



**LABOUR RIGHTS PROTECTION
AS PART OF THE EUROPEAN
INTEGRATION POLICY –
PERSPECTIVES OF DEVELOPMENTS
WITHIN THE AA, THE VLAP AND
THE SOCIAL CHARTER**

The project was implemented in cooperation with the Friedrich Ebert Foundation. The publication reflects the personal opinions of the authors. It is prohibited to use materials published by the Friedrich Ebert Foundation for commercial purposes without prior consent of the Foundation.

Researchers:



Elza Jgerenaia – The Head of the Labour and Employment Policy Department of the Ministry of Labour, Health and Social Affairs of Georgia. PhD Fellow in Business Administration at Ilia State University.



Ekaterine Kardava – Invited Lecturer at the Caucasus International University. Expert in EU Law. PhD Fellow at the Faculty of Law of the Tbilisi State University.

Project Assistant - Irina Tsertsvadze
Translator - Nino Gabunia
Editor - Ragnar Skre
Publishing House - “Fountain Georgia”

LABOUR RIGHTS PROTECTION AS PART OF THE EUROPEAN INTEGRATION POLICY – PERSPECTIVES OF DEVELOPMENTS WITHIN THE AA, THE VLAP AND THE SOCIAL CHARTER

*1. Legal Regulatory Policy of labour Relations in the framework
of European Integration*
Ekaterine KARDAVA

*2. Administration and Institutionalization Models of Labour Rights
Protection in Georgia and New Practical Approaches in the Framework of
the Visa Liberalization Action Plan (VLAP)*
Elza JGERENAI



Introduction

In 2014, eighteen years after signing the Partnership and Cooperation Agreement (PCA), Georgia and the European Union signed a second agreement: the EU-Georgia Association Agreement (AA, which replaced the PCA and established an association between the parties. As a result of this twenty-year-long integration process, Georgia was recognized as a state with European aspirations. With the Deep and Comprehensive Free Trade Area (DCFTA), the groundwork has been laid for a new and closer political and economic integration which offers a European prospect for the Georgian people, namely a dignified future as a member of the European family. In 2013, prior to the ratification of the AA, the EU offered Georgia a Visa Liberalization Action Plan. Both documents obliged Georgia to integrate and implement European standards in the fields of labour law and employment relationships. It should also be noted that labour law is not only an area subject to regulation by the Association Agreement and the other obligations currently on the agenda, but has also been a matter for discussion in numerous international documents and official talks on the road to European integration. Despite the fact that the labour field in Georgia for many years has been a subject for theoretical and practical research, the following aspects have not been studied even until today:

- ***Description of the labour law requirements within the framework of the EU Integration Policy (PCA, ENPAP) and an assessment of their implementation;***
- ***Within the framework of the EU Integration Policy, an analysis of the history and the dynamic of the content of legislative amendments and an assessment of the approximation of legal activities;***
- ***Description and assessment of the administration and institutionalization process within the framework of the EU Integration Policy;***
- ***Analysis of how the Labour Code of Georgia complies with the European Social Charter;***
- ***Interpretation of goals and objectives of the provisions of the Association Agreement and based on them, a complex rethinking of a policy of activities and changes that are necessary to implement in the labour field;***
- ***Description of activities to be carried out by the Government of Georgia within the VLAP;***
- ***Comparative review how well Georgia's labour legislation complies with directives envisaged by the Association Agreement, as well as a review of the current situation, where we are and what should be done in the future.***

These are the most important issues to study in order to assess the current situation in the field of labour law in Georgia. By analysing them will provide a picture of how Georgian labour legislation approximates European standards *in terms of the political, legal or practical contexts*. It will make clearer the following:

- If a publicly declared will regarding the European integration was/is in compliance with the process of legal approximation, if these two aspects were/are in compliance with each other;
- The stage of the regulation policy of labour relations in regard to European standards;
- Obstacles that Georgia currently faces in the labour field.

This study highlights not only circumstances revealed as a result of the comparative method, but also the process of legal approximation and its dynamic in order to better understand policy, mechanisms, speed and quality of the approximation of the Georgian labour legislation with EU legislation.

To achieve the abovementioned goals and objectives, two independent surveys were conducted. The results are presented in this book in two parts:

- 1. *Legal regulatory policy of labour relations within the framework of the EU Integration.***
- 2. *Administration and institutionalization models of labour rights protection in Georgia and new practical approaches within the framework of the Visa Liberalization Action Plan (VLAP).***

It must be noted that in 2012-2013, reform of the labour legislation had been one of priorities of the Government of Georgia. As a consequence, in 2013, amendments were proposed to the Labour Code, which promoted the implementation of European standards in Georgia's normative space. In December 2015, the EU positively evaluated the activities implemented in the labour field within the VLAP.

In the following, a summary and the main findings of both surveys are briefly presented. The study was conducted in Georgian language and published in the form of a book (168 pages), which was handed over to representatives of the executive branch of the Government of Georgia (Ministers, Deputy Ministers), members of the Parliament, public servants, representatives of international and non-governmental organizations, Georgian Employers' Association and representatives of Georgian Trade Union Cooperation and experts.

I. Legal Regulatory Policy of Labour Relations within the Framework of the EU Integration

Ekaterine KARDAVA

The following issues and sub-issues are discussed in the first study:

1. Summary of regulatory policy concerning labour relations within the framework of the Association Agreement and the Association Agenda

- *Association Agreement*
- *Association Agenda*
- *Annual National Action Plans for the Implementation of the Association Agreement and the Association Agenda*

2. EU Labour Law

- *Historical context and the dynamic of the engagement and the development of the social policy in the EU legislation*
- *Treaty on European Union (TEU) and Treaty on the Functioning of the European Union (TFEU)*

3. Dynamic of the development of the regulatory policy concerning labour relations – the road from the PCA to the AA

- *General overview of the normative environment ensuring EU integration processes and the implementation of the legislative approximation*
- *Dynamic of the assessment of undertakings that the labour legislation is facing and implementation of these undertakings*

4. Comparative review of some aspects of the Georgian Labour Code and the EU legislative acts (Directives)

- *Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees on the conditions applicable to the contract or employment relationships*
- *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*
- *Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding*
- *Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States related to collective redundancies*
- *Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses*

5. Reviewing the compliance of some aspects regulated by the Labour Code of Georgia with the European Social Charter

➤ ***The Association Agreement¹, the Association Agenda² and the Annual National Plans:***

Before the AA began to be implemented in the field of labour legislation, a) the goals and objectives of the AA must be studied and b) AA provisions must be interpreted. Provisions regulating the labour field are structurally placed under two different titles of the Association Agreement, namely the Trade and Social Policy:

¹ Association Agreement between the European Union and the European Atomic Energy Community and their Member States, on the one part, and Georgia, of the other part, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ.L:2014:261:FULL&from=EN>

² Association Agenda between the European Union and Georgia, http://eeas.europa.eu/archives/delegations/georgia/documents/cap_aa/associationagenda_2014_en.pdf

1. **Chapter 13 of Title IV (DCFTA) – Trade and Sustainable Development** In the part related to the DCFTA, the importance of interconnection between three segments: trade, decent work and environmental protection are highlighted. Pursuant to article 235, *the Parties recognise that it is inappropriate to encourage trade or investment by lowering the levels of protection afforded in domestic environmental or labour law.* By unifying this especially important trio, the Association Agreement is focused on the policy of sustainable development as a part of a global approach.

2. **Chapter 14 of Title VI – Employment, Social Policy and Equal Opportunities.** According to Chapter 14, *the Parties must strengthen their dialogue and cooperation to promote the Decent Work Agenda, employment policy, health and safety at work, social dialogue, social protection, social inclusion, gender equality and anti-discrimination, and corporate social responsibility and thereby contribute to the promotion of more and better jobs, poverty reduction, enhanced social cohesion, sustainable development and improved quality of life.*

Specific mechanisms contributing to the goals mentioned above are presented in the form of EU legislative acts in the **Annex XXX** to the Association Agreement, which itself is divided into three parts:

a) *Labour law (8 directives. Implementation period - 4-6 years)*

b) *Anti-discrimination and gender equality (6 directives. Implementation period - 3-4 years)*

c) *Health and Safety at Work. (26 directives. Implementation period - 5-9 years)*

Provisions of the directives of the first and the second parts represent universal norms and are related to all forms of labour relations. The directives of the third part regulate relationships characteristic of a specific field and technical standards to be applied for these relationships.

To gradually implement the Association Agreement, the Association Agenda for 2014-2016 was approved. In this document, the labour field is discussed in three main policy areas:

1. **In the part of the trade union rights and core labour standards (2.1) in the Political Dialogue and Reform block it is mentioned that** amendments to the Labour Code adopted by the Parliament of Georgia in June 2013 shall be implemented in line with ILO standards. The new law should be strengthened with new institutions and procedures for resolving disputes and developing a negotiation culture, which involves creating a mediation centre. Focus should be on improving safety in the working environment. An effective social dialogue must be established, including through systematically convening the Tripartite Commission.

2. **In the part related to the trade and trade-related matters (2.4) in the Trade and Sustainable Development block,** it is mentioned that *the Parties will engage in a dialogue on the issues covered by the Chapter on Trade and Sustainable Development of the envisaged Association Agreement, in particular by exchanging information on the implementation of the Labour Code, as well as implementation of commitments related to sustainable development;*

3. **In the part related to employment, social policy and equal opportunities (which is included in the block related to other fields of cooperation – 2.6)** it is mentioned that the Parties will cooperate in order to prepare for the implementation of the EU laws in the areas, such as health and safety at work place, labour law and working conditions, gender equality and antidiscrimination; the establishment of an effective labour inspection system; building capacity of social partners; and the development of a strategic approach to the employment. **In order to effectively fulfil undertakings defined by the Association Agreement and the Association Agenda, the Government of Georgia adopts the National Action Plan on an annual basis.**

The 2014 National Action Plan³ For the purpose of the implementation of the objectives set forth in Article 348, Chapter 14, Title VI of the AA, the following obligations were set:

³ Approved by the Decree №1516 of the Government of Georgia of 3 September 2014, the National Action Plan for the Implementation of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part and Association Agenda Between the European Union and Georgia, http://www.eu-nato.gov.ge/sites/default/files/AA%20Action%20Plan-2014-Final-ENG_0.pdf

Drafting the bills on Employment, bill on Labour Protection and Hygiene and bill on Labour Migration on the basis of the EU legislative acts (directives) stated in Annex XXX.

