

# Harmonization of Georgian National Legislation with EU on Women Labour Rights Directives

In the Workplace foreseen by the EU-Georgian Association Agreement

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- It is desirable that the Labour Code of Georgia, the normative act regulating labour activities, defines the concepts of direct and indirect discrimination. Definition of discrimination should provide prohibition of any kind of discrimination and grounds of discrimination should not be exhaustive. It is important that the legislation includes norms that legally regulate interviewing and putting questions. These actions should not be considered same as an employer's general right to information. As a result, each candidate will be secured from interference in the private life and unequal treatment on any grounds.
- The Labor Code should reflect: Concept of payment according to the international standards. Principle of equal payment for equal labour of women and men; The State should elaborate methodology that objectively measures/evaluates labour and is based on anti-discriminatory criteria. There should be elaborated a framework and mechanism, that ensure employed women have equal right to opportunities as men at the work place (promotion, raise qualification, etc.)
- Sexual harassment should be defined as a form of discrimination in compliance with the international standards. Prohibition of sexual harassment should be written in the relevant part of the Code on Administrative Offences and a system of adequate sanctions should be launched. Role of an employer should be outlined with regard to fighting against sexual harassment. This involves creating relevant policy documents, campaigns for raising awareness etc.

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## Prohibition of Discrimination and Gender Equality According to the Implemented Directives (2017) of the Association Agreement between the European Union and Georgia

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The Association Agreement was signed on June 27, 2014, between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part. The Parliament of Georgia ratified the document on July 17, 2014, and it was enforced on July 1, 2016.

Significant part of the Association Agreement is dedicated to the material and institutional mechanisms of protection of the labor rights.

The chapter 13 of the Association Agreement is about the labor rights in trade and sustainable development, the chapter 14 - about the employment, social policy and equal opportunities.

The document focuses on prohibition of discrimination on the working place and gender equality. Besides, it underlines compliancy of the national legislation and practices with the acting international standards in this direction.

With this view, the following articles of the Agreement are important:

»Article 227 is about the International Labour Organisation's (ILO) Declaration on Fundamental Principles (prohibition of discrimination) and Rights at Work of 1998. Also, it is about the State's obligation to have legislation (policy) that promotes protection of labor rights, to achieve high level in this direction and sustain it;

»Article 229 focuses on the importance of international trade development such a way as to ensure whole and productive employment/ decent work (decent work implies gender equality, among the other aspects), respect and realize in the law and practice fundamental

standards of the International Labour Organisation (ILO), its No. 100 and No. 111 conventions on prohibition of discrimination of labor rights;

»Article 348 (employment, social policy and equal opportunities): The Parties shall strengthen their dialogue and cooperation on promoting the Decent Work Agenda, employment policy, health and safety at work, social dialogue, social protection, social inclusion, gender equality and anti-discrimination, and corporate social responsibility;

»Article 349 focuses on the importance of gender equality and equal opportunities;

The article 235 (investments – labor rights) of the Agreement is very important as well. It says:

- The Parties recognize that it is inappropriate **to encourage trade or investment by lowering the levels of protection** afforded in domestic environmental or labour law.
- A Party shall not waive or derogate from, or offer to waive or derogate from, its environmental or labour law as an encouragement for trade or **the establishment, the acquisition, the expansion or the retention of an investment of an investor** in its territory.
- A Party shall not, through a sustained or recurring course of action or inaction, fail to **effectively enforce its environmental and labour law, as an encouragement for trade or investment**.

According to the article 354 of the Agreement, Georgia will carry out approximation of its legislation to the EU acts and international instruments referred to in Annex XXX ("employment, policy and equal opportunities") to this Agreement in accordance with the provisions of that Annex.

Annex XXX includes 40 directives. 6 out of them are about prohibition of discrimination and gender equality and these directives are to be implemented by the State by 2017-2018.

The present written work aims at analyzing 3 directives of the EU. They had to be implemented by 2017. These directives are:

- EU Council Directive 2000/78/EC of 27 November, 2000, establishing general framework of equal treatment in employment and occupation.
- EU Council Directive 2000/43/EC of June 29, 2000 implementing the principle of equal treatment between persons irrespective of racial and ethnic origin.
- EU Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

According to the obligations imposed by the above-mentioned directives, within the framework of the "Tripartite Commission on Social Partnership" of Georgia, in 2016 draft amendments and supplementations were created. They reflect standards of Directives though it has not reached the Parliament yet.

## I. Concept of Discrimination According to the Directives

Concepts of discrimination are written in all the three Directives mentioned above. These concepts are in compliance with the goals of the Directives.

Namely:

**The purpose of the EU Council Directive 2000/78/EC of 27 November, 2000**, is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment (Article 1).

- For the purposes of this Directive, **the „principle of equal treatment“** shall mean that there shall be no direct or indirect discrimination whatsoever on the grounds of religion or belief, disability, age or sexual orientation.
- **Direct discrimination** shall be taken to occur where one person is treated less favourably than another on the grounds of religion or belief, disability, age or sexual orientation;
- **Indirect discrimination** shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons;
- **Harassment** shall be deemed to be a form of discrimination when unwanted conduct takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.
- An instruction to discriminate against persons on any of the grounds mentioned above shall be deemed to be discrimination.

**EU Council Directive 2000/43/EC of June 29, 2000 (implementing the principle of equal treatment between persons irrespective of racial and ethnic origin)** aims to create a framework for implementing the principle of equal rights and combat discrimination on the grounds of racial and ethnic origin.

According to the above Directive, the principle of equal treatment means there shall not be direct or indirect discrimination on the grounds of racial and ethnic origin.

**Direct discrimination** shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a

comparable situation, on the grounds of racial and ethnic origin.

**Indirect discrimination** shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular racial and ethnic origin at a particular disadvantage compared with other persons unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

**Harassment** shall be deemed to be a form of discrimination when unwanted conduct takes place on the grounds of racial and ethnic origin with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

**An instruction** to discriminate against persons on the grounds of racial and ethnic origin shall be deemed to be discrimination.<sup>1</sup>

**EU Council Directive 2004/113/EC of 13 December 2004 (implementing the principle of equal treatment between men and women in the access to and supply of goods and services)** aims to lay down a framework for combating discrimination based on sex in access to and supply of goods and services, with a view to putting into effect the principle of equal treatment between men and women.

According to the Directive:

- **Direct discrimination** shall be taken to occur where one person is treated less favourably, on grounds of sex, than another is in a comparable situation;
- **Indirect discrimination** shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with

persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary;

- **Harassment** - unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment;
- **Sexual harassment** - any form of unwanted physical, verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.

### Concept of Discrimination According to the Georgian Legislation

**According to the Labor Code of Georgia, article 2, paragraph 3, discrimination is:**

1. **Harassment** – direct or indirect harassment with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.

And/or

2. **Unequal treatment** – Creating conditions where one person, directly or indirectly, is treated less favorably than another is, has been or would be treated in a comparable situation.

Unlike the Directives, concepts of “**direct discrimination**” and “**indirect discrimination**” are not defined in the Labor Code of Georgia. Though, the “Law on the Elimination of all Forms of Discrimination”, adopted in 2014, includes labor relations and defines these concepts.

According to the abovementioned Law, Article 2, paragraphs 2 and 3:

1. 2000/43/EC Directive, article 2

**Direct discrimination** shall be any treatment or creation of any conditions putting a person in a disadvantaged position in the enjoyment of the rights determined by the legislation of Georgia based on any of the grounds listed in Article 1 of the present law, as compared to other persons in similar conditions, or putting in equal condition those persons, who are in essentially unequal conditions, unless such treatment serves a legitimate purpose, including protection of public order and morale, has objective and reasonable justification and is necessary in a democratic society and where the measures applied are proportional for the achievement of such purpose.

**Indirect discrimination** shall be a condition, where a provision, criterion or practice of a conditionally neutral and essentially discriminatory content exists, putting in a disadvantaged position persons under one of the grounds listed in Article 1 of the present law, as compared to other persons in similar conditions, or putting in equal condition those persons, who are in essentially unequal conditions, unless such a condition serves a legitimate purpose, including protection of public order and morale, has an objective and reasonable justification and is necessary in a democratic society and where the measures applied are proportional for the achievement of such purpose.

**Conclusion:** The abovementioned norms of the “Law on the Elimination of all Forms of Discrimination” are in compliance with the contents of the terms in the Directives.

**Recommendation:** It is desirable that the Labor Code of Georgia, the normative act regulating labor activities, defined the concepts of direct and indirect discrimination.

Concept of harassment defined in the Labor Code complies with the concept of harassment written in the Directives.

