had been dismissed on political grounds. In this case, the court was guided by Article 363^{3} of the Civil Code of Georgia and emphasized the transfer of the burden of proof to the defendant. In particular, the defendant was explained the obligation: a) to justify different treatment with objective and reasonable arguments that outweigh the different treatment and would be justified by democratic values; B) Prove the absence of different treatment. Regarding this case, the Appeals Chamber extensively reviewed the relevant case law of the Strasbourg Court and held that "the plaintiff was able to present to the court facts and evidence which give rise to a presumption of discriminatory action against him (discriminatory violation of the right to work), otherwise the defendant was not able to bear the burden of proving the denial of such treatment." Accordingly, the court found that the dismissal was based on discrimination on political grounds.

In another case (Judgment of the Supreme Court of Georgia of March 30, 2018 in the case Nას-238-238-2018) the court explicitly stated that Georgian law stipulates that facts of discrimination must be named by the court (alleged victim of discrimination) in order to create a presumption of the existence of prima facie discrimination. As to the evidence of the said facts, the plaintiff must present the evidences in his possession and the ones to be obtained by him. And the defendant is obliged to present evidence beyond the plaintiff's capacity. Moreover, the fact of discrimination, ex officio by the court, is not an investigative category on its own initiative.

For the purposes of procedural-legal analysis of the burden of proof in the discrimination case, the Court of Cassation was guided by the provisions of Chapter VII^{3} of the Code of Civil Procedure and Article 363^{3}. According to the Supreme Court, “the named procedural norm establishes the obligation of the initiator of the restriction to present evidence to the court and to point to the facts, the analysis of which gives grounds for the presumption of unequal treatment of a person on a certain basis. In compliance with this procedural standard, the defendant's obligation arises: a) to justify different treatment with objective and reasonable arguments that outweigh the different treatment and will be justified by democratic values; B) prove the absence of any ill-treatment.” (Judgments of the Supreme Court of Georgia in the case of

September 9, 2017 Nას-247-235-2017 and in the case of October 11, 2017 Nას-344-322-2017).

In its conclusions, the Committee also requested information on examples of case law, in which Articles 144, 150 and 151 of the Criminal Code of Georgia were used in the context of moral harassment in the workplace. In case law, criminal cases did not have this qualification.
As for the 2018 Committee questions, whether there are any restrictions on determining the amount of compensation to be paid to victims of sexual and moral (or psychological) harassment in the event of moral and material harm, and as for the examples of precedent decisions on compensation for moral (psychological) harassment in the workplace, according to the first part of Article 10 of the Law of Georgia on the Elimination of All Forms of Discrimination, any person who considers himself a victim of discrimination has the right to file a lawsuit against the person/institution who allegedly discriminated against him/her, and to demand moral and/or material compensation for the damage. According to the first part of Article 413 of the Civil Code of Georgia, monetary compensation for non-pecuniary damage may be requested only in cases precisely defined by law in the form of reasonable and fair compensation. According to the case law, the victim has no obligation to prove psychological and moral harm during the harassment, because the latter is considered as the essence of the harassment. In assessing non-pecuniary damage, the courts take into account the victim's subjective attitude towards the severity of such damage, as well as the objective circumstances by which it can be assessed in this regard. Therefore, no restrictions apply when determining the amount of compensation.

One of the precedent cases was considered in the Common Courts of Georgia in 2018 (Judgment of the Tbilisi Court of Appeals of December 12, 2018 in case N2ბ / 1609-18), which was related to sexual harassment. In the present case, the court found that in determining the fair amount of non-pecuniary damage to be inflicted on the offender, it should be borne in mind that the defendant placed the plaintiff in unfavorable conditions, resulting in termination of employment by the employee. Also, it is important that the moral damage caused by the violation of personal non-pecuniary rights has no material equivalent and it is objectively impossible to assess the degree of spiritual pain experienced by a person related to the violation of honor and dignity and compensate it with money. The purpose of compensation is to alleviate the pain caused by moral damage. It is aimed at dispelling negative emotions. The amount of damages should not be unreasonably increased and its purpose should not be to punish the defendant. The court found that the amount for moral damage indicated by the plaintiff - GEL 2,000 is relevant for the purposes of compensation of the moral damage. Accordingly, the claim for damages in the amount of 2000 GEL is well-founded and must be satisfied.