The 2015 National Action Plan⁴ defined the adoption/implementation of the Labour Market Information System (LMIS) concept, drafting of the bill on Occupational Health and Safety, and the adoption of the action plan on the National Strategy of the Labour Market.

The 2016 National Action Plan⁵**envisaged the following:** Revision/discussion of the format of the Tripartite Social Partnership Commission together with social partners and the implementation of relevant legislative amendments; discussion of the issue of compulsory endorsement of the number of ILO Conventions; drafting the bill on occupational health and safety together with interested parties and submitting it to parliament for adoption; gradual revision of the national legislation in accordance with the directives listed in Annex XXX of the Association Agreement on Health and Safety at a Workplace within the defined timeframe (preparing draft laws by reflecting requirements of six directives); monitoring the implementation of the ILO conventions ratified by Georgia, including the assessment of the provisions of the Organic Law of Georgia the Labour Code of Georgia; drafting recommendations and, if necessary, preparing a package of relevant amendments. The development and approval of the concept of an active labour market policy on the basis of EU policy; adoption of state programmes for, *inter alia*, Labour Market Analysis, Introduction and the Development of the Information System.

The term of activities set for 2016 has not expired yet, however, the following can be said regarding undertakings defined by the 2014-2015 National Action Plans:

- In 2014, the bill on Labour Migration was drafted. In April 2015, it was adopted by the Parliament of Georgia.
- In 2014, the law on the Employment was not adopted. This undertaking was not reflected in the National Action Plan of the following year.
- From the 2014 undertakings, the draft law on Occupation safety and Hygiene had not been submitted for the consideration.
- Within the framework of the 2015 undertakings, the state programmes on (1) Labour Market Analysis and the Introduction and the Development of the Information System and (2) the Assistance to the Employment were introduced.
- The 2015 undertaking on drafting a bill on Occupation Safety and Health was not fulfilled. This undertaking was included in the 2016 National Action Plan.
- In 2016, the Labour Market Active Policy Strategy and its Implementation Action Plan for 2016-2018, the State Program for the development of the Labour Market Analysis and Information System, the State Programme for Labour Conditions Inspection 2016 and other documents were adopted.

Based on few examples provided above, it is clear that in some cases, the undertakings are met, while in some cases they are not. In addition, in some cases, the plans are not implemented within the set term. The assessment of the abovementioned components in a dynamic allows us to make a logical and reasonable conclusion: There is a fragmented approach with regard to the labour regulation policy. Complex and systemic comprehension is necessary. Goals, objectives and specific obligation of the Association Agreement, the notion and the methods of the gradual and dynamic approximation, an

⁴ Approved by the Decree №59 of the Government of Georgia of 26 January 2015, the 2015 National Action Plan for the Implementation of the Association Agreement between Georgia, on the one part, and the European Union and the European Atomic Energy Community and their Member States, on the other part and the Association Agenda between Georgia and the European Union, <http://www.eu-nato.gov.ge/en/eu/association-agreement>

⁵ Approved by the Decree №382 of the Government of Georgia of 7 March 2016, the 2016 National Action Plan for the Implementation of the Association Agreement between Georgia, on the one part, and the European Union and the European Atomic Energy Community and their Member States, on the other part, and the Association Agenda between Georgia and the European Union, <http://www.eu-nato.gov.ge/sites/default/files/AA%20NAP%202016%20ENG.pdf>

interaction between the activities/events set in the Annual Action Plans, the Association Agreement and the Association Agenda shall be thoroughly and properly analysed. It is necessary to apply a strategic-conceptual approach and tactics of the scheduled, gradual and dynamic approximation, also to conduct an overview of the tools and the mechanisms of the administration and the institutionalism within the framework of financial resources of the State and a preliminary analysis of the outcomes as a result of the influence on the market. As a result, the approximation policy will be effective, continuous, uninterrupted and fruitful.

➤ **The dynamic of the development of the labour relation regulation policy – the road from the PCA⁶ to the AA:**

The Association Agreement is a legally binding act. In the framework of the abovementioned agreement, Georgia is positively “forced” to regulate labour relations. It must be noted that the approximation of Georgian legislation with EU legislation and the integration of the provisions of the ILO conventions into Georgian legislation is not only today’s agenda. *The first foundation of the legal cooperation between Georgia and the EU was established by the Partnership and Cooperation Agreement (PCA)*, which, similar to the Association Agreement, considered both trade-economic and social aspects in the framework of the parallel and dynamic development. It is underlined that reforms that need to be implemented in regard to the social cooperation should be aimed at the development of safety standards, which is characteristic of a market economy and includes all areas of social protection.

The implementation of PCA required the introduction of domestic legal instruments and the formation of an adequate normative environment. For this purpose, the country started to adopt normative acts that would ensure the development of EU integration processes and the legal approximation policy: *The adoption of the Resolution by the Parliament of Georgia on Harmonisation of the Georgian legislation with the EU Laws was essential and first in this respect.* Pursuant to this resolution, “*all laws and normative acts adopted by the Parliament since 01 September 1998 shall be in compliance with the standards and the rules established by the European Union.*” In 2000, the President of Georgia issued the Decree on the Promotion of the Implementation of the Partnership and Cooperation Agreement between Georgia and the EU and the Decree on the Strategy of the Harmonisation of the Georgian Legislation with the EU Laws. Pursuant to this decree, “*Until 01 February 2001, relevant ministries and agencies shall prepare notes on the document prepared by the Georgian-European Policy and Legal Advice Centre (GEPLAC): Recommendations for the Strategy of the Harmonisation of the Georgian Legislation with the EU Laws and proposals regarding this strategy*”. **In 2001, the decree on the Strategy of the Harmonisation of the Georgian Legislation with the EU Laws was adopted. It approved the National Harmonization Strategy** and instructed the Commission for the Promotion of the EU Partnership and Cooperation to *draft the National Program for the Harmonization of the Georgian Legislation with the EU legislation.* In 2004, the Decree on the Unified Action Plan for the Implementation of the National Program for the Harmonization of the Georgian Legislation with the EU Laws and the Elaboration of the New Agenda on the EU Cooperation was adopted. The document approved ***the National Harmonization Program – Guideline Principles for the action plan*** and it was decided to prepare the *Unified Action Plan for the Implementation of the National Plan* in cooperation with the GEPLAC. *A separate chapter was dedicated to the field of the labour law, where*

⁶ Partnership and Cooperation Agreement between the European Communities and their member states, on the one part, and Georgia, on the other part of 22 April 1996, entered into force in 1999, http://ceas.europa.eu/archives/delegations/georgia/documents/eu_georgia/eu_georgia_pca_en.pdf

⁷ The consultation centre established in Georgia within the framework of the GEPLAC is an assisting instrument of legislative and economic reforms. Since 1997, it has been consulting the Ministries of Georgia and other state bodies. It became one of the coordinating bodies that leads a harmonization process of the legislation. It also consults the State Commission.

the comparative review of the compliance of the Georgian labour legislation with the EU laws, as well as recommendations regarding necessary legislative amendments were presented. As a result, the National Harmonization Program included provisions of the directives, which had to be integrated in the Georgian legislation. It shall be highlighted that some of those directives currently are included in the Annex XXX of the Association Agreement. In 2004, Georgia became a beneficiary of the European Neighbourhood Policy, and in 2005, negotiations started on drafting the individual action plan necessary for actively including Georgia in the European Neighbourhood Policy. To this end, numerous normative acts were adopted. ***In 2006, the European Neighbourhood Policy Action Plan*** was prepared and from the same year, Georgia started its implementation. **Since 2007, the EU Commission has been annually evaluating the ENP AP implementation by the country.**

The history of the formation and the establishment of the abovementioned normative environment demonstrates the will, which had to gradually resulted in the legal approximation process in the field of the labour law. The systematization of the normative acts adopted/approved with the purpose of the promotion of the EU integration processes is important for understanding the compliance and the correspondence of the development of the publicly declared foreign policy and the policy for pro-European regulation of the labour legislation.

For the time, when GEPLAC experts, in cooperation with the State Commission analyzed the existing legislation (Labour Code adopted in 1973), they in parallel studied the draft Labour Code, which had to replace the old law. The new Code had to take into account new realities of the labour market and labour relations, the current socio-economic situation and, at the same time, requirements of the EU laws and European standards. Of course, as a result of the analysis, recommendations were prepared that had to be reflected in the new Code. Despite the fact that the new law included many universally recognized principles in the labour field and implemented new institutions relevant to the modern labour market, it was still far from the standards set by the EU laws. It did not take into consideration results of the experts' analysis, ignored the recommendations and somehow created a problem related to the pro-European regulation of labour relations.

The adoption of the new Labour Code coincides with the period when Georgia became the beneficiary of the European Neighbourhood Policy. On the basis of the PCA, recommendations regarding the labour field were included in the ENP AP too. ***The annual assessment report on the ENP AP implementation by Georgia and the current situation in the country*** drafted by the EU (EU Commission) described the existing situation and underlined the following problems according to the years:

2007: Georgia has opted for total liberalisation of employment and labour relationships in which the market is the single regulator. There is a predominance of the long-term unemployment. A lack of effective employment and labour market policies and disrupted social safety nets has exacerbated labour market distortions. The 2006 Labour Code, which was prepared without prior consultation with trade unions, is not in line with the International Labour Organisation (ILO) standards. Furthermore, the labour code contradicts both the EU standards and the European Social Charter ratified the country in July 2005. No progress can be reported with regard to the social dialogue.⁸

2008: As to labour legislation, labour rights and social dialogue, Georgia declared readiness for launching more intensive cooperation between social partners, but no concrete measure has been conducted. No amendment has been made to the Labour Code.⁹

⁸ Commission staff working document accompanying the communication from the Commission to the Council and the European Parliament 'Implementation of the European Neighbourhood Policy in 2007 Progress Report Georgia, Brussels, 03 April 2008, SEC (2008) 393, p.11, <http://www.eeas.europa.eu/delegations/georgia/eu_georgia/political_relations/political_framework/enp_georgia_news/index_en.htm>

⁹ Commission staff working document, 'Implementation of the European Neighbourhood Policy in 2008, Communication from the Commission to the Council and the European Parliament interim Progress Report Georgia, Brussels, 23 April 2009, p.15, <http://eeas.europa.eu/delegations/georgia/documents/eu_georgia/enp_progressreport2008_ka.pdf>