**The Code, as well as the “Law on the Elimination of all Forms of Discrimination” does not involve sexual harassment as a form of discrimination.**

The Labor Code defines harassment with general terms. As for the “Law on the Elimination of all Forms of Discrimination”, article 6, “sexual harassment takes place when any form of unwanted physical, verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.”

This problem is discussed in the Report 2018 of the experts committee of the International Labor Organizations.<sup>2</sup>

It is worth noting, that on April 4, 2017, the Georgian Government received an ordinance on the “Definition of General Rules of Ethics and Behavior in the Public Institution”, that somehow regulates aspects of sexual harassment. This is a positive step forward, though it does not comply with the standards set by the Directives. Apart from that, private legal relationships are not regulated, as these rules are related only to the public sector.

**Recommendation: Sexual harassment should be defined as a form of discrimination in compliance with the international standards. Prohibition of sexual harassment should be written in the relevant part of the Code on Administrative Offences and a system of adequate sanctions should be launched.**

**Role of an employer should be outlined with regard to fighting against sexual harassment. This involves creating relevant policy documents, campaigns for raising awareness, etc.**

Article 2, paragraph 3, the Labor Code of Georgia, prohibits discrimination in labor relations. Namely, it says: any type of discrimination due to race, color, language, ethnic and social category, nationality, origin, property and position, residence, age, gender, sexual orientation, limited capability, membership of religious or any other union, family

2. [http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0:NO:13100:P13100\\_COMMENT\\_ID:3342182:NO](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0:NO:13100:P13100_COMMENT_ID:3342182:NO)

3. # 200 Ordinance April 4, 2017, Georgian Government, on the “Definition of General Rules of Ethics and Behavior in the Public Institution”, article 15.

conditions, political or other opinions are prohibited in employment and pre-contractual relations.

Though, this definition involves all the prohibited grounds of discrimination, in practice it may create a problem in the employment and pre-contractual relations in case of discrimination on a ground that is not written in the article 2, paragraph 3, of the Labor Code of Georgia.

**Recommendation: Accordingly, the definition should be formulated in such a way as to set prohibition of discrimination on any other grounds and should not list all the grounds.**

Besides, other prohibited grounds should be added: health condition, pregnancy and child care. This will limit and prevent gender-based discrimination in labor relations.

## II. Exclusion of Discrimination

According to the Directives, the provision, criterion or practice is not considered as discrimination if it is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.<sup>4</sup>

Member States may provide that a difference of treatment which is based on a characteristic related to any ground shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.<sup>5</sup>

According to the Labor Code, article 2, paragraph 5, "the necessity of making distinction between the people judging from the essence, specifications of the employment or the conditions of its performance, which serves to achievement

of legitimate goal and is the reasonable and necessary way of its achievement shall not be deemed as discrimination".

The Law of Georgia "On the Elimination of All Forms of Discrimination", article 2, paragraph 8 and 9, reflects standard of Directives, "any difference, inadmissibility, and preference of specific work, activity or domain, based on specific requirements, shall not be considered as discrimination.

Differential treatment or creation of differential conditions and/or state is admissible, if there is invincible state interest and state intervention is necessary in a democratic society".

**Conclusion: The Georgian legislation complies with the Directives with this regard.**

## III. Field of Action of the Directives

Directives imply all the people in the public or private sectors, and State bodies, among the others.

**Council Directive 2000/78/EC covers the following issues:**

- Conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
- Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
- Employment and working conditions, including dismissals and pay;
- Membership of, and involvement in, an organization of workers or employers, or any organization whose members carry on a

4. 2000/78/EC Directive, article 2

5. 2000/78/EC Directive article 4, 2000/43/EC directive, article 4.



particular profession, including the benefits provided for by such organizations (article 2).

**EU Council Directive 2000/43/EC of 29 June 2000 covers the following issues:**

- Conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
- Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
- Employment and working conditions, including dismissals and pay;
- Membership of, and involvement in, an organization of workers or employers, or any organization whose members carry on a particular profession, including the benefits provided for by such organizations;
- Social protection, including social insurance and health care.
- Social protection;
- Education;
- Access to public goods and services, including housing.

**Council Directive 2004/113/EC of 13 December 2004 covers the following issues:**

The Directive concerns to all the people who produce goods and ensure access to and supply of goods and services. It does not cover employment, self-employment or occupation.

The field of the Directives involves pre-contractual, recruitment stages.

Article 2, paragraph 3, the Labor Code of Georgia prohibits discrimination at a pre-contractual stage as well.

“Any type of discrimination due to race, color, language, ethnic and social category, nationality, origin, property and position, residence, age, gender, sexual orientation, limited capability, membership of religious or any other union, family conditions, political or other opinions are prohibited in employment and pre-contractual relations”;

Though, neither the Code, nor any other normative act regulates stage of interview and rules for questioning at a pre-contractual stage, though these stages carry high risk of unequal treatment. More than that, the article 5, paragraph 8, the Labor Code of Georgia, says: “the employer is not required to prove his/her decision on refusal of employment”. This encourages discrimination.<sup>6</sup>

Even more, the article 4, paragraph 5, the Labor Code of Georgia, says: “Employment agreement shall not be concluded with pregnant or breast-feeding females to perform hard, hazardous and dangerous labor”.

Law of Georgia on Gender Equality, article 6, paragraph 4, says: “The legislation of Georgia shall ensure creation of favorable working conditions for pregnant women and nursing mothers which excludes their work in hard, harmful and dangerous environment, as well as at night”.

Law of Georgia on Labor Safety, article 5, paragraph 6, says: “Employer should not employ a person under the age of 18, as well as pregnant and nursing women in severe, harmful and dangerous jobs that are in high risk”.

These kinds of provisions encourage employer while employing to ask questions about pregnancy and breast feeding.

6. Paragraph 6 of Article 2 of European Social Charter, CEACR: Individual Observation concerning Right to Organize and Collective Bargaining Convention, 1949 (No. 98) Georgia (ratification: 1993) Published: 2010.



**Recommendation: It is important the legislation included norms that legally regulate interviewing and putting questions. These actions should not be considered same as an employer's general right to information. As a result, each candidate will be secured from interference in the private life and unequal treatment on any grounds.**

The Directives also prohibit discrimination in the issue of payment.

The Labor Code of Georgia, unlike the legislation that regulates payment in the public establishments, does not recognize the concept of payment.

The Code does not recognize the principle of equal payment of labor for men and women.

Apart from that, there is no methodology in the country that measures/evaluates labor. It would make it possible to compare labor activities of persons and to discuss certain discriminatory approaches with regard to payment.

The standards of Directives are not reflected in the Georgian legislation. This is a violation<sup>7</sup> of #100 fundamental convention of the International Labor Organization. As a result, many times Georgia was a subject to criticism<sup>8</sup> of various international organizations and experts' committee of the International Labor Organization. It is worth noting, that in 2018 standards committee of the International Labor Organization discussed the above issues and gave relevant recommendations<sup>9</sup> to Georgia.

7. According to the article "a", #100 fundamental convention of the International Labor Organization, payment is minimum allowance or anything - money or goods, given by an employer to an employee directly or indirectly.

8. ILO convention #100; Report of the Committee of Experts on the Application of Conventions and Recommendations , Georgia Equal Remuneration Convention, 1951 (No. 100) (ratification: 1993); European Social Charter (article 4.3; conclusions on the implementation of the European Social Charter 2015 of the European Committee of Social Rights; Committee on the Elimination of Discrimination against Women (CEDAW) Concluding observations on the combined fourth and fifth periodic reports of Georgia\*; European Convention on economic, social and cultural rights, article 7; Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women.

**Recommendations: The Labor Code should reflect:**

- a) Concept of payment according to the international standards.
- b) Principle of equal payment for equal labor of women and men;
  - The State should elaborate methodology that objectively measures/evaluates labor and is based on anti-discriminatory criteria.
  - There should be elaborated a framework and mechanism, that ensure employed women have equal right to opportunities as men at the work place (promotion, raise qualification, etc.)

#### IV. Positive Actions

All the three Directives concern positive actions<sup>10</sup>, according to which, with a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to any of the grounds referred to in Article 1.

With regard to disabled persons, the principle of equal treatment shall be without prejudice to the right of Member States to maintain or adopt provisions on the protection of health and safety at work or to measures aimed at creating or maintaining provisions or facilities for safeguarding or promoting their integration into the working environment.

Accordingly, for ensuring equality, the Directives recognize two measures: 1) indirect discrimination and 2) positive actions.