In another case (Tbilisi City Court decision, Case N2.15615-16 of 6 April 2017) concerning discrimination on political grounds, the court made the following important explanations about compensation for moral damages: "Moral damage is caused by the feeling of spiritual and moral pain as a result of discrimination [of the employee], and how this pain is expressed in the amount of money that [the employee] must claim in court, the law does not impose specific criteria, in contrast to the demand for the elimination of the consequences of discriminatory acts and compensation for material damage, the regulatory norms of which are proposed by the legislation of Georgia." It

is noteworthy that moral damage can be directly related to discriminatory treatment and dismissal on its basis, as well as moral damage can occur later, with long-term unemployment, inability to live an active life, lifestyle changes, depression, uncertainty, diminished joy of life, due to the tension, inferiority complex and other factors. Taking into account the discriminatory treatment of the employee, the court considered that imposing the amount of 2000 GEL, or full compensation, for the moral damage on the employer would not be commensurate with the damage, especially when [the employee] has been restored to all violated rights and to some extent It also leads to moral satisfaction (it should also be noted that while the European Court of Human Rights often finds a violation of this or that article of the Convention against the applicant, considers it to be sufficient restitution to recognize the violation of the Convention itself and no longer discusses additional monetary restitution).. Thus, the Court considers it appropriate that [the employer] should be liable for moral damage in the amount of only GEL 500 in favor of the [employee]. In this particular case, the court took into account the fact that the amount does not provide for restoration/restitution of the infringed right, as the damage caused has no monetary equivalent, although for the purpose of compensation, it is possible to alleviate negative feelings of the [employee], provoke positive emotions, which will help him achieve spiritual balance." Based on the above, according to the decision of the city court, the claim of the employee in the part of moral damages was partially satisfied and the employer was ordered to compensate non-pecuniary damages in favor of the employee in the amount of GEL 500 .

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

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

With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that in the undertaking:

a they enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking;

b they are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

The legislation of Georgia provides guarantees for the protection of the trade union worker elected to the trade union body and employed in the main job. In particular, according to the Organic Law of Georgia on Trade Unions (Articles 23-24), a worker elected to a trade union body and not dismissed from a main job may be given free time from industrial activity to perform trade union duties and to do short-term training (to raise qualification) under a collective contract (agreement) in accordance with the specified conditions.

A worker elected to a trade union body or a delegate to a trade union conference or congress shall be exempted from manufacturing activities in order to participate in the work of this body in accordance with the conditions specified in the collective contract (agreement).

It is inadmissible impose the punishment on, to dismiss or transfer to another job the chairperson or member of an elective trade union body employed on the main job at the initiative of the employers, without the prior consent of the trade union body, except in cases provided by the legislation of Georgia.

Also, a worker who has been dismissed from his/her main job due to being elected to a trade union body is given a pre-emptive right to return to his/her previous job (position) or receive an equivalent job (position) after the end of his/her term of office.

An employee elected to the trade union committee (trade committee) of an undertaking, institution, organisation, who has been dismissed from a main job, enjoys the social and labor rights established for the relevant employees of this undertaking, institution, organisation in accordance with the conditions defined by the collective contract (agreement).

An employee elected to a trade union body may not be dismissed at the initiative of the employer within 1 year after the end of his/her term of office, except in cases provided by the legislation of Georgia.

There were no cases/violations related to t**he right of workers' representatives to protection** revealed by the Labour Inspection Office since January 2021.

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

Article 29 – The right to information and consultation in collective redundancy procedures
With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned

The changes in the labor legislation of Georgia in 2020 also touched upon the issue of mass dismissal. According to the Organic Law of Georgia, the Labor Code of Georgia, the procedures for mass dismissal are newly regulated. In particular, according to Article 49, a mass dismissal is considered to be the termination of an employment contract by an employer within 30 calendar days on such grounds as is not conditioned by the employee's personality or conduct or the expiration of the employment contract:

- With less than 10 employees - in an organisation with more than 20 employees but less than 100;
- With less than 10 percent of employees - in an organisation with more than 100 employees.

According to the same article, if the employer plans a mass dismissal, he is obliged to start consultations with the employees' union within a reasonable time (in its absence - with the employees' representatives). Consultations should, at least, include ways and means of preventing mass dismissals or reducing the number of employees to be dismissed, and the possibility of supporting laid-off employees to continue their employment or training.

The employer is obliged to send a written notification to the Minister of IDPs from the Occupied Territories, Labor, Health and Social Affairs and the employees whose employment contracts are terminated at least 45 calendar days prior to the mass dismissal. The employer is obliged to send a copy of the notification sent to the Minister to the employees' union (in its absence - to the employees' representatives). The mass dismissal shall take effect 45 calendar days after the notification to the Minister.

The employer is obliged to inform the employees' union (in its absence - the employees' representatives) in writing of the following information: reasons for the planned mass dismissal, number and category of employees to be dismissed, total number and categories of employees in the organisation, the period of time during which the mass dismissal will take place, the criteria by which the dismissed employees will be selected and compensation will be paid to them. The mentioned information is also sent in writing to the Minister of IDPs from the Occupied Territories of Georgia, Labor, Health and Social Affairs.

In case of non-fulfillment of the obligation imposed by law to the employer, the employees can apply to the court.

The law does not provide for any sanctions for non-compliance with these requirements.