2009: With regard to the employment, Georgia has no specific employment strategy in place and no employment agency. Following a joint statement issued by the International Labour Organisation (ILO) and Georgia in October 2008, a number of consultations were held during the reporting period between representatives of the Government, the trade unions and the Association of Employers. The aim of the consultations was to review the Labour Code provisions, which were not in line with the ILO Conventions on core labour standards. The social dialogue of October 2009 led to the issuing of a Decree institutionalising the tripartite National Social Dialogue Commission in November 2009.¹⁰

2010: Challenges remain with regard to Freedom of Association, labour rights, and employment. The ILO expresses its concern with regard to the implementation of the conventions. Georgia has no employment strategy. There is no employment agency as well. It is essential to amend the Labour Code and the Law on Trade Unions.¹¹

2011: The issue of labour rights continues to be a serious concern, including the insufficient implementation of core ILO conventions. Whereas in 2011 the progress was made in the dialogue of Georgia with the ILO and certain recommendations, Georgia is still expected to address several of them, notably with regard to legislative amendments to the Law on Trade Unions and the Labour Code.¹²

2012: Labour rights have been identified as one of the principal challenges faced by the new Government. Previous reports noted an absence of the substantive social dialogue, and the perception that the authorities were obstructing activities of trade unions and putting pressure on trade union members. However, the new Government has made a commitment to bring labour legislation into line with international and European standards and to work closely with the ILO and other partners to this end. The ILO was closely involved in preparing revisions of the Labour Code, which is a significant positive development. The quality of social dialogue has also been enhanced; in December 2012, the Parliament adopted a law institutionalising the Tripartite Social Commission under the chairmanship of the Prime Minister.¹³

2013: A new Labour Code in line with the ILO standards was adopted. This had been a longstanding EU request, but its proper implementation remains problematic. All International Labour Organization (ILO) standards-related provisions were properly adopted, which means that the Labour Code is now complying with the ILO Conventions.¹⁴

2014: The institutional arrangements to protect labour rights remained unchanged. There is a broad consensus between the Government and the social partners about work safety inspections, but the creation of broader labour inspections (linked to the AA/DCFTA) remained a contentious issue.¹⁵

¹⁰ Commission staff working document accompanying the communication from the Commission to the European Parliament and the Council taking stock of the European Neighbourhood Policy (ENP) Implementation of the European Neighbourhood Policy in 2009, Progress Report Georgia Brussels, 12/05/2010 SEC(2010) 518, p. 10, http://www.eeas.europa.eu/delegations/georgia/documents/eu_georgia/progress%20report_en.pdf

¹¹ Commission staff working document on the implementation of the European Neighbourhood Policy in 2010, Progress Report Georgia, Commission, EU High Representative on Common Foreign and Security Policy, Brussels, 26 May, 2011, p.3, p. 12, http://eeas.europa.eu/delegations/georgia/documents/eu_georgia/enp_progressreport_2010_ka.pdf

¹² Joint staff working document implementation of the European Neighbourhood policy in Georgia progress in 2011 and recommendations for action accompanying the document joint communication to the European parliament, the Council, the European economic and social committee and the committee of the regions delivering on a new European Neighbourhood policy, Brussels, 15.5.2012 swd(2012) 114, p. 8-9, http://eeas.europa.eu/delegations/georgia/documents/news/enpprogressreport_2011_en.pdf

¹³ Joint staff working document Implementation of the European Neighbourhood Policy in Georgia Progress in 2012 and recommendations for action Accompanying the document joint communication to the European Parliament, the Council, the European Economic and Social committee and the committee of the regions, Brussels, 20.3.2013 SWD(2013) 90, p.7, http://eeas.europa.eu/enp/pdf/docs/2013_enp_pack/2013_progress_report_georgia_en.pdf

¹⁴ Joint staff working document, implementation of the European Neighbourhood policy in Georgia progress in 2013 and recommendations for action accompanying the document joint communication to the European Parliament, the Council, the European economic and social committee and the committee of the regions, Brussels, 27.3.2014 SWD(2014) 72, p.9, 13, http://eeas.europa.eu/enp/pdf/2014/country-reports/georgia_en.pdf

¹⁵ Joint staff working document Implementation of the European Neighbourhood Policy in Georgia Progress in 2014 and recommendations for actions Accompanying the document joint communication to the European Parliament, the Council, the European economic and social committee and the committee of the regions, Brussels, 25.3.2015 SWD(2015) 66, p. 8, http://eeas.europa.eu/enp/pdf/2015/georgia-enp-report-2015_en.pdf

The assessments stated above suggest that within a certain time period, the labour legislation was in the stagnation condition. This suggests that in the field of the labour law, the dynamic and gradual legal approximation did not take place and the challenges faced by the country were not met from year to year in spite of the firm publicly declared will regarding the EU integration policy.

With regard to the assessment of the labour legislation, a new stage started in 2012-2013, when the amendments were proposed to the Labour Code of Georgia. The notes of the ENP AP assessment document that the Labour Code was approximated to the international standards coincide with exactly the same time period. However, the issue of the establishment of the institution, which will supervise the execution of the Law, is still a problem.

➤ **Comparative review of some aspects of the Georgian Labour Code and the EU legislative acts (Directives)**

As the labour field represents one of the priorities of the Association Agreement and the EU integration processes, it is necessary to compare Georgia's Labour Code with EU laws. The survey discusses several directives and their compliance with the provisions of the Labour Code. The comparative review covers the current situation regarding the regulation of labour relationships in Georgia and highlights some issues that require legislative amendments.

▪ **COUNCIL DIRECTIVE 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies¹⁶**

The deadline for the implementation and the integration of the Directive in the Georgian legislation is five years (2019). As labour relations are a part of not only social policy, but also criteria for the development of the economic policy, the Directive highlights the importance of the maximum effort for the protection of employees in case of collective redundancies while taking into account the need for a balanced economic and social development.¹⁷

For the purposes of this Directive, *collective redundancies* mean dismissals effected by an employer for one or more reasons not related to the individual workers concerned where, according to the choice of the Member States, the number of redundancies is:

(i) either, over a period of 30 days:

— at least 10 in establishments normally employing more than 20 and less than 100 workers,

— at least 10% of the number of workers in establishments normally employing at least 100 but less than 300 workers,

— at least 30 in establishments normally employing 300 workers or more,

(ii) or, over a period of 90 days, at least 20, whatever the number of workers normally employed in the establishments in question.

Pursuant to the Directive, *information and consultation* play an important role. Therefore, when the employer decides to carry out collective redundancies, s/he shall start consultations with the representatives of the employees within a reasonable term with the purpose of achieving agreement. These consultations shall, at least, cover ways and means of avoiding collective redundancies or reducing the number of workers affected, and of mitigating the consequences by recourse to accompanying social measures aimed, *inter alia*, at aid for redeploying or retraining workers made redundant.¹⁸

In order to allow the representatives of the employees to work out constructive proposals, the employers shall in good time during the course of the consultations:

(a) supply them with all relevant information and

(b) in any event notify them in writing of:

¹⁶ <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1465201380616&uri=CELEX:01998L0059-20151009>

¹⁷ *Ibid*, Preamble 2.

¹⁸ *Ibid*, Article 2.2.

- (i) the reasons for the projected redundancies;
- (ii) the number and categories of workers to be made redundant;
- (iii) the number and categories of workers normally employed;
- (iv) the period over which the projected redundancies are to be effected;
- (v) the criteria proposed for the selection of the workers to be made redundant in so far as national legislation and/or practice confers the power therefor upon the employer;
- (vi) the method for calculating any redundancy payments other than those arising out of national legislation and/or practice.¹⁹

As for the Labour Code of Georgia and its regulating norms, it does not include **the notion of collective redundancies**, however, **the Code regulates cases of massive layoffs**.²⁰

1. *Massive layoffs should be considered cases when at least 100 employees' labour agreements are terminated;*
2. *The ground for Massive layoffs could be economic circumstances, technological, or organisational changes requiring downsizing;*
3. *In case of Massive layoffs, labour agreements are terminated within 15 calendar days;*
4. *Employers shall be obliged to notify in writing the Ministry of Labour, Health, and Social Affairs of Georgia and the employees whose labour agreements are terminated, at least 45 calendar days before the massive layoffs.*

Except the abovementioned note, the regulating framework for collective redundancies is not presented in the Georgian legislative space. Undoubtedly, it is not enough and is far from the standards set by the Directive. The abovementioned is problematic in regard to employees' protection and does not meet the principles of a decent and safe employment. Moreover, such an approach does not envisage the concept of a balanced economic and social policy.

■ Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationships²¹ The term of the implementation of the directive is 4 years upon entry into force of the Agreement (i.e. 2018)²². Its goal is to establish relevant legislative flexibility as a response to new job forms and new employment relations types and new realities on the labour market, for the purpose of protecting the employees. In particular, it concerns an obligation to notify an employee regarding terms and conditions of the agreement in writing not later than two months after the commencement of the employment. The Directive clearly defines which employment relationships it covers and which not. In addition, it also clarifies cases of the modification of employment relationships/agreements and a list of the essential aspects of the contracts and employment relationships²³.

¹⁹ Ibid Article 2.3.

²⁰ Article 381, Labour Code of Georgia, consolidated version, <https://www.matsne.gov.ge/en/document/view/1155567>

²¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1474526910812&uri=CELEX:31991L0533>

²² the entrance into force of the temporary use of the Association Agreement was defined and the list of the chapters and annexes that came into force was made; it is to be mentioned that the Annex XXX was covered by this framework and the term identified for each Directive shall be counted from 1 September 2014, while the agreement shall full come into force on 01 July 2016.

²³ Article 2.2.

An employer shall be obliged to notify an employee to whom this Directive applies, of the essential aspects of the contract or employment relations

- (a) the identities of the parties;
- (b) the place of work; where there is no fixed or main place of work, the principle that the employee is employed at various places and the registered place of business or, where appropriate, the domicile of the employer;
- (c) (i) the title, grade, nature or category of the work for which the employee is employed; or
- (ii) a brief specification or description of the work;
- (d) the date of commencement of the contract or employment relations;
- (e) in the case of a temporary contract or employment relations, the expected duration thereof;
- (f) the amount of paid leave to which the employee is entitled or, where this cannot be indicated when the information is given, the procedures for allocating and determining such leave;
- (g) the length of the periods of notice to be observed by the employer and the employee should their contract or employment relations be terminated or, where this cannot be indicated when the information is given, the method for determining such periods of notice;
- (h) the initial basic amount, the other component elements and the frequency of payment of the remuneration to which the employee is entitled;

Despite the fact that the amendments proposed to Labour Code in 2013 mostly regulated issues related to the form²⁴ and essential conditions of the employment contract,²⁵ approaches, standards and numerous aspects defined by the Directive are not reflected in the Labour Code. For instance, the employer is not obliged to notify the employee in writing regarding essential aspects of the agreement within two months of the commencement of work.