**It is worth noting, that the Georgian legislation complies with the EU Directives. Namely,**

10. 2000/78 directive, article 7, 2004/113, directive, article 6, 2000,43 directive ,article 5.

according to the article 2, paragraph 7, “the Law of Georgia On the Elimination of All Forms of Discrimination”,

**“Special and temporary measures aimed at encouraging or achieving factual equality, especially with regard to gender, pregnancy and motherhood issues, as well as persons with disabilities, shall not represent discrimination”.**

## V. Minimum Requirements

In all the three Directives **minimum requirements**<sup>11</sup> are underlined. Thus, Member States may introduce or maintain provisions which are more favorable to the protection of the principle of equal treatment than those laid down in this Directive. Besides, the implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive.

## VI. Legal Measures for Defence of Rights

All the three Directives cover legal measures for defence of rights, like:

Judicial and/or administrative procedures, including appropriate conciliation procedures for victims of discrimination.

Associations, organizations or other legal entities which have a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.

## VII. Burden of Proof

Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

Accordingly, the requirements of the Directives are to put burden of proof on defendant/employer in any legal case that is based on discrimination.

The amendments and supplements to the Labor Code, made on June 12, 2013, somehow cover the international standard. The article 402 on prohibition of discrimination was added to the Code. Paragraph 3 says: The burden of proof for the claim submitted in the case on terminating labor relations with or otherwise persecuting employees for being members of an employees' association or for participating in the activities of a similar association, or on the grounds of discrimination under the article 2 of this Code, shall lie on employers if employees allege the circumstances providing a reasonable cause to believe that employers acted in breach of the above-mentioned requirements.

**Recommendation: In order to be considered all the standards of the Directives, burden of proof should lie on an employer not only in the above-mentioned cases or when terminating labor relations, but in any case where there is a dispute on discrimination related to pre-contractual and labor relations.**

<sup>11</sup>. 2000/78 directive, article 8, 2004/113 directive article 7, 2000,43 directive art6.

## VIII. Victimization

According to the three Directives, Member States shall introduce into their national legal systems such measures as are necessary to protect employees against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.

According to the article 37, part 3, paragraph "b" of the Labor Code of Georgia, it is prohibited to terminate labor agreement on the grounds of discrimination. Also, according to the article 402,

It shall be prohibited to discriminate against employees for being members of an employees' association or for participating in the activities of a similar association, and/or to perform any other act aiming at: a) hiring employees or retaining jobs for them in exchange for their refusal to join or to withdraw from the employees association; b) terminating labour relations with or otherwise persecuting employees for being members of an employees association or for participating in the activities of a similar association.

The Law of Georgia On the Elimination of All Forms of Discrimination, article 12, part 1, says: "Any kind of negative treatment of or influence on any person on the grounds that this person has filed an application or complaint seeking protection from discrimination to relevant bodies or has cooperated with them shall be prohibited".

## IX. Social dialogue

The Directives pay special attention to development of social dialogue and its role for ensuring equal treatment. Namely:

- » Member States shall, in accordance with their national traditions and practice, take adequate measures to promote dialogue between the social partners with a view to fostering equal treatment, including through the monitoring

of workplace practices, collective agreements, codes of conduct and through research or exchange of experiences and good practices.

- » Where consistent with their national traditions and practice, Member States shall encourage the social partners, without prejudice to their autonomy, to conclude at the appropriate level agreements laying down anti-discrimination rules.

There is the Tripartite Commission on Social Partnership in Georgia. Its mandate includes discussions on labor issues, accordingly, relevant proposals and recommendations are received<sup>12</sup>, prohibition of discrimination in labor rights, among the others. Although, the activities of the Commission are not effective as its sessions are not held as often as they should be.

**Recommendation: Activities of the Tripartite Commission on Social Partnership should be more active. Among the other issues, prohibition of discrimination in labor rights should be focused as well.**

## X. Dialogue with non-Governmental Organizations

The Directives also underline the importance of dialogue with non-governmental organizations. The dialogue is vital for fighting against discrimination on any of the grounds written in the Directives.

## XI. Dissemination of Information

According to the Directives, Member States shall take care that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force in this field, are brought

12. The labor Code, Chapter IV1 the Government of Georgia, Ordinance #258, on approving the statute of the Tripartite Commission on Social Partnership, article 4.

to the attention of the persons concerned by all appropriate means, for example at the workplace, throughout their territory.

According to the article 6, part 2, paragraph "e", the Law of Georgia On the Elimination of All Forms of Discrimination, the Public Defender implements activities for raising public awareness on the issues of discrimination.

The mandate of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia include the issues of labor and employment and discrimination in labor relations. The Ministry should be more active to disseminate information with the help of social partners.

## XII. Sanctions

According to the Directives, Member States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive.

The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive.

## XIII. Compensation and Pay for Damage

The Directives set obligations for the Member States to elaborate legislation and mechanisms that ensure victims of discrimination receive effective compensation and/or pay for damage.

The Labor Code does not include such mechanisms, though these issues are somehow regulated by the Law of Georgia On the Elimination of All Forms of Discrimination and the Civil Code.

**Issues of compensation and pay for damage should be specifically defined in the Labor Code.**

## XIV. Implementation

The Directives set obligations for Member States to not only adopt legislation but also launch effective mechanisms that ensure equality.

According to the statute of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia, approved by the Government of Georgia, ordinance #473, on October 14, 2018, the main activities of the Ministry in the field of labor and employment is implementation of social security mechanisms in organizations and establishments and promotion<sup>13</sup> of elimination of labor discrimination.

According to this statute, tasks and competence of the Department of Labor Conditions Inspection are: to elaborate relevant recommendations<sup>14</sup> for preventing cases of discrimination at workplace or forced labor and, in case of request of employees and/or employer, study and analyze cases of discrimination and its causes at workplace and elaborate relevant recommendations.<sup>15</sup>

Though, by the statute of the department, such functions are restricted at this stage.<sup>16</sup>

The department has opportunities to work on the issues of discrimination within the framework of the State Program 2018 of Labor Inspection approved by the #603 ordinance of the Government of Georgia. Though, it can not be effective, as it is based on voluntariness. In case of violation, the Department will restrict only with recommendations.<sup>17</sup>

Thus, at this stage the Department of Labor Conditions Inspection is not a mechanism for fighting against discrimination.

13. Government of Georgia, ordinance #473, on approving the statute of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia, article 2, paragraph "f", "e, d" subparagraphs.

14. Article 19, paragraph "c".

15. Article 19, paragraph "d".

16. Ordinance of Georgia on Labor, Healthcare and Social Protection #01-1/N. Article 7.

17. Ordinance of Government of Georgia, #603, on 2018 State Program of labor Inspection article 2, paragraph 1, article 3, paragraph "f".

It is worth noting, that since 2014 the Public Defender of Georgia monitors the processes of elimination of discrimination and of ensuring equality (in the sphere of labor relations as well) according to the Law of Georgia On the Elimination of All Forms of Discrimination.

The Public Defender of Georgia carries out the cases on discrimination on the basis of applications and complaints of physical and legal persons or group of persons. The Public Defender is authorized to end the case with conciliation. If conciliation is impossible and discrimination is proved, it refers relevant person to restore the rights of a victim. Within the framework of the mandate, the Public Defender is authorized to issue a general proposal and send it to the relevant establishment for preventing discrimination and fighting against it. If an administrative body does not fulfil a recommendation and there are enough proofs to prove discriminatory treatment, the Public Defender is authorized to file an appeal to a court against the administrative body.<sup>18</sup>

In spite of that, due to its limited mandate, the Public Defender can not be considered to be an effective mechanism against discrimination. Reason for that are the following circumstances:

- 1) In spite of the fact, that the Public Defender's mandate covers public as well as private sectors, legal persons of private law do not have obligation to submit the information that is necessary for studying a case. In many cases this becomes an obstacle for the Public Defender to study a case, consequently, legal procedures are terminated;
- 2) The Public Defender's recommendation does not have an obligatory force and in relation to private persons it is limited to address to a court when a recommendation is not fulfilled.
- 3) Due to the existing legal regulations, a victim of discrimination prefers to address a court as there are limited terms for addressing to a court. Discussions on a case at a court or

an administrative body may be a basis for the Public Defender to terminate legal procedures.

- 4) Apart from that, within the framework of the Public Defender, it does not have a right to enter a workplace and study a case with its own initiative.

Common courts are means for fighting against discrimination. They discuss cases on discrimination according to the special rule of court processes. As a result of a court dispute, a victim of discrimination can request termination of discriminatory actions and/or elimination of its results and compensation<sup>19</sup> for moral and material damage.

Though, taking into consideration, that court disputes are connected to financial resources and take much time, mechanisms of labor inspection should be strengthened. It should have perfect mandate, elaborated according to the international labor organizations, to fight against discrimination in labor relations.