▪ **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**²⁶

The Directive is to be implemented within a term of six years (2020). Its goal is to regulate issues related to working time that set a minimum standard for health and safety. The Directive regulates the following issues: a minimum rest period during a day and a week, annual leave, breaks, the maximum weekly working time, the length of night work and shift work.

Rest and Break:

Pursuant to the Directive, the member States shall take measures necessary to ensure that every worker is entitled to a minimum *daily rest* period of 11 consecutive hours per 24-hour period²⁷. During the week or the seven-day period, every worker is entitled to a minimum uninterrupted rest period of 24 hours, plus the 11 hours' daily rest²⁸. The Labour Code of Georgia defined 12 hours as the minimum daily rest period. However, other details regarding working time are not included in the Code. For instance, the Code says nothing regarding the minimum uninterrupted rest period of 24 hours during the week.

Working Hours:

The Directive defines the maximum working time per week as part of ensuring the protection of workers' health and safety. The average working time for each seven-day period, including overtime, must not exceed 48 hours²⁹. The notes of the Labour Code of Georgia regarding working hours are still subject to dispute and controversy. Pursuant to the Labour Code of Georgia, *the duration of working time shall not exceed 40 hours*, whereas, *in companies with specific operating conditions*, where the manufacture/work process requires more than eight hours of continuous work, *the working time shall not exceed 48 hours a week*.³⁰ Overtime work shall be deemed the work performed by an employee with the agreement of the parties in the period of time, the duration of which exceeds 40 hours a week for an adult.³¹ The Labour Code of Georgia did not define the upper limit of the working period, including the overtime work; i.e. any work time which exceeds 40 hours will be considered overtime. At the same time, legislators defined the standard working

(i) the length of the employee's normal working day or week;

(j) where appropriate;

(i) the collective agreements governing the employee's conditions of work;

or

(ii) in the case of collective agreements concluded outside the business by special joint bodies or institutions, the name of the competent body or joint institution within which the agreements were concluded.

²⁴ A labour agreement shall be concluded in writing if labour relations last for more than three months, Organic Law of Georgia - Labour Code of Georgia, consolidated version, Article 6.11, <https://www.matsne.gov.ge/en/document/view/1155567>

²⁵ Ibid, Article 6.9.

The essential terms of a labour agreement shall be:

a) the date of work commencement and the duration of labour relations

b) the work time and rest time

c) the workplace

d) the position and type of work to be performed

e) the amount of labour remuneration and the payment procedure

f) the procedure of compensating for overtime work

g) the duration of paid and unpaid leaves of absence and the procedure for granting leaves of absence.

²⁶ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0088&rid=1>

²⁷ Article 3.

²⁸ Article 5.

²⁹ Article 6.B.

³⁰ Article 14.1. of the Labour Code of Georgia, consolidated version, <https://www.matsne.gov.ge/en/document/view/1155567>

³¹ Ibid, Article 17.3.

time for certain enterprises as a 48-hour working period during which overtime work is not considered, and for these enterprises therefore, overtime will be calculated as the time that exceeds the 48-hours period.

Annual Leave:

Regarding annual leave, the Directive sets a minimum of one four-week-long annual leave period.³² According to Georgia's Labour Code, an employee has the right to enjoy paid leave for at least 24 working days per annum.³³ **The minimum 4 weeks paid period defined in the Directive means 28 paid days including non-working days during the leave period** (pursuant to common practice, Saturday or Saturday and Sunday). Pursuant to the Labour Code, paid leave covers **24 working days, not including days off**. This Labour Code norm does not comply with the minimum standard of the Directive. For reasons of comparison, paragraph one of Article 41 of Georgia's Law on Public Service states that: ***paid leave amounts to 30 calendar days annually***, which is in compliance with the minimum standard defined by the Directive (i.e. paid 4 weeks' period).

- **COUNCIL DIRECTIVE 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)**³⁴

There is set a 4-year term for implementing the Directive in Georgian legislation (2018). The woman represents a specific subject of protection in the employment relationships. Therefore, the goal of the Directive is to establish special regulations for the protection of health and safety of employed women who are particularly at risk. Taking into account the specific condition of the woman in question, the Directive defines three stages: a ***pregnant worker, a worker who has recently given a birth, and a worker who is breastfeeding***.³⁵

Maternity Leave:

Pregnant workers, workers who have recently given birth or who are breastfeeding are granted the right to maternity leave for ***at least 14 continuous weeks***, allocated before and/or after the delivery.³⁶ Pursuant to the Labour Code, an employee shall be given maternity and parental leave, at the employee's own request, for a total of ***730 calendar days due to pregnancy, giving birth and childcare***. In general, for ***183 calendar days*** out of the maternity and parental leave,³⁷ an employee has a right to be paid, whereas in the event of pregnancy with complications or giving birth to twins, 200 calendar days shall be paid leave; i.e. pursuant to the Labour Code, maternity leave continues for approximately 104 weeks (2 years and 2 months), from which only ***26 weeks (or 28 weeks)*** are paid. The requirement in the Labour Code significantly exceeds the minimum standard, defined by the Directive, but the duration defined by the law must proportionally protect the defined benefit by providing financial guarantees and financial measures. If all the components are taken into consideration, it would make the implementation of the goal and the objectives of the Labour Code effective and efficacious.

Night Work:

Pursuant to the Directive, Member States must ensure that pregnant workers, workers who have recently given birth and workers who are breastfeeding are not obliged to perform night work during their pregnancy and for a period following childbirth. The length of this

³² Article 7, DIRECTIVE 2003/88/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 04 November 2003 concerning certain aspects of the organization of the working time, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0088&rid=1>

³³ Article 21.1. of the Labour Code of Georgia, consolidated version, <https://www.matsne.gov.ge/en/document/view/1155567>

³⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:01992L0085-20140325&rid=1>, amendments proposed on the basis of the Directive 2007/30 of 20 June 2007 and 2014/27 Directive of 27 February 2014

³⁵ Ibid, Article 2.

³⁶ Ibid, Article 8.1.

³⁷ Article 27 (1,2), Labour Code of Georgia, consolidated version, <https://www.matsne.gov.ge/en/document/view/1155567>

period is up to the national authority competent for safety and health to determine, and it must be implemented according to the procedures based on a medical certificate. According to the national legislation or national practice, the following shall be provided: (a) a transfer to daytime work; or (b) a leave from work or an extension of maternity, a leave where such transfer is not technically and/or objectively feasible or cannot reasonably be required on duly substantiated grounds.³⁸ The Georgian Labour Code prohibits *employment of pregnant women, women having recently given birth or nursing mothers, as well as babysitters of children under the age of 3 for a night job without their consent.*³⁹ **Despite the fact that the Code includes a restrictive norm, there is no protective norm for cases when a woman’s job and job functions are connected to night work, which may be harmful for her. In addition, the Code does not include an obligation for the employer to take specific measures.**

Ante-natal examinations

Pursuant to the Directive, pregnant workers shall be entitled to, in accordance with national legislation and/or practice, time off, without loss of pay, in order to attend ante-natal examinations, if such examinations have to take place during working hours.⁴⁰ There is no norm with a similar content in Georgia’s Labour Code, but pursuant to Paragraph 5 of Article 41¹ of its Law on Public Servants, *“Hours of absence from work of public employees due to medical examinations during pregnancy shall be considered as valid and they shall maintain their salary if they submit appropriate documents confirming the medical examination.”*

▪ **COUNCIL DIRECTIVE 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States related to safeguarding employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses⁴¹**

The Directive must be implemented within five years, i.e. by 2019. The Directive underlines that the basis for its adoption is a tendency characteristic of a modern economy: structural changes of enterprises during full or partial transfers or merger of businesses or enterprises. This has impact on the employment and living conditions of employees. There may also take place collective redundancies or bankruptcy of enterprises. It is therefore necessary to safeguard the rights of employees, provide them with information and engage them in consultations about the expected negative outcomes. The implementation of a social dialogue policy will somehow neutralize, alleviate or terminate negative influence through searching for relevant ways, and, in addition, it will promote transparency and protection of process.⁴²

Currently, the issue is not regulated by the Labour Code of Georgia.

➤ **Review of the approximation of some aspects regulated by the Labour Code of Georgia with the European Social Charter⁴³**

Georgia’s ratification of the European Social Charter and its Annex in 2005 preceded the adoption of the new Labour Code in 2006. Georgia recognized some of the provisions of the Charter as mandatory. In the present study, these provisions are checked against the Labour Code for compliance.

▪ **Right to just conditions of work** – Paragraphs 1, 2, 5 and 7 of Article 2 (four paragraphs

³⁸ Ibid Article 7.2.

³⁹ Article 18, Labour Code of Georgia, consolidated version, <https://www.matsne.gov.ge/en/document/view/1155567>

⁴⁰ Article 9, COUNCIL DIRECTIVE 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:01992L0085-20140325&rid=1>

⁴¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1474535240124&uri=CELEX:02001L0023-20151009>

⁴² Ibid, Preamble.

⁴³ EUROPEAN SOCIAL CHARTER (REVISED),

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007cf93>

out of seven) are recognized. The recognition relates to several issues:⁴⁴ To provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit; to provide for public holidays with pay; to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised as a day of rest according to tradition or custom in the country or region concerned; to ensure that workers performing night work benefit from measures which take into account the special nature of the work.

From the recognized obligations, the Labour Code of Georgia does not regulate the issue related to remuneration for public holidays.

▪ **Right to a fair remuneration**– Paragraphs 2, 3 and 4 of Article 4 (three paragraphs out of five) are recognized.⁴⁵ The recognition relates to the following issues: to recognise the right of workers to an increased rate of remuneration for overtime work (subject to exceptions in particular cases); to recognise the right of male and female workers to equal pay for the work of equal value; to recognise the right of all workers to a reasonable period of notice for the termination of employment.

Amendments that Georgia made to the Labour Code in 2013 established more guarantees of remuneration for overtime work. A general rule for compensation for overtime work was developed, with an increased amount of hourly pay rate. However, the issue became a subject of negotiations between the parties. Therefore, the imperative scheme for **the minimum amount** is not specified, for instance: a double amount of the hourly pay rate or something else.

As for the right of women and men to equal salary: pursuant to the Labour Code and numerous other acts, unequal treatment on the basis of various forms of discrimination is prohibited. Therefore, the requirement of the Social Charter is met in the form of substantive norm. However, the real situation should be subject to a separate study to identify what actions and outcomes are most effective related to the prohibition on discrimination.

The amendment to the Labour Code proposed in 2013 regulated grounds and a rule of the termination of the agreement. It strengthened the legal status of employees and made them more protected. One of the requirements was to issue a written preliminary notification of termination. If the employee asks for it, the employer has to substantiate the reason for the dismissal. **As for notifying the employer about the termination of the labour agreement in a reasonable time period:** Pursuant to the Labour Code of Georgia, two forms of preliminary notification and compensation were established:

- 1. When terminating a labour agreement, employers shall be obliged to notify employees about it in writing at least 30 calendar days in advance. Besides, employees shall be granted a severance pay in the amount of at least one month's salary within 30 calendar days after terminating the labour agreement.*
- 2. When terminating a labour agreement, employers may notify employees about it in writing at least three calendar days in advance. In this case, employees shall be granted a severance pay in the amount of at least two months' salary within 30 calendar days after terminating the labour agreement.*⁴⁶

The Labour Code does not differentiate between the notification and the compensation on the basis of the employee's status, functions, length of service, merit and other aspects.

⁴⁴ Pursuant to Article 2, the country has not met following: to provide for a minimum of four weeks annual holiday with pay; 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; 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 relations

⁴⁵ Article 4 is not recognized: to recognize the right of workers to a remuneration such as will give them and their families a decent standard of living.

⁴⁶ Article 38(1,2), Labour Code of Georgia, consolidated version, <https://www.matsne.gov.ge/en/document/view/1155567>

Therefore, it is very difficult to discuss whether it is reasonable to notify the employee regarding the termination of the labour agreement even one month prior to the termination without considering the circumstances of the specific case. The aspects of the relationships, the proportionality and the compliance between the notice period and the issuing of compensation should be discussed while dealing with the particular case.

Notify in 30 calendar days in advance

Grant 1 month's salary

Notify in 3 calendar days in advance

Grant 2 month's salary

▪ ***Right to information and consultation in collective redundancy procedures*** – Article 29 is fully recognized: 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 the recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.

The requirement of the Charter regarding the part that concerns consultations for the purpose of avoiding collective redundancies, mitigating their consequences and applying social means is not regulated by the Labour Code of Georgia (see also reasoning regarding 98/59/EC Directive).

The review of the compliance of the Labour Code of Georgia with the Social Charter makes it clear that in a number of cases, mandatory provisions are included in the Code in the relevant form and content, while, in some cases, the regulation of an area of concern is incomplete or non-existent. However, at the same time, the Code regulates issues that are not yet recognized as mandatory by Georgia. Taking this into account, it is advisable to start an official dialogue regarding the conformity of the Labour Code with the Social Charter and to revise the policy on the recognition of the provisions.

Conclusion

To conclude, this study may be seen as a first attempt to look closer at the regulatory policy in regards to labour relations in a complex and comprehensive manner against the background of EU integration processes, covering all stages of the integration policy and important documents, and both negative or positive developments. By focusing on the pace, quality, periods and results of the legal approximation, we have reviewed and explained the issue from the perspective of EU legal sources, as well as against the background of interstate processes. We have also explained provisions and approaches of the Association Agreement, clarified a range of unfulfilled undertakings, and revealed activities and recommendations that are necessary to implement in the future.

Despite problems with making the Labuor Code comply with European standards, at present, it is clear and there is no doubt that the correct process of the legal approximation has started, which requires continuity and a gradual development.

It is advisable to continue to ground integration process in academic research, public debate, specialist experience and thorough knowledge of the EU integration. The approximation policy, on the one hand, should be oriented towards the protection of the rights of employees as the decent labour represents a mean for enjoying constitutional rights and freedoms and is one of the most important guarantees of justice. On the other hand, it should move at a pace that is compatible with the country's development in terms of industry, trade and economy and trends in the labour market.

II. Administration and Institutionalization Models of Employment Rights Protection in Georgia and New Practical Approaches within the Framework of the Visa Liberalization Action Plan (VLAP)

Elza JGERENAIA

1. Introduction

One of the main purposes of having a state is to ensure a decent living standard for its citizens, where decent and safe work conditions represent one of the essential components. This in turn ensures that there is a productive labour force and, correspondingly, provides the basis for a thriving economy.

There is an ongoing debate in society about how to improve conditions in the workplace, create opportunities for productive employment, eliminate illegal migration, and make political decisions that bring about the best results in terms of employment policy. It must be noted that on the basis of the visa liberalization dialogue, the Government made progressive steps and implemented essential reforms in regard to labour and employment policy. The present study touches upon the issues that were highlighted in the course of the dialogue between Georgia and the EU regarding visa liberalization. In particular, it discusses issues such as mechanisms for labour inspection, regulation of labour migration, an active policy of the labour market aimed at the reintegration of migrant labour force, the implementation of effective and proactive measures to fight trafficking and social dialogue.

The report will review reforms implemented by Georgia in the field of the labour policy. In addition, it will discuss essential challenges that followed the reform.

2. Review of the VLAP and VLAP progress reports – commitments and recommendations from the EU

Before Georgia and the EU began talks about visa liberalization, the country had been through a long and difficult journey. The foundation of Georgia's relationships with the EU was laid with the Partnership and Cooperation Agreement (PCA)⁴⁷, which entered into force on 1 July 1999. Later, on 14 November 2006, the Georgia-EU European Neighbourhood Policy Action Plan was adopted. In 2013, the European Commission submitted the Visa Liberalization Action Plan (VLAP) to the Government of Georgia, which defined undertakings to be fulfilled by Georgia for obtaining a short-term visa-free entrance permit in Schengen countries. The Georgia-EU visa dialogue appeared to be an important and especially effective instrument for the implementation of long-term and difficult reforms, especially in the field of protection of employment rights, labour migration and employment policy.

The Action Plan consisted of four blocks:

- *Document security (including biometrics);*
- *Integrated border management, migration management, asylum;*
- *Public order and security;*
- *External relationships and fundamental human rights.*

Special emphasis was placed on the labour law, especially issues related to the regulation of labour migration and the need for a labour inspectorate.

⁴⁷ "Eastern Partnership and Socio-Economic Policy of Georgia, Tbilisi, 2011, CIESR, CEPR, OSGF/ https://www.osgf.ge/files/publications/EaP_CIESR-Ge.pdf

For the implementation of the sustainable and well-planned reforms, the Action Plan was divided in two tiers of benchmarks - the policy framework (legislation and planning), which was strengthened by more specific benchmarks (effective and sustainable implementation of relevant measures).

On 15 November 2013,⁴⁸ the Commission published its first report on the implementation of the Action Plan on Visa Liberalization by Georgia.⁴⁹ The Second Report was published on 29 October 2014,⁵⁰ and the third report on 8 May 2015,⁵¹ while the forth and last one was released on 18 December 2015.⁵² **The Second Report clearly demonstrated the need for establishing a labour inspectorate.**

The experts who wrote the report for the European Commission offered recommendations about how to safeguard the protection of the rights of employees. These recommendations concerned obligatory measures that had to be implemented by the State and covered the following issues:

- *Revision of the services available for victims of trafficking;*
- **Review of the status, mandate and authority of the labour inspection department to enable it to identify labour exploitation and forced labour and respond to violations;**
- **Taking steps to enhance a proactive, more intensive investigations of all forms of exploitation.**
- **Developing a rigorous approach for tackling the trafficking of women for commercial, sexual, as well as labour exploitation.**

A comprehensive analysis of the implementation process and outcomes of the reforms implemented by Georgia made it clear that, in general, the legislative framework and policy, as well as the unity of institutional and organizational principles and procedures comply with European standards. The authors of the report also underlined the need for implementing a targeted information campaign about the rights and obligations that will apply under a visa free travel regime and rules regulating access to the EU labour market. The final report about the implementation process was published in late 2015, on the basis of monitoring work by the European Commission.⁵³

In order to achieve these benchmarks, Georgia's Health Ministry developed a legislative foundation for labour migration.

Also the report published by the European Commission on 8 May 2015 regarding Georgia's VLAP implementation noted the progressive steps made by the country and the successful implementation of reforms. The report states that Georgia's progress under VLAP's four blocks were significant and demonstrated the country's huge efforts which is the result of coordinated work by the country's government.

According to the report, Georgia implemented legislative and institutional reforms in the designated areas which complied with the best European and international standards. The Commission unambiguously noted Georgia's progress in a remarkably short period

⁴⁸ REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL First Progress Report on the implementation by Georgia of the Action Plan on Visa Liberalization, http://ec.europa.eu/dgs/home-affairs/what-is-new/news/docs/20131115_1st_progress_report_on_the_implementation_by_georgia_of_the_apvl_en.pdf

⁴⁹ European Commission, Migration and Home Affairs, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/international-affairs/eastern-partnership/visa-liberalisation-moldova-ukraine-and-georgia/index_en.htm

⁵⁰ REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Second Progress Report on the implementation by Georgia of the Action Plan on Visa Liberalization http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/international-affairs/eastern-partnership/visa-liberalisation-moldova-ukraine-and-georgia/docs/2_progress_report_georgia_vlap_en.pdf

⁵¹ REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Third progress report on Georgia's implementation of the action plan on visa liberalization https://ec.europa.eu/delegations/georgia/documents/visa/20150508vlap_en.pdf

⁵² REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Fourth progress report on Georgia's implementation of the action plan on visa liberalisation <http://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-684-EN-F1-1.PDF>

⁵³ Report from the Commission to the European Parliament and the Council, updated in 2015 <http://procurement.gov.ge/getattachment/CooperationInternationalPublic/saertashoriso-angarishebi/1-2015-684-EN-F1-1.PDF.aspx>

of time. The Commission report underlined Georgia's efforts and its work was positively assessed in a joint declaration adopted at the Eastern Partnership Summit in Riga. *On the basis of this recommendation, relevant legislative amendments were elaborated. Based on the amendments, the Labour Inspectorate was granted a corresponding mandate – an authority to carry out supervision for the purpose of the identification and the prevention of forced labour and labour exploitation (trafficking). In line with the EU report, legislative amendments were positively evaluated and the progress was seen in meeting legal and political requirements.*

The Commission report noted that Georgia's progress under four VLAP blocks has been significant and demonstrated the country's strong commitment to fulfilling the designated objectives. This was the result of extensive work and a dedicated, broad effort. A comprehensive analysis of the reforms also bore out that Georgia's systems for creating a legislative and policy framework and its institutional and organizational principles and procedures are in compliance with the best European and international standards.