18. Law on "Elimination of all Forms of Discrimination" article 6.

19. Civil Procedure Code of Georgia, chapter 7.

## Women's Rights in the Association Agreement

Directives on Prohibition of Discrimination and Gender Equality  
Implementation period 2018

*Ekaterine Kardava*

### I. Introduction

In the Association Agreement, the policy of protection of employees are regulated through several directions:

1. The issues of decent work, productive and entire employment are involved in the framework of sustainable development policy of the DCFTA; regulations of labor standards are required through reflection of the ILO conventions in national legislation and practice and balance with trade targets.

2. Social progress and protection of employee's rights are regulated within the framework of social policy, that is divided in three directions: a) labor law; b) prohibition of discrimination and gender equality; c) labor safety.

In the part on prohibition of discrimination and gender equality of the Association Agreement, Annex XXX includes 6 Directives. The terms their implementation are given in the below table:

| Prohibition of Discrimination and Gender Equality |  |                         |                                 |
|---|--|-------------------------|---------------------------------|
| #   | EU Directives  | Term for implementation | Year of starting implementation |
| 1   | Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation <sup>20</sup>  | 4 years                 | 2018                            |
| 2   | Directive 92/85/EEC 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) <sup>21</sup> | 4 years                 | 2018                            |
| 3   | Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security <sup>22</sup>   | 4 years                 | 2018                            |
| 4   | Directive 2000/43/EC on implementing the principle of equal treatment between persons irrespective of racial and ethnic origin.  | 3 years                 | 2017                            |
| 5   | Directive 2000/78/EC on establishing general framework of equal treatment in employment and occupation.  | 3 years                 | 2017                            |
| 6   | DIRECTIVE 2004/113/EC on implementing the principle of equal treatment between men and women in the access to and supply of goods and services   | 3 years                 | 2017                            |

20. Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006L0054&from=EN>

21. 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).

22. Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31979L0007&from=EN>

Woman is a subject to particular and specific protection in labor law. Woman's labor is differently regulated with special and exceptional norms, compared other employees. Strengthened legal intervention is conditioned by various aspects, like, woman's gender, physical characteristics, biological function (pregnancy, giving birth to a child, breast feeding). For these very factors a woman may become a subject to unequal treatment, discrimination, harassment (sexual harassment, among the others) from an employer. Besides, these factors are obstacles for a woman's professional growth and development: they are on a maternity leave, can not use the opportunities and proposals that are available for the other employees; their competitiveness declines because of departing from working processes and of having no environment filled with innovations and changes. All the factors **separately and together** are basis for unequal treatment and discrimination of women.

The labor law and employment policy are focused on strengthening women's opportunities, that are achieved through special protection norms and exceptional rules. Differential treatment shall not be deemed as discrimination. This approach is materially strengthened in the Convention 111 of the ILO, the Organic Law of Georgia – Labor Code of Georgia, Law of Georgia "On the Elimination of All Forms of Discrimination", the Law of Georgia on "Gender Equality", etc:

» Any difference, inadmissibility, and preference of specific work, activity or domain, based on specific requirements, shall not be considered as discrimination.

» Importance of difference between persons due to the essence of work, its specifics or conditions of its performance, shall not be deemed as discrimination if it serves legitimate aim and is proportionate means.

» Special and temporary measures aimed at encouraging or achieving factual equality, especially with regard to gender, pregnancy and motherhood issues, as well as persons with disabilities, shall not represent discrimination.

Any difference, inadmissibility, and preference of specific work, activity or domain, based on specific requirements, shall not be considered as discrimination.

» Discrimination is not special and temporary measures, measures that aim at restoring the results of discrimination and is targeted to the group who need special protection due to their gender.

**Protection mechanisms of women from discrimination are studied, described and underlined below, within the framework of three EU Directives. Besides, recommendations are represented for legal activities. These Directives are:**

- Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.
- Directive 92/85/EEC 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);
- Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

**2006/54/EC Directive on the implementation of the principle of equal opportunities and equal treatment of men and women in the matters of employment and occupation.**

All the three Directives should have been reflected in the Georgian national legislation until 2018, and should have been enacted and reflected in national practice since 2018.



## II. Directives on Prohibition of Discrimination and Gender Equality and Georgian Legislation

The goal of the Directive is to implement the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. These principles are:

1. Prohibition of gender-based discrimination;
2. Equal access to opportunities of employment and professional development;
3. Equal working conditions;
4. Equal remuneration;
5. Equal occupational social security schemes.

With the purpose of implementing the principles of equal treatment, the Directive defines importance of using following measures:

- Determining legal, procedural measures;
- Ensuring adequate court and administrative activities;
- Establishing effective, proportional and adequate measures of responsibilities;
- To lie burden of proof to a defendant, when there is a dispute on the basis of discrimination;
- Determining measures of real and effective compensation and damage compensation;
- Promoting social dialogue between the social partners;
- Ensuring involvement of non-governmental organizations working on these issues;
- Establishing equality institutions; determining subject of protection of human rights in the field of prohibition of discrimination;
- Establishing measures of protection from

repression/victimization.

For the purposes of the Directive the following terms and their definitions are essential:

- direct discrimination
- indirect discrimination
- harassment
- Sexual harassment
- pay
- occupational social security schemes

The Georgian legislation acknowledges some of the terms through the details of their contents. Hereby, it should be noted, that through the specifics of its national law and other conditions, Georgia has a right and opportunity to reflect the goals, tasks and provisions of the Directive in its national legislation and law.

### a) *Direct and Indirect Discrimination*

The terms “direct discrimination” and “indirect discrimination” are not defined in the law regulating labor relations, namely, the Labor Code of Georgia. Though, the Law of Georgia On the Elimination of All Forms of Discrimination, adopted in 2014, defines them. The scope of this law is large and covers activities of public institutions, organizations, physical and legal persons in all fields.

The provisions of “the Law of Georgia On the Elimination of All Forms of Discrimination” somehow covers labor relations in Georgia, though the Labor Code does not regulate the aspects with regard to direct discrimination and indirect discrimination.

According to “the Law of Georgia On the Elimination of All Forms of Discrimination”

- **Direct discrimination** shall be any treatment or creation of any conditions putting a person in a disadvantaged position in the enjoyment

of the rights determined by the legislation of Georgia based on any of the grounds listed in Article 1 of the present law, as compared to other persons in similar conditions, or putting in equal condition those persons, who are in essentially unequal conditions, unless such treatment serves a legitimate purpose, including protection of public order and morale, has objective and reasonable justification and is necessary in a democratic society and where the measures applied are proportional for the achievement of such purpose.

- **Indirect discrimination** shall be a condition, where a provision, criterion or practice of a conditionally neutral and essentially discriminatory content exists, putting in a disadvantaged position persons under one of the grounds listed in Article 1 of the present law, as compared to other persons in similar conditions, or putting in equal condition those persons, who are in essentially unequal conditions, unless such a condition serves a legitimate purpose, including protection of public order and morale, has an objective and reasonable justification and is necessary in a democratic society and where the measures applied are proportional for the achievement of such purpose.

**In the abovementioned norms the contents of the Directives terms are reflected, though the Labor Code of Georgia should regulate the aspects of direct discrimination and indirect discrimination (through the consideration of codification essence, as the Code in itself should regulate nuances connected to labor relations).**

#### **b) Harassment**

According to the Labor Code of Georgia, discrimination is:

1. Harassment and/or
2. Unequal treatment

According to the article 2, part 3, the Labor Code of Georgia:

- Discrimination is harassment – direct or indirect harassment of a person with the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment.
- Discrimination is unequal treatment – creating unequal conditions where one person is treated less favorably than another is, has been or would be treated in a comparable situation.

**The contents of the Directive in relation to harassment is reflected in the Labor Code of Georgia.**

#### **c) Sexual harassment**

**The Directive defines a specific form of harassment – sexual harassment.** According to the Directive, sexual harassment is any form of unwanted physical, verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.

In 2017 Georgia implemented ratification of the Convention of the Council Europe “On the Prevention and Elimination of Violence against Women and Domestic Violence”. Its article 40 requires criminalization of **sexual harassment** and its announcement as a punishable act, namely:

- The parties take all the necessary legal or other measures to ensure that any form of unwanted physical, verbal, non-verbal or physical conduct of a sexual nature, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, shall be punishable under criminal law or other legal sanctions.

The Law of Georgia on “Gender Equality” includes text on prohibition of conduct of a sexual nature in labor relations, namely:

- In labor relations: b) any form of unwanted physical, verbal, non-verbal or physical conduct of a **sexual nature** occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is inadmissible.