On 18 December 2015, the Commission published its fourth and final progress report on Georgia's VLAP implementation. According to the assessment carried out by the Commission, Georgia met all the requirements of all four blocks of phase two of VLAP, which meant the successful completion of the technical process of visa liberalization and the successful implementation of all remaining reforms.

The implementation of the undertakings set forth in the VLAP were given the highest priority. Accordingly, significant funds and human resources were allocated in order to ensure the sustainability of the reforms. The EU has contributed to this process through its EU Technical Assistance Project⁵⁴ on the Employment and Professional Education Reform. One of the priorities of the project is to develop and implement educational programmes concentrated on the requirements of the labour market.

3. Labour Migration

Following Georgia's approximation with the EU, works on the legislation regulating the migration field started with the framework of VLAP. The process of establishing a legislative framework was facilitated by the visa dialogue with the EU and VLAP, which was part of this dialogue.

To regulate labour migration, the Parliament of Georgia adopted the Law on Labour Migration in 2015. The main goal of the law is to facilitate the development of legal labour migration and to decrease illegal labour migration and trafficking. Later, on 7 August the same year, the Government issued Resolution #417⁵⁵ on the Rule of the Employment Arrangement and the Implementation of Paid Labour Activity with a Local Employee of a Labour Immigrant (a foreigner without permanent residence permit in Georgia), which regulates the employment of foreign citizens in the country.

In order to effectively manage migration processes, a Memorandum of Understanding was signed between the Labour and Employment Policy Department of the Ministry of Labour, Health and Social Affairs and the Migration Department of the Ministry of Internal Affairs. Relevant state programs were elaborated within the VLAP framework and the

⁵⁴ EUVEGE – EU Technical Assistance to VET and Employment Reforms in Georgia, http://www.eu-ve.ge/EUVEGE_PROJECT_GEO.html Title 14 of the Association Agreement between EU and Georgia, Employment, Social Policy and Equal Opportunities, Article 349: Employment policy, aiming at more and better jobs with decent working conditions, including with a view to reduce the informal economy and informal employment; (c) promoting active labour market measures and efficient employment services, as appropriate, to modernise the labour markets and to adapt to labour market needs of the Parties; (d) fostering more inclusive labour markets and social safety systems that integrate disadvantaged people, including people with disabilities and people from minority groups; (e) equal opportunities and anti-discrimination, aiming at enhancing gender equality and ensuring equal opportunities between men and women, as well as combating discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation; (f) social policy, aiming at enhancing the level of social protection

⁵⁵ The decree of the Government of Georgia #417 of August 2015 (Tbilisi) on Regulations on Employment Arrangement and Paid Labour between a Labour Immigrant (foreigner without permanent residence permit in Georgia) and a Local Employee". <https://matsne.gov.ge/ka/document/view/2941958>

following important issue was highlighted: Employment promotion programs of the Ministry of Labour, Health and Social Affairs and short-term professional training courses (from 3 to 4 months) should be made available for foreigners with a permanent residence permit (if s/ he speaks the national language).

The development of a temporary, or circular, labour migration scheme represents one of the instruments which enhances the functioning of the labour market and has a positive influence on the economy. Similar schemes are ones that promote legal migration and suit the market requirements of other countries, making it easy for migrants to return to their homelands. As a consequence of circular migration, economic opportunities, professional skills, as well as migration experience of Georgian citizens are improved.

In parallel with circular migration, it is important to periodically assess how these schemes influence migrants, as well as those who employ migrants, and also the impact on sending and receiving countries and the affected families. Such an assessment is also important after the implementation of test schemes.

One of the preconditions for creating the investment environment in the country is the existence of a developed labour market and consequently, the existence of the opportunity to attract relevant human resources. Alongside increasing opportunities for legal migration, new legislative acts will allow for access to well-paid work places for Georgian citizens in economically developed countries.

4. Institutional Model of Labour Inspection Mechanisms

Alongside the amendments to the Labour Code made in 2013, active discussions started on the implementation of the mechanisms for the enforcement of the Labour Code. As a result of the abolishment of the Labour Inspection in 2006, the registration of accident statistics was stopped. Thus, the incomplete statistics on industrial injuries and accidents in recent years revealed an alarming condition with regard to employment safety, and highlighted ways for solving the problems in this field.

Since 2013, the Ministry has started working on developing an effective mechanism for ensuring decent conditions in the workplace, beginning with working conditions in enterprises. The establishment of a Labour Inspectorate, taking into consideration new practical approaches within VLAP, represents a case that is different from the experience of other countries. As already mentioned above, before 2006, the Labour Inspection was operating according to Soviet standards. It was abolished and unfortunately, no alternative structure for enforcing the Labour Code was established. The corrupt nature of this institution was named as the reason for the abolishment; however, no reform was carried out in this regard⁵⁶ similar to the road inspection, on the basis of which the patrol police was formed.

Thus, it was decided to develop a state program for monitoring labour conditions for an initial, transitional stage, which would provide the grounds for the recruitment of human resources, for the revision of the legislative basis and the establishment of an institution with European standards. In the course of the development of the abovementioned state program, consultations and recommendations were received from the International Labour Organization and social partners (Georgian Trade Union Cooperation, Georgian Employers' Association, Georgian Microfinance Association, Georgian Small and Medium Enterprises Association). For the transitional stage, in order to conduct inspections of working conditions in companies on a voluntary basis, which means without issuing fines or using other sanctions, it was decided to develop a relevant program.

On the basis of the same program, in order to ensure healthy labour conditions defined by the legislation, it was decided to monitor enterprises on the basis of prior

⁵⁶ Fighting Corruption in Public Services, Chronicling Georgia's Reforms, International Bank for Reconstruction and Development/International Development Association or the World Bank 2012, http://siteresources.worldbank.org/INTGEORGIA/Resources/Georgia_Book_Georgian.pdf

notification. These visits would consist of consultations with employers and employees in order to raise awareness and reveal systemic violations. The material would be analysed in order to develop the relevant standards of occupational safety and health protection and make legislative proposals. Within the framework of the State Program on Monitoring of Labour Conditions, 25 primary and 25 backup inspectors were selected in July 2015 to carry out the monitoring. Their job is to increase employees' and employers' awareness regarding detected violations, inform and consult them on the existing labour law and labour norms on work health and safety. They shall inspect companies in regard to the work safety and health protection; promote execution of the labour law, prevent discrimination in employment relationships, assess the risk related to the violation of labour rights, labour safety and health protection in the organizations, and, on the basis of the evaluation, develop a monitoring plan for these organizations.

The registration of the organizations interested in the program has been successfully started, despite the fact that the vast majority of employers were sceptical about its association to the Soviet legacy of using the inspection system as a means of repression. Involving state enterprises in this program was evaluated as an especially progressive step. As a result, labour conditions were examined in 25 enterprises, and these reports formed the basis for drafting conclusions and recommendations. The private companies also agreed to participate in a similar initiative and the Employers' Association and its management contributed greatly to this. This led to a close cooperation with the EA, and the repeated examination of up to 60 companies that were members, according to the most up-to-date data. As a result of the repeated inspections, significant changes were seen in terms of improving labour conditions.

A prompt response to anonymous notifications about violations of labour rights and labour safety made by employees can be considered a proactive measure implemented by the Ministry, which is followed by inspection and recommendations. Campaigns carried out by the inspectors to raise awareness in enterprises resulted in a positive outcome, which is demonstrated not only by notifications received from the employees during the inspections, but also by the fact that employers wanted to participate in the program.

The approval of the program by the Ministry was followed by the establishment of the Labour Conditions Inspection Department as a structural unit of the Ministry in April 2015. Pursuant to the statute of the Department, a function of the unit was to carry out state supervision on issues related to the implementation of obligations related to work safety and health. In addition, amendments were made to the statute of the Department on the basis of recommendations provided by ILO experts. These amendments introduced a format within the framework of a tripartite council related to the implementation of the inspection. In cooperation with social partners, the work on the draft law on Occupational Safety and Health continues.

For the efficient operation of the Labour Inspection Department, the Ministry of Labour, Health and Social Affairs of Georgia, in cooperation with ILO started preparing amendments to the current legislative and sub-legislative acts and began laying the groundwork for new legislative acts.

Training and retraining of labour inspectors is actively promoted by ILO and the European Agency For Safety and Health at Work (EU-OSHA) within the framework of the EU project EU-VEG⁵⁷.

In 2013, the United States Department of Labour allocated USD 2 million in assistance to Georgia within the framework of the project Improvement of the Labour Legislation Enforcement Mechanism. The Georgian representation to ILO has had intensive cooperation with the Ministry as part of the same project. In addition, it should be noted that

⁵⁷ The Financial Agreement signed between the Government of Georgia and the European Union "Employment and Vocational Education and Training" established within the Framework of the Employment and Vocational Education and Training Sector Coordinating Council was approved on the basis of the decree #2181 of 26 December 2013 of the Government of Georgia. In the following years, sectoral reforms on employment and vocational education and training shall be implemented. The reform will be assisted by the EU sectoral assistance program. The budget of the program is 27 million Euro.

the US Department of State allocated an additional⁵⁸ USD 1 million in assistance⁵⁹, which will improve the GoG's ability to enforce the labour legislation in terms of effectiveness. The establishment of an effective and efficient system is recognized in the ILO program on decent labour and is already included in the Declaration on Social Justice, where the role of all three parties – the state, the employer and the trade unions – are highlighted.⁶⁰

4.1. Results of the State Program on Labour Conditions Monitoring/Inspection

Monitoring of labour conditions that are carried out within the framework of the State Program on the Monitoring of Labour Conditions covered metallurgical, chemical and mining industries, and healthcare, catering, landscaping, transportation, energy, education and other service fields. As a result of the monitoring, various violations were detected in the fields of labour safety and occupational diseases.⁶¹

In December 2015, about 60 companies were subject to repeated monitoring within the framework of the program. The recommendations were fully met by about 25 companies, while they were partially met in about 30 organizations and 10 companies ignored them. On the basis of the recommendations issued as a result of the monitoring, the companies significantly improved fire-fighting and electrical safety systems; collective protective equipment was improved; employees were given individual protection equipment. This once again highlights the efficiency and progressiveness of the establishment of the Labour Inspection in the country in the initial stage in spite of its voluntary nature.