The Georgian legislation includes similar formulations and defines "sexual harassment" as it is defined in the Directive or the Convention. We can say, that Georgian legislation prohibits sexual harassment in labor relations. Though, none of the abovementioned norms underline the term "sexual harassment". The only exception is Ordinance #200, April 20, 2017, the Government of Georgia "On the Definition of General Rules of Ethic and Behavior in the Public Institution".

#### Article 15. Inadmissibility of sexual Harassment

1. The public servant treats employees regardless of their gender identity or sexual orientation.
2. The public servant is well informed about the **phenomenon of sexual harassment and the inadmissibility of such practice** in both the workplace and public space.
3. **The public servant does not carry out sexual harassment**, informs about the internal and general procedures of dissemination of such facts.
4. **A public servant, especially in the position of the head of the public, has any responsibilities, communications or actions to rectify the fact of sexual harassment in response to his / her competence and in full compliance with high sensitivity and confidentiality.**

As sexual harassment is one of the elements of discrimination and is a special aspect in labor relations (and this is proved by the approach of the Directive), the Labor Code of Georgia should define the term and regulate all the aspects connected to it.

#### d) Remuneration

According to the Directive, the term remuneration includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer within the labor relations;

Georgia has ratified ILO Convention 100. According to it:

- The term "remuneration" includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment; the term "equal remuneration for men and women workers for work of equal value" refers to rates of remuneration established without discrimination based on sex.

The Law of Georgia "On the Public Service" includes provisions on remuneration, namely:

- Remuneration of a servant includes **salary, classroom supplement and cash award.**
- The labor remuneration system is based on the principles of equality and transparency, which implies **equal pay for performing equal work.**

From the abovementioned norms we see that remuneration consists of various elements. Thus, remuneration should include all its components. Remuneration can be fixed or changeable, depended on the work load and the income of an enterprise, may include basic salary and salary supplement, like years of work, night work, etc. Thus, the principle of equal remuneration for men and women workers for work of equal value implies salary with all its components.

The labor Code of Georgia does not include definitions of remuneration. Also, it does not include regulatory norm on prohibition of unequal remuneration for men and women workers for work of equal value (considering all the components).

In 2018, at the ILO session 107, that was dedicated to use of international labor standards<sup>23</sup> it was mentioned, that since 2002, the experts committee places in the agenda the issues of non-existence of definition “equal remuneration for men and women workers for work of equal value” in the Georgian labor legislation. The Committee noted, that the labor Code of Georgia includes only general provisions on prohibition of discrimination. Besides, the experts committee underlines the importance to differentiate the definitions of the terms like, **equal and same**. Prohibition of discrimination and protection of gender equality is required only when paying equal remuneration for work of equal value. It is not required that any kind of work performed by men and women had identical and same remuneration.

It is desirable that the Labor Code of Georgia reflected the principle of equal remuneration for men and women workers for work of equal value. Besides, the term remuneration should be defined and this nuance should be focused on: Prohibition of different treatment with regard to defining amount of remuneration through considering all its components. The sophistication of the issue requires such methodology that measures and evaluates labor and is based on objective criteria (ILO Convention # 100).

It is essential to create strong mechanisms of labor relations inspection with the methodology where there are all the instruments to detect all forms and elements (issues of remuneration, among the others) of discrimination against women.

#### **e) Schemes of Social Protection**

According to the Directive, in order to ensure implementation of principle of equality between men and women, specific measures should be included in social security schemes. This will promote transparency of its contents and use.

In the social security schemes direct and indirect gender-based discrimination is prohibited, namely:

- In relation to the conditions of access, use and frameworks of the schemes;
- Obligations of contribution/deposit and calculation of contribution/deposit;
- Calculation of social help (in relation to additional help of a spouse or other person who is dependent), term of getting a right to receive social help; regulating conditions to maintain the social help.

According to the Directive, the social security schemes are related to the aspects like:

- sickness;
- invalidity;
- old age, including early retirement;
- industrial accidents and occupational diseases;
- unemployment.

Apart from the abovementioned, the social security schemes imply other social help in cash or in any kind, especially because of losing a breadwinner, if such income is compensation/remuneration paid by an employer to an employee.

The Directive does not restrict an employer to pay pension supplementation to a person who reached retirement age within the framework of labor relations on the basis the social security schemes, though has not reached retirement according to the rules of law. The aim of this action is to make the amount of social help equal or approximate with the amount that was paid to a person with different sex (who has reached the age of retirement) in the similar condition.

23. Report of the Committee of Experts on the Application of Conventions, and Recommendations, Report III, part A, Application of International Labour Standards, 2018, ILO 107 th session, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_617065.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_617065.pdf)

According to the Directive, cases of discrimination in the social security schemes are as follow:

- Determining the persons who may participate in social security schemes;
- Fixing the compulsory or optional nature of participation in an occupational social security scheme;
- Laying down different rules, except for the cases of reimbursement of contributions when a worker leaves a scheme without having fulfilled the conditions guaranteeing a deferred right to long-term benefits;
- Setting different conditions for the granting of benefits or restricting such benefits to workers of one or other of the sexes;
- Fixing different retirement ages (retirement age within the framework of labor relations on the basis the social security schemes);
- Suspending the retention or acquisition of rights during periods of maternity leave or leave for family reasons which are granted by law or agreement and are paid by the employer;
- Setting different levels of benefit, except in so far as may be necessary to take account of actuarial calculation factors which differ according to sex in the case of defined-contribution schemes;
- And so on.

The social security schemes work in Georgia, though terms and cases of discrimination connected to schemes within the framework of labor relations (underlined in the Directives) are not regulated in the legislation. Regulatory norms connected to the social security schemes should be reflected in the field of Georgian legislation and they will be in compliance with the purposes of the Directive.

#### **f) Other Aspects of less Favourable Treatment and prohibition of Discrimination**

The Georgian legislation and the Labor Code recognize equal rights between men and women and prohibits gender-based discrimination. Though, such legal recognition in some cases is neither prevents nor eliminates its results. The nature of discrimination is complex. Thus, an employer may show unequal treatment (without even being aware of it) on the ground of sex. For example: he may send to a business trip a man who is not married, but not send a woman who is married with the purpose of not departing her from her family.

#### **Fundamental sign of discrimination is - unequal access to opportunities.**

Employee – man or woman, should be equally involved in the working environment, they should equally have information on any opportunity. They should take decision in equal conditions.

Equal rights and balance between men and women may be damaged by unequal access to opportunities of professional education and development. This aspect is underlined in the Directive. Professional education, raising qualification, developing relevant skills for a job, getting new kind of knowledge – all these are basis of further development, competitiveness and promotion. If a woman does not have equal access to such kind of opportunities, she has less chances to get employed or promoted. This puts her in a less favorable condition.

According to the Directive, direct and indirect discrimination is prohibited in public sector as well as in private sector, in relation to these aspects (article 14):

- Conditions for access to employment, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
- Access to all types and to all levels of vocational guidance, vocational training,

advanced vocational training and retraining, including practical work experience;

- Working conditions, including dismissals and pay;
- Membership of, and involvement in, an organization of workers or employers.

**The aspects of treatment of a woman who has returned from a maternity leave require special consideration. She shall be entitled to benefit from any improvement in working conditions to which she would have been entitled during her absence (Article 15 of the Directive). This implies professional training, qualifications development, etc.**

It is expedient that the Labor Code of Georgia stipulate (through a special provision or article) the prohibition of discrimination in relation to the following aspects:

- qualifications enhancement, professional training and development, career development, professional mobility;
- Taking such measures and offering such working conditions to a woman after the end of her period of maternity leave that will render her competitive in working environment and will make her equal with respect to all the opportunities related to her employment, promotion, development, development of special skills, etc.
- Despite the fact that according to Article 37(3) (c) of the Labor Code of Georgia, employment contract may not be terminated with a woman while she is still on leave for pregnancy, birth of a child and child care, adoptive parent leave and additional leave for the care of a child (until a child turns 5 years old), it is expedient that the Labor Code of Georgia, similar to the Law of Georgia on Civil Service, stipulate an imperative approach concerning prohibition of dismissing a woman, namely: "a female civil servant may not be dismissed during the period of pregnancy or raising a child until

it turns 3 years old due to reorganization of a public institution and/or its merging with another public institution or because of the results of evaluation of such civil servant."

**It is desirable to stipulate every aspect of discrimination in labor relations in labor legislation. Thus, it is expedient to introduce in the Labor Code of Georgia a provision that would be similar to the approach found in the Law of Georgia on Eliminating all forms of Discrimination:**

Special or temporary measures aimed at promoting or achieving factual equality, especially with regard to gender, pregnancy and maternity matters, as well as with respect to persons with disabilities, shall not represent discrimination.

The Directive places particular focus on the following subjects of employment relations in the context of equal opportunities and prohibition of discrimination:

- Father who uses paternity leave;
- Adoptive parent.

At the end of paternity and/or adoption leave, workers are entitled to the same protection mechanisms as a woman who has returned from maternity leave. In particular, upon return to their jobs, they should benefit from any improvement in working conditions to which they would have been entitled during their absence; they should also be given the possibility to take relevant trainings for the development of professional skills. (Article 16 of the Directive).

It is also worthy of mention that according to the Law of Georgia on Civil Service, entitlement to paternity leave has been integrated in the leave for pregnancy, birth of a child and child care; such entitlement applies in the part of child care and is effective upon the birth of a child provided a mother is not using the maternity leave. Such an approach somewhat ambiguous considering procedural as well as financial aspects. It is also



necessary to differentiate between paternity leave, maternity leave and child care leave and make them separate mechanisms. Although, presently, having a paternity leave recognized at the legislation level is certainly a positive step forward. Although, an identical approach should be taken in the Labor Code of Georgia.

In general, legislative regulation of maternity leave is somewhat flawed with respect to terms as well as substance. Maternity leave and paternity leave are distinct mechanisms and should be addressed individually. At the same time, maternity leave that comprises three continuous and integral biological stages -- pregnancy, birth of a child and breastfeeding -- should be distinguished from child care leave. While the Labor Code of Georgia combines leave for pregnancy, birth of a child and child care under a single type of leave.

#### **g) victimization**

The Directive stipulates the introduction into national systems of such measures as are necessary to protect employees, including those who are employees' representatives provided for by national laws and/or practices, against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment (Article 24).

According to the Labor Code of Georgia:

- An employment contract may not be terminated on the grounds of discrimination (37.3.b.).
- The following shall be prohibited: discrimination of a worker due to his/her membership of employee association and/or another action the purpose of which is to:
  - a) hiring a worker or retain a job for a worker

in exchange for rejecting membership of employee association or abandoning such association; b) termination of employment relations with a worker or otherwise harassing him/her because of their membership of or participation in the activities of employee association (Article 402.1).

**It is desirable to develop a policy document or a guide about measures and rules for prevention of victimization and/or addressing the effects of victimization.**

#### **h) the burden of proof**

The Directive stipulates the shift of the burden of proof to a respondent when a person considers himself/herself wronged due to discrimination. The burden of proof rests with an employer in all employment relation cases when a worker regards that he/she has been discriminated.

According to the Labor Code of Georgia:

The burden of proof rests with an employer in case of complaints filed on any grounds of discrimination (The Labor Code of Georgia, Article 2)<sup>24</sup>, as well as complaints filed because of termination of employment relations with a worker due to his/her membership of employee association or participation in the activities of such association or due to other harassment, provided a worker refers to circumstances that provide the basis for reasonable doubt that employer was acting in violation of the requirements stipulated in the Law (The Labor Code of Georgia, Article 402.3)

24. The Labor Code of Georgia, Article 2:

„3. Any type of discrimination due to race, color, ethnic and social category, nationality, origin, property and position, residence, age, gender, sexual orientation, disability, membership of religious or any other union, family conditions, political or other opinions are prohibited in employment relations.“

4. Direct or indirect harassment of a person aimed at or causing creating intimidating, hostile, humiliating, degrading or offensive environment, or creation of such conditions that directly or indirectly deteriorate his/her condition compared with other persons being in similar conditions shall be regarded discrimination.“



**The Labor Code of Georgia introduced a significant safeguard for ensuring equality, by placing the burden of proof on an employer in cases of termination of employment contract based on discrimination or in case of other harassment, although it is advisable to reflect the approach of the Directive more clearly in the Code, namely, that the burden of proof will rest with the employer in any cases when a worker refers to discrimination or in cases of dispute.**

#### ***i) compensation and reparation***

The Directive stipulates that the states shall introduce into their national legal systems such measures as are necessary to ensure real and effective compensation or reparation for the loss and damage sustained by a person injured as a result of discrimination. The matters of private law disputes, including labor law disputes, are governed by civil legislation, under the Labor Code of Georgia and the Law of Georgia on Eliminating All forms of Discrimination. Therefore, the legislation of Georgia governs the aspects of reparation.

The Labor Code of Georgia refers to material responsibility for inflicted damages, at the same time, regulates the matter of compensation in cases of termination of employment relations, which is determined by court. Although, the Labor Code of Georgia does not contain an explicit provision about effective compensation losses inflicted or reparation for damages sustained due to discrimination. In general, the Labor Code of Georgia does not prescribe special responsibility/sanctions for the breach of labor legislation.

#### ***j) equality bodies, social dialogue***

According to the Directive, a country shall designate and make necessary arrangements for a body or bodies for the equal treatment policy implementation, promotion, analysis, monitoring, etc. These bodies may form part of agencies with responsibility for the defense of human rights. The competencies of these bodies shall include:

- Independent assistance to victims of discrimination in pursuing their complaints about discrimination.
- conducting independent surveys concerning discrimination;
- publishing independent reports and making recommendations on any issues to such discrimination;

**The Directive emphasizes bolstering of social dialogue around discrimination matters through the use of the monitoring method.** Monitoring should apply to practice at workplaces, access to employment, professional trainings and development, statute, codes of conduct; furthermore, studies should be performed for sharing experience and good practices. Employers should be encouraged to regularly provide to workers or to their representatives information on equal treatment. Such information may include an overview of the proportion of men and women at different levels of the organization, their pay and pay differentials, and possible measures to improve cooperation with employees' representatives.

The Directive also focuses on the dialogue with the NGO sector.

**It is expedient to explicitly stipulate in the documentation prescribing the functions and scope of partners' tripartite commission the role of social partners in employment relations with respect to discrimination issues;**

**It is advisable to carry out activities based on which, through self-regulation, the practice of employers' conduct will be developed gradually towards mainstreaming discrimination policy in the management system. For this purpose, it is necessary to start discussions on this issue in the social dialogue format.**

#### ***k) sanctions***

According to the Directive, national legislation shall stipulate rules on penalties applicable to infringements of the national provisions adopted

pursuant to the Directive. The penalties, which may comprise the payment of compensation to the victim, must be effective and proportionate.

**The Labor Code of Georgia does not contain sanctions for the breach of the provisions of the Code.**

**Summary:**

The Labor Code of Georgia offers quite a broad listing of the elements of discrimination and prohibits harassment and less favorable treatment based on the elements of discrimination. Nevertheless, banning discrimination is confined to general norms only and is not detailed like in the Directive. The Directive offers a model of regulating a number of aspects – provides more specifics on the principles and rules for regulating sensitive practice; these aspects are essential for achieving equality of rights of women and men.

The Directive places special emphasis on the following aspects of determining discrimination:

- direct and indirect discrimination;
- harassment;
- sexual harassment, as well as any less favorable treatment based on a person's rejection of or submission to such conduct;
- instruction to discriminate against persons on grounds of sex;
- any less favorable treatment of a woman related to pregnancy or maternity leave;
- different pay;
- different social security schemes;
- access to professional development opportunities (especially for women who have returned from maternity leave);
- victimization.

**92/85/EEC 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 (10th individual Directive in the context of the Directive 89/391/EEC Article 16(1))**

For legal certainty, transparency, the development of uniform practice, as well as based on codification interests, it is expedient to stipulate all relevant terms for defining discrimination, their substance, norms governing discriminatory action considering the specificity of labor relations in the Labor Code of Georgia.

Annex XXX of the Association Agreement stipulates the commitment on the fulfillment of the Council of Europe Directive 92/85/EEC of 19 October 1992; the Directive relates to 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.

**The term for fulfilling the Directive was 4 years (2018).<sup>25</sup>**

The Directive aims at introducing the measures that will encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding;

**a) maternity leave:**

According to the Directive, pregnant workers, workers who have recently given birth or are breastfeeding are entitled to maternity leave of at least 14 continuous weeks, allocated before and/or after confinement.

Chapter 6 of the Labor Code of Georgia governs leave for pregnancy, birth of a child and child

25. E. Kardava's dissertation paper "Georgia's Labor law reform in light of the European integration and AA requirements", 2018, has been used in the overview around the Directive 92/85

care. The content of maternity leave does not fully match the approach of the Directive, since the term 'breastfeeding' is used in the Directive, while the Labor Code of Georgia refers to Child Care. Breastfeeding is an essential and integral part of maternity leave. Breastfeeding is a phase when a woman, after childbirth, provides continuous care for an infant for the period necessary during the confinement and after release from the maternity house. That is why, the period of breastfeeding is distinguished from the 'child care' phase in the types of leave. The former falls in the category of maternity leave, while the latter is a separate type of leave and both a father and a mother (any caretaker of a child) are entitled to it. While, according to the Labor Code of Georgia, maternity leave includes child care leave that lasts until about a child is 2 years old.