The State Program on the Labour Conditions Inspection for 2016 was adopted on the basis of a resolution by the Government of Georgia with minor amendments. The implementation of goals set within the program was continued, in particular, prevention of labour safety regulation violations and increasing awareness of employers and employees about detected violations and provision of information and consultations. In order to prevent forced labour, it is necessary to increase awareness among employers and employees regarding hazards related to human trafficking, develop standards relevant to labour safety and health and determine the need for institutional reform in the field of labour safety protection.

As mentioned above, on the basis of legislative amendments proposed within the VLAP, the Labour Conditions Inspection Department was granted authority to carry out state supervision and identification of forced labour and labour exploitation. The Labour Conditions Inspection program has a preventive nature, the goal of which is to assist the employer and establish a safe and healthy work environment.

The reports and recommendations prepared within the framework of the program represent confidential, non-public information. In the course of the inspection process, the inspectors fill in a questionnaire. The questionnaire is developed by the Department and is approved on the basis of the individual administrative-legislative act issued by the Minister. The report drafted by the inspectors may be followed by the employer's written notes regarding the inspection process and the drafted report.

4.2. Strengthening the mandate of the Labour Inspectorate – the first legislative amendments

In order to meet obligations defined by VLAP and fulfil functions of the Labour Conditions Inspection Department, significant amendments were made to the Law

⁵⁸ U.S.-Georgia Strategic Partnership Commission, Office of the Spokesperson, Washington, DC, July 6, 2016, <http://www.state.gov/r/pa/prs/ps/2016/07/259365.htm>

⁵⁹ U.S.-Georgia Strategic Partnership Commission, Office of the Spokesperson, Washington, DC, July 6, 2016, <http://www.state.gov/r/pa/prs/ps/2016/07/259365.htm>

⁶⁰ INTERNATIONAL LABOUR OFFICE, Governing Body 309th Session, Geneva, November 2010. Labour administration and inspection: Challenges and perspectives, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_145952.pdf

⁶¹ See the Annex: On Violations of Labour Safety and Professional Diseases

on Entrepreneurs and the Law on Combating Human Trafficking. On the basis of the abovementioned amendments, a resolution by the Government of Georgia on Regulations of State Monitoring of Labour Exploitation and Response was approved, according to which, in order to prevent and respond to forced labour and labour exploitation, the state supervision is carried out by the Labour Conditions Inspection Department and if forced labour and labour exploitation - human trafficking is detected, the Department addresses an investigative body. The Decree of the Government defines proactive (scheduled) and reactive inspection, the latter being defined as an inspection on the basis of the notification received through a hotline, an application or a complaint.

Currently, the International Labour Organization actively supports the Ministry in the process of developing the legislative framework and the role of the ILO is very important for the implementation of the complete and efficient labour inspection. In addition, the experts of the EU technical assistance project Employment and Professional Education Reform are actively engaged in the process of the transposition of the EU directives defined by Annex XXX of the EU-Georgia Association Agreement into Georgian legislation.

Within the framework of the dialogue between the EU and Georgia on the visa liberalization regime, in August 2015, a Memorandum of Understanding was signed between Georgia's Ministry of Labour, Health and Social Affairs and the Ministry of Internal Affairs. The goal of the Memorandum was to promote the detection of human trafficking. Within the framework of the Memorandum, a list of enterprises and organizations with difficult, dangerous or hazardous work (high risk occupations), where foreign citizens were also employed, was sent to the Ministry of Internal Affairs. Fortunately, as a result of inspections at these listed organizations and enterprises, instances of workplace hazards were revealed. The notification received through the Ministry hotline of signs of forced labour was followed by a prompt response carried out by a labour inspectors' mobile group. However, as a result of unscheduled (reactive) inspection, no signs of trafficking were detected and, relevantly, the case did not become a basis for contacting the investigation body.

5. Trafficking – Forced Labour and Labour Exploitation

Human trafficking, sometimes called modern slavery or “white slavery”, is one of the most common serious crimes of the present century. Trafficking is a violation of fundamental rights recognized by the UN Universal Declaration of Human Rights (1948)⁶² and unfortunately, represents one of the most rapidly growing and profitable criminal businesses, spreading more rapidly than drug and arms trafficking. It is also a global problem and a transnational crime worldwide.

The Government of Georgia has ratified⁶³ and implemented several international documents on combating trafficking in domestic legislation. Georgia is actively engaged in international events with regard to combating trafficking. Preventive measures has become one of the government's priorities in combating trafficking. Correspondingly, the implementation of awareness raising activities in the general public on trafficking threats has become very important.

A recommendation by the Commission which was prepared on the basis of the Third Progress Report of the Commission of 8 May 2015 on the implementation of the VLAP by Georgia concerned the revision of the mandate and the authority of the Labour Conditions

⁶² Universal Declaration of Human Rights – An international act, adopted on 10 December 1948 by the United Nations General Assembly. Fundamental human rights - the right to life, liberty and security of person, the right to a nationality, shelter, the right to take part in the government of his country, directly or through freely chosen representatives, right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment, to rest, education, the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits, etc., <http://ungeorgia.ge/uploads/UDHR-60Geo.pdf>

⁶³ So-called Palermo Protocol - Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, the Council of Europe Convention on Action against Trafficking in Human Beings, ILO 182 Convention on Worst Forms of Child Labour.

Inspection Department of the Ministry of Labour, Health and Social Affairs of Georgia, for the purpose of detecting labour exploitation and forced labour and providing a relevant response. On the basis of these recommendations, amendments were implemented in the **Law of Georgia on Combating Human Trafficking and the Law of Georgia on the Control of Entrepreneurial Activity**, which enabled a competent agency of the Ministry of Labour, Health and Social Affairs of Georgia to inspect working conditions only in order to prevent and respond to forced labour and labour exploitation and in case there were detected any signs of human trafficking, it was authorized to contact investigative bodies, i.e. law enforcement.

Measures against trafficking are actively discussed and regularly assessed by the Group of Experts on Action against Trafficking in Human Beings (GRETA). On 22-26 June 2015, the Group of Experts on Action against Trafficking in Human Beings (GRETA) was on a working visit to Georgia. This group held meetings with representative of the government, as well as non-governmental organizations, in order to prepare the second GRETA evaluation report.

Alongside other issues, the GRETA experts positively evaluated issues related to the labour inspectorate and measures taken by the government in this regard. In particular, the establishment of a labour inspectorate for the purpose of combating trafficking was assessed as a step forward. However, the experts listed the following problem areas where improvements were necessary:

- *Monitoring and research after the implementation of awareness raising campaigns in order to study the level by which public awareness was raised;*
- *Training courses on trafficking for all front-line officers;*
- *Explanation and analysis of the role of referral mechanisms during the training courses;*
- *Identification of labour exploitation and detection of possible cases of trafficking;*
- *Lack of cooperation between the mobile groups of the Ministry of Internal Affairs, the Ministry of Labour, Health and Social Affairs and the State Fund;*
- *Detection of trafficking cases mostly depend on self-reporting;*
- *Low statistical rate of trafficking cases.*

One of the challenges faced in trafficking cases is the identification of the victims on the basis of proactive measures and the development of relevant standard procedures. Proactive detection means the identification of risks and commencement of procedures for the identification of a possible victim on the basis of an operative report.

In order to achieve overall state and public goals, in particular, for the purpose of promoting identification of a trafficking crime, a memorandum was signed between the agencies, which envisaged planning and implementation of effective measures, as well creating an effective mechanism for combating human trafficking. The memorandum declared the following priority objectives: The implementation of relevant measures with the purpose of raising employers' and employees' awareness of the risk of trafficking, the provision of information to the Ministry of Internal Affairs revealed as a result of the inspection carried out by the relevant agency of the Ministry of Labour, Health and Social Affairs of Georgia on organizations belonging to risk-groups and the implementation of the operative activities on the basis of the submitted materials and the commencement of investigation in cases there have been identified signs of trafficking. The mutual cooperation among the parties also includes exchanging information, the organization of information exchange meetings/trainings on issues related to human trafficking for relevant employees.

5.1 Recommendations of the CoE Group of Experts on Action Against Trafficking in Human Beings (GRETA) and the USA

Pursuant to the recommendations of the *CoE Group of Experts on Action Against Trafficking in Human Beings (GRETA)*, the Government of Georgia was instructed to:

- **Implement the method of proactive inspection in order to identify signs of trafficking, labour exploitation and forced labour;**
- **Continue adequate social protection programs for ensuring safety of trafficking victims.**

The GRETA report mentioned proactive steps to combat labour exploitation in Georgia, recommending the establishment of a mechanism to effectively monitor private employment agencies and other intermediaries that offer employment to local job seekers.⁶⁴ Such a mechanism will help prevent trafficking for the purpose of labour exploitation.

In its reports on the Trafficking in Persons Report (TIP), the US Department of State outlines what it considers minimum standards necessary for the elimination of trafficking in persons. Since 2011, the State Department's reports about Georgia have underlined how important it is to establish a labour inspectorate to confront the problem in this country.⁶⁵

In the State Department report, Georgia appears in Tier 2, which means that the country does not fully comply with minimum standards, which are presented in the Victims of Trafficking and Violence Protection Act of 2000. However, experts have not left unnoticed the achievements and the progress made in the field of combating human trafficking. Correspondingly, the country's national standards were found to be in compliance with international standards.⁶⁶ According to the 2015 TIP report by the State Department, Georgia has made progress in all four areas in accordance with preventive and safety measures that are required in order to identify cases of trafficking. Cooperation with local and international organizations was strengthened. The establishment of the Labour Inspection Department at the Ministry of Health was also positively assessed.⁶⁷

In the State Department's report for 2013-2014, the country also maintained its position in Tier 2. The report highlighted the weakness of the enforcement of the anti-trafficking legislation and for the first time, the recommendation part included a proposal to establish a labour inspectorate that will be entitled to proactively identify signs of trafficking and increase the awareness of such signs. The report indicated a need to train labour inspectors in order to strengthen the identification of signs of trafficking, as well implementing a proactive campaign to raise awareness among the public.