Maternity leave, according to the Directive, is integral to and continuous due to a biological condition of a woman, therefore it applies only to women (maternity leave). Therefore, the leave stipulated in the Directive does not include paternity leave. Some EU member states have introduced paternity leave as a dedicated type of leave.

According to the Labor Code of Georgia, maternity leave, i.e. leave for pregnancy, the birth of a child or child care is granted to a female worker and its duration is 730 calendar days, 183 calendar days of which are paid, and in case of complicated childbirth and the birth of tweens, 200 calendar days will be paid. i.e., according to the Code, maternity leave lasts for about 104 weeks (2 years and 2 months) from which 26 or 28 weeks are paid. According to the Directive, maternity leave should not be less than 14 weeks and it should be paid. At a glance, the Labor Code of Georgia sets fairly high standard since it envisages at least 24 weeks paid leave. But actually this is not the case.

**The Directive focuses on the reimbursement of maternity leave only and not child care leave.**

While in the Labor Code of Georgia maternity leave period includes the period of the child care as well (until a child turns about 2 years). In EU member states, after the maternity leave period is over, a woman is entitled to continue child care leave

which is subject to separate pay and regulation. According to Estonia Law on Employment Contract, a woman is entitled to 140 calendar days of maternity leave. This is about 5 months (20 weeks). The matters of compensating maternity leave are governed in the Estonia Law on Health Insurance. According to the Estonia Law, child care leave is the matter of separate regulation. Both mother and father are entitled to take leave until their child turns 3 years, although child care leave should be used by one of the parents and not by both simultaneously. While the matter of compensation of child care leave is governed by the Parental Benefit Act and State Family Benefit Act.

Thus, following comparing the Labor Code of Georgia with the Directive, we should not make a deduction that 24-26 week paid leave stipulated in Labor Code of Georgia corresponds with its substance or financially to the 14 week paid maternity leave provided for in the Directive. Furthermore, mothers cannot afford using 730 calendar days leave since their social protection situation is hard, she is not receiving income, and thus rather prefers to leave a child at home after the expiration of 183 days (often earlier) and return to work without using the days of leave she is entitled to according to the Law.

It is stipulated in the Ministerial Order on approving the Rule of Reimbursement of Leave for Pregnancy, Birth of a Child and Child Care, as well as for the Adoption of a Newborn that based on the Law on the Public Service, a father, based on own request, is granted leave for child care in the amount of 550 calendar days from the birth of a child, of which, 90 calendar days are paid. However, father is provided 90 days of paid leave for child care only in case a mother of a newborn has not used the child care part of the leave for pregnancy, birth of a child and child care. According to the same Order, "family members of a pregnant (childbearing) woman will not be entitled to leave for pregnancy, birth of a child and child care and, respectively, to reimbursement, except for a case when a father of a child or a custodian receives allowance since a mother has died during childbirth while an infant has survived".

**It would be expedient to introduce uniform regulation of paternity leave in the Georgia Law on Civil Service and the Labor Code of Georgia; furthermore, to introduce more accurate and transparent regulation of the aspects of financing in the Ministerial Act.**

*P.S. The Estonian Law provides for paternity leave according to which a father is entitled to 10 days leave during a two months' period prior to birth of a child and within two months after the birth of a child. It should be noted that this provision was entered in Estonia Law in 2009 and was fully enforced in 2013.*

Estonia Law also governs adoptive parent's leave. A person who adopts a child aged less than 10 years is entitled to 70 calendar days of adoptive parent leave after the date when the court decision enters into effect. The matters of compensation of leave are determined according to the Law of Estonia on Healthcare.

*According to the Estonia Law, child care leave is a matter of separate regulation. Both mother and father are entitled to leave until a child turns 3 years old, although, child care leave should be used by one of the parents and both parents may not use it simultaneously. The leave can be used fully or in increments. A worker shall provide 14 days advance notice to an employer about the use of the entitlement to leave, as well as stopping the leave. If a parent's parental right has been removed or a child lives at a social protection facility, parent loses entitlement to child care leave. The matter of compensation for the childcare is governed by the Law on Parental Benefit Act and State Family Benefit Act. If parents have a child with disabilities, they will additionally be given child care leave one paid day per month until the child turns 18. Parents who are raising a child who is 14 years of age and above or a person with disability aged 18 and over, are entitled to unpaid leave for child care in the amount of ten days per years.*

### **b) compensating maternity leave**

According to the Directive, compensation or adequate benefit shall be provided to a worker who is on maternity leave:

*allowance shall be deemed adequate if it guarantees income at least equivalent to that which the worker concerned would receive in the event of a break in her activities on grounds connected with her state of health, subject to any ceiling laid down under national legislation.*

The Labor Code of Georgia, unlike the Directive, does not govern the principle of compensating maternity leave, rather, it sets a specific amount of pay:

*Leave for pregnancy, birth of a child and child care and adoptive parent's leave is reimbursed from the State Budget of Georgia, as prescribed by Georgia legislation. Maximum cash allowance for the period of paid leave for pregnancy, birth of a child and child care, as well as paid leave for an adoptive parent is GEL 1,000. Employer and worker may agree on additional reimbursement".*

**Evidently, the approach of the Labor Code of Georgia is far from the standard of the Directive. It is advisable to regulate in the Labor Code not the amount of fixed compensation but the scheme/method for calculation of reimbursement of maternity leave.** In this respect, it should be noted that the Law of Georgia on Civil Service governs the principle of reimbursing for maternal leave. Namely, 183 calendar days are paid from the leave for pregnancy, birth of a child and child care, while in case complicated delivery or birth of twins – 200 calendar days of leave are paid. Reimbursement will be provided from a budget of a relevant public institution, considering salary and class supplement of a civil servant, while for a servant who has a military or special rank, in addition to wages, they will receive supplement based on the years of service and pay based the rank."

### **c) night work**

According to the Directive, the state shall ensure that pregnant women, women who have recently given birth and breastfeeding workers are not

obliged to perform night work which shall be determined by the national authority competent for safety and health, subject to submission of a medical certificate: Based on national legislation or practice:

- A worker shall be transferred to daytime work;
- Leave from work or extension of maternity leave shall be pursued where such a transfer is not technically and/or objectively feasible or cannot reasonably be required on duly substantiated grounds.

Under Article 18 of the Labor Code of Georgia it is prohibited to employ a pregnant woman, a woman who has recently given birth or a breastfeeding woman, also a person caring for a child under the age of 3 at night work without their consent.

**Despite having a protective / prohibiting provision in the Labor Code of Georgia, there is no mention of cases as to how an employer should act and/or what measures employer shall carry out when a woman's job and functions involves night work, how she should be transferred to day work or how the leave should be extended.**

#### ***d) ante-natal examinations***

**According to the Directive, pregnant women are entitled to time off, without loss of pay, in order to attend ante-natal examinations, if such examinations have to take place during working hours.**

The Labor Code of Georgia does not contain a similar provision. In 2017 a legislative proposal was submitted to the Parliament of Georgia, Chair of the Social Partnership Tripartite Commission and the Minister of Labor, Health and Social Protection of Georgia on the above-mentioned issue. The Parliament Health Care Committee voted for the legislative amendment twice and rejected the legislative proposal. The approach of the Directive is reflected in the Law of Georgia on Civil Service.

#### ***e) assessing working conditions and prohibition of harmful impact***

**The Directive** attaches due attention to the development of guidelines on the assessment of the chemical, physical and biological agents and industrial processes considered hazardous for the safety or health of workers who are pregnant, have recently given birth and breastfeeding workers. The Annex to the Directive contains a non-exhaustive list of agents, working processes and working conditions that should be considered in the assessment guidelines. The Annex also describes such aspects as: noise, vibration, cold and heat regulation, amount of ionizing and non-ionizing radiation, categories of cancerogenes, underground mining work, etc. If, following the assessment, hazard to a pregnant or breastfeeding worker's health is identified, an employer shall apply necessary measures to temporarily arrange working conditions or working hours to avert such impact over the worker.

If it is not technically feasible or objectively impossible to regulate working conditions or working hours, or the need cannot be duly justified, employer shall apply necessary measures to transfer a worker to another job on a temporary basis. If the latter is also not feasible, a pregnant and breastfeeding mother shall be given leave for the period that is necessary for protecting her health and safety.