On 30 June 2016, the US State Department issued its Trafficking in Persons Report, according to which Georgia moved to Tier 1. This means that the country satisfied the minimum standards for combating trafficking and the government carried out consistent and coordinated measures against trafficking.

6. Social Partnership Commission and Social Dialogue

In general, the social dialogue and the tripartite cooperation represents one of the strongest instruments for the management of the labour market. Its role is especially

⁶⁴ The Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA). The Second Report on Georgia, 03 June 2016, http://www.coe.int/en/web/anti-human-trafficking/news/-/asset_publisher/tX6Zwufj34JY/content/publication-of-greta-s-second-report-on-georgia

⁶⁵ The Annual Trafficking in Persons Report of the U.S. Department of State. This is confirmed by reports of 2011-2012 (p. 166), 2012-2013 (p. 5) and 2013-2014 (p. 142). <http://www.state.gov/j/tip/rls/tiprpt/2012/index.htm>

⁶⁶ Trafficking in Persons Report 2014; Available at <http://www.state.gov/documents/organization/226846.pdf>, see also, Trafficking in Persons Report 2015; available at <http://www.state.gov/D4086E97-D7A2-4962-BD40-08A2326107BF/FinalDownload/DownloadId-06390CF999285A483E1052C4B754CBDA/D4086E97-D7A2-4962-BD40-08A2326107BF/documents/organization/245365.pdf>; According to the US Department of State Trafficking in Persons Report, countries are ranked against four tiers (1 being the highest ranking and tier 3 being lowest) and the placement is based on the extent of government response to fighting trafficking. It specifically involves an assessment of government's efforts to comply with the minimum standards set by the Trafficking Victims Protection Act of 2000. <http://www.coe.int/ka/web/tbilisi/reports-on-georgia1>

⁶⁷ Trafficking in Persons Report 2015; <http://www.state.gov/documents/organization/245365.pdf>

important in the course of the long-lasting social and economic crisis in the country, when the environment requires prompt changes and reforms.

The participation of social partners in anti-crisis measures and the planning and implementation of reforms are important in order to achieve micro economic stability. It can simplify necessary changes and the process of the reforms which are required during the crisis; however, it should be carried out while maintaining justice and principles of equality.

Internationally, social dialogue has been the purview of ministries of labour, health and social affairs. In Georgia, the Ministry of Labour, Health and Social Affairs is responsible for issues related to labour and employment. The foundation for the social dialogue was laid in 2012 with the **Statute of the Social Tripartite Partnership Commission**. The Tripartite Commission was established as an advisory board, which is accountable to the Chairperson of the Tripartite Commission – the Prime Minister of Georgia. It consists of the following social partners: The Government of Georgia, employers' and employees' unions operating throughout the country in various sectors, in particular, the Association of the Trade Unions of Georgia and the Employers' Association – six members from each party. The following representative bodies were designated from the government side: *a) The Ministry of Labour, Health and Social Affairs of Georgia; b) The Ministry of Justice of Georgia; c) The Ministry of Economic and Sustainable Development of Georgia; d) The Ministry of Regional Development and Infrastructure of Georgia; e) Ministry of Education and Science of Georgia.*

To assist the social dialogue, the Commission decided to draft proposals and recommendations regarding labour and related issues on the basis of the resolution. It was decided to call a session of the Tripartite Commission once per quarter. In addition, it was decided to call an extraordinary session whenever there is a need. The Secretariat of the Tripartite Commission assists in the organization of the sessions and ensures an organizational and technical part of the activities of the Commission (organization of the meetings, drafting protocols, invitation of experts and specialists and collection of materials for the session).

During the social dialogue, the Tripartite Commission represents a forum for the exchange of information, consultations and negotiations. Social pacts, tripartite agreements, tripartite declarations, validation of political documents and policy instruments represent the outcomes of the Commission.⁶⁸

Unfortunately, after this meeting, before 11 April 2016, the Tripartite Social Partnership Commission was not able to hold its session. An effective functioning of the Tripartite Commission and strengthening of the labour mediation, as one of the mechanisms of the labour dispute resolution, was included in the recommendation part of the US State Department. Correspondingly, convening the meeting with its renewed composition became a priority. In order to increase the efficiency of the Tripartite Commission, the following amendments were made in a government resolution in 2016: The first amendment determined the function of the government representative as deputy chair of the commission. The second amendment said the health minister would have the PM's role in his absence. The third amendment said the Ministry of Labour, Health and Social Affairs is responsible for the operation of the Secretariat of the Tripartite Commission.

Thus, the tripartism in Georgia is in a process of development. Each country approaches the case individually and, correspondingly, the dialogue takes different forms. Therefore, it is important for Georgia not to directly copy a framework for social dialogue, but to establish a dialogue framework that will fit the national context. Its main goal should be to create the means to develop policy and implement it effectively, with improved quality of outcome.

In cooperation with ILO, there are plans to strengthen the capacity of the Tripartite Commission and its Secretariat, which will make the work of the Commission effective and

⁶⁸ National Tripartite Social Dialogue: An ILO Guide for Improved Governance. International Labour Organization (ILO) – 2013.

positively influence the outcomes of the social dialogue. At the next session, planned for the third quarter of 2016, there will be discussed various issues in line with the strategic plan.

7. Active Labour Market Policy

7.1. Promotion of Employment and Labour Integration

A large proportion of the Georgian population requires various labour market services or assistance to become integrated in the labour market. The country's Active Labour Market Policy (ALMP) should be directed towards increasing the labour integration and the productive employment rate, as well as boosting income generation opportunities. Special attention should be paid to vulnerable groups in the labour market. The abovementioned circumstance served as a basis for drafting the document within the framework of the EU project.

Unemployment is the most urgent social and economic problem in Georgia. Youth are overrepresented among the unemployed population. This factor further increases social risks and endangers the future of the country. On 2 June 2016, the Government Resolution #238 on The State Program for Vocational Training/Retraining of Jobseekers was issued. The goal of the program is to raise the competitiveness of job seekers in the labour market. Within the framework of this program, each beneficiary of the professional training/retraining program receives a voucher worth 1,000 GEL for each short-term professional program. The program also envisages internships for jobseekers.

These are active measures for promoting employment which serve the purpose of preventing migration, integration of labour migrants in the labour market, increasing the opportunity of productive employment by raising job seekers' competitiveness, reduction of the informal economy and employment and the development of a more inclusive labour market which is directed towards the integration of vulnerable groups (persons with disabilities and minority groups).

7.2. Labour Market Studies

Alongside Georgia's the economic growth, there is a growing demand for human resources with low as well as high level of qualification. In 2015, the Ministry of Labour, Health and Social Affairs of Georgia conducted a pilot survey titled Labour Market Demand Component. One of the issues in this survey was about identifying trends in the employment of foreign citizens and determining reasons for their employment in the country.

The survey was done in order to get information about the attitudes and requirements of employers through quantitative and qualitative methods. The survey revealed a lack of specific skills among job seekers and difficulties in terms of hiring. Correspondingly, a need to implement an active labour market policy was revealed that would be oriented at eliminating the imbalance between the workforce demand and supply. Such active measures are, for instance: training, retraining, assistance in finding a work place, career planning, consulting and promotion of mobility.

The survey allows us to make the following conclusion: The labor productivity level is unfortunately low in Georgia, the reason being a lack of qualifications, skills and competence in the labour force which does not meet the requirements of employers.

Thus, the labour market in Georgia is characterized by low labor productivity, high activity in the labour market, high unemployment rate among youth and little change in the main characteristics of the labour market. These characteristics indicate structural problems in terms of training and skills.

In 2015, another important survey was conducted to identify employment trends among persons with disabilities. The survey, *“the impact of micro and macro factors on working environment adaptation and the work efficiency of people with disabilities*

(PWD)”, was conducted by using both qualitative and quantitative methodology. The main objective was to draw a general picture of employed PWDs according to economic sectors and regions and to study their attitudes to working conditions. A further objective was to study the opinions of employers and field experts with regard to the research topic.

The survey did not only reveal problems and challenges in the labour market regarding PWD employment, but also that there is no unified PWD database, or in most cases, access to the database is complicated due to the confidentiality of the information. The survey paved the way for carrying out more surveys about the labour market. However, the issue is still problematic and urgently requires active intervention by the state.

Reducing the unemployment rate through an active labour market policy was defined as a priority for the state. This depends to a significant degree on having information about the labour market and on the institutionalization of this information. The main goal of an active labour market policy is to increase the employment opportunity for job seekers and improve the connection between vacancies and the labour force. The effective implementation of the policy will influence the GDP; consequently, the rate of unemployment will decrease throughout the country and as a result, the dependence of socially vulnerable groups on social assistance will be reduced.

8. Conclusion and recommendations

Important measures implemented in the country within the framework of the Visa Liberalization Action Plan (VLAP), especially in the field of labour and employment, prepared a solid foundation for the implementation of large-scale institutional reforms. This means the harmonization of the labour law with European standards, including the development of effective execution mechanisms and the establishment of a labour inspectorate with a strong mandate.

In order to create an efficient and effective labour inspectorate, a number of measures should be taken. These are international obligations taken on by the country on the basis of the ILO conventions it has ratified, the European Social Charter, the EU Association Agreement and other documents. These obligations will involve the drafting of legislation about a labour inspectorate, and connected to that, the gradual transposition of EU directives that concern the proposed technical regulations.

An active engagement of the Social Partnership and the capacity of the social dialogue are essential for the effective fulfilment of fundamental principles and rights in the labour field. This is a key factor for the effective development of Georgia’s employment policy. Therefore, the tripartism represents the foundation for policy development in the labour and employment fields, as well as for effective implementation and improvement of results.

The European Commission has underlined Georgia’s steady progress. However, in its recommendations it indicated a necessity of systematic and effective steps and maintaining a trend of the progress. Alongside with the EU, the U.S.A. continues strengthening of the strategic partnership with Georgia.

Therefore, the dialogue between Georgia and the EU regarding visa liberalization has appeared to be especially successful in the labour field, where new practical approaches in various directions were identified and the foundation of the fundamental reforms was laid down. The present report demonstrates that the labour inspection mechanism represents the foundation for the good governance of the labour market, the development of fair economics and the implementation of the international labour standards. It is clear that the transitional stage will prepare the ground for the administration of the labour rights protection in order to establish the effective European modernized model in the country.

Contact info:

Association "EUROPEAN TIME"
European.time.geo@gmail.com
593277514