Pregnant and breastfeeding women shall not be obliged to continue serving official duties where the assessment has identified risk of impact that places worker's health under jeopardy.

According to Article 35 of Labor Code of Georgia, employer shall protect a pregnant woman against work that endangers wellbeing of her or her fetus, physical and mental health. Furthermore, worker is entitled to refuse to perform work, assignment or instruction that, due to the non-protection of labor safety conditions, poses evident and substantial threat to his/her or a third persons' life, health.



Despite having such a provision, it is general and declaratory and the enforcement of the provision is not reinforced by imposing special obligations on employers, such as stipulated in the Directive: it is not clear what actions employer uses for testing and assessment of work conditions, based on which guidelines it is operating and following assessment how it responds to check the impact.

According to Article 5(6) of the Law of Georgia on Labor Safety,

“An Employer may not employ individuals under the age of 18, as well as pregnant and breastfeeding women on jobs that involve heightened risk, hard, harmful and dangerous conditions. The list of jobs involving increased risk, hard, harmful and dangerous conditions is set forth in Georgia legislation.”

According to Article 4(5) of the Labor Code of Georgia

Employment agreement may not be concluded with pregnant or breastfeeding women to perform hard, hazardous and dangerous labor.

The above-mentioned articles are prohibitory and relate only to a decision on employment - **Employer may not employ... neither the Labor Code of Georgia or the Law on Labor Safety provide for cases when a woman was working on a job that involved hard, harmful and dangerous conditions, later she got pregnant and gave birth to a child and returned to labor while in the period of breastfeeding. How does Georgia legislation address such cases?**

**The following legal acts should also be underscored: according to the Law of Georgia on Gender Equality, “as prescribed by Georgian legislation, favorable labor conditions are ensured for pregnant women and breastfeeding mothers and thus, they may not be engaged in activities involving hard, harmful and dangerous working conditions, as well as night work.”**

The Law of Georgia on Labor Safety applies to work involving elevated risk and involving hard, harmful and dangerous working conditions. Therefore, only those employers are required to assess risk who fall under the Government of Georgia # 381 Decree.<sup>26</sup> Thus, the requirement of the Labor Legislation of Georgia – provide relevant conditions for pregnant and breastfeeding women – is declaratory: an employer’s obligation to perform risk assessment or test working environment is not reinforced by specific legislative regulatory provisions, specific principle of activity, testing methodology are not envisaged, nor are the guidelines formulated.

#### *f) dismissal:*

According to the Directive, it is prohibited to dismiss pregnant workers, women who have recently given birth, and breastfeeding workers during the period from the beginning of their pregnancy to the end of the maternity leave, save in exceptional cases not connected with their condition which are permitted under national legislation and, where applicable, provided that the competent authority has given its consent. If a worker is dismissed during the referred period, the employer must cite duly substantiated grounds for her dismissal in writing;

The approach of the Directive is included in the Labor Code of Georgia, in particular: According to Article 37(3)(c), employment contract may not be terminated during the period of leave after worker informs employer about her pregnancy, birth of a child and child care, as well as adoptive parent’s leave and additional leave due to child care.

Notably, the period during which it is prohibited to dismiss a female worker is quite long considering the fact that the period of maternity leave alone is 730 days. While additional leave for the birth of a child (Article 30 of the Code) comprises consecutively or incrementally at least 2 weeks per

26. The Government of Georgia Decree №381 of July 27, 2018, on approving the listing of jobs involving elevated risk, hard, harmful and dangerous conditions, <https://matsne.gov.ge/ka/document/view/4277583?publication=0>.

year, which is provided to a worker for child care in the amount of 12 weeks until a child turns 5 years.

The following grounds are exception from prohibition of dismissal:

- employment contract has expired;
- work stipulated under employment contract has been fulfilled;
- a worker quits job/position willingly, based on a written application;
- parties have reached written agreement;
- a worker has harshly breached his/her duties stipulated under employment contract or internal regulations;
- employee has violated duties stipulated under labor contract and/or internal policy and any disciplinary measure has been used against such worker over the past 1 year;
- court decision has become enforceable that excludes the possibility to fulfill work.
- in case of death of a worker.

European Social Charter also refers to such circumstances that national legislation may determine the grounds for dismissal of a pregnant woman that are not related to her specific condition.

Directive 79/7 aims at the implementation of principles of equal treatment of women and men.

**79/7/EEC Directive on the progressive implementation of the principle of equal treatment for men and women in matters of social security.**

**The term of implementation of the Directive was 4 years, namely, in 2018.**

The Directive applies to any worker, including self-employed, whose labor process has stopped due to health, industrial case/occupational diseases or involuntary unemployment, as well as to workers who have a disability, are job seekers or have been dismissed or are self-employed.

**According to Article 1a of the Directive**, it applies to statutory schemes which provide protection against the following risks:

- sickness
- invalidity
- old age
- accident at work and occupational diseases
- unemployment.

The Directive also applies to social assistance, in so far as it is intended to supplement or replace the schemes referred to above.

Equal treatment in social assistance and social schemes implies the absence of discrimination, direct or indirect, based on gender, especially considering marital or family status.

In the context of discrimination, the following is especially notable:

- the scope of social allowances schemes and the conditions of access thereto,
- the obligation to contribute and the calculation of contributions,
- the calculation of benefits including increases due in respect of a spouse and for dependents and the conditions governing the duration and retention of entitlement to benefits.

The principle of equal treatment shall be without prejudice to the provisions relating to the protection of women on the grounds of maternity.

The Directive stipulates that a country shall be



responsible for revoking laws, other acts and executive/administrative regulations that conflict with the principle of equal treatment. The Directive does not apply to the provisions concerning survivors' benefits nor to those concerning family benefits, except in the case of family benefits granted by way of increases of benefits due in respect of the risks referred to in paragraph 1 (a) of the Directive.

According to the Directive, a country shall introduce into its national legal system such measures as are necessary to enable all persons who consider themselves wronged by failure to apply the principle of equal treatment to pursue their claims by judicial process, possibly after recourse to other competent authorities.

**It is advisable to stipulate in Georgia legislation specifically those social protection schemes that are the subject of special attention in the context of discrimination considering national specificity and identify a body that will perform periodic assessment and produce a report on the mentioned matter.**

### III. National Mechanisms for Gender Equality and Combatting Discrimination

At presently, the following mechanisms are in place for gender equality policy:

- Municipality assemblies establish **municipal gender equality councils** for systematic and coordinated work with the Gender Equality Council established by the Parliament of Georgia.
- At municipalities, municipality mayor identifies a civil servant in charge of gender equality matters for the study of gender equality issues, planning and coordination of activities.
- The Public Defender within own competence, ensures monitoring of gender equality and responds to the cases of breach of gender equality.
- The function and competence of the Ministry of IDPs from the Occupied Territories, Labor, Health and Social Protection of Georgia is supporting the introduction of labor safety mechanisms and elimination of labor discrimination cases; support the protection of safe labor conditions for workers and prevention of discrimination in employment relations, in the field of employment and labor.
- The Ministry Labor Conditions Inspection Department purview, directed at the prevention of discrimination cases or forced labor at workplaces, comprises developing relevant recommendations to prevent discrimination or forced labor, drawing relevant recommendations; in case of demand of workers and/or employer, study and analysis of cases and causes of workplace discrimination cases, drawing relevant recommendations.
- The Parliament of Georgia, forms a **gender equality council** for systematic and coordinated work on gender issues.
- The Government of Georgia forms **interagency commission on gender equality, violence against women and domestic violence** to ensure systematic and coordinated work on gender and other matters stipulated in Georgia legislation.
- Supreme representative bodies of autonomous republics create **gender equality council** for systematic and coordinated work with the Parliament of Georgia Gender Equality Council.

## Summary of recommendations

- » It is expedient to start legislative activity swiftly to introduce the provisions of 2006/54/EC, 92/85/EEC and 79/7/EEC Directives in Georgia legislation to enable their fulfillment in 2019 (all three directives were to be fulfilled in 2018).
- » It is expedient that the Labor Code of Georgia directly regulate aspects of direct and indirect discrimination (at least by considering the essence of codification, since the Code, with its nature, should maximally govern aspects related to employment relations).
- » Sexual harassment is one of the elements of discrimination and is a special aspect in employment relations as evidenced by the approach taken in the Directive. It is advisable that the Labor Code of Georgia define a concept and govern the related aspects.
- » It is expedient to introduce in the Labor Code of Georgia the principle of equal pay for equal work for men and women, at the same time, to define the concept of pay, focus on such important aspect as prohibition of disparate treatment with respect to determining the amount of pay considering all components of pay – cash or in-kind. The improvement of the matter also requires having in place such methodology as is measuring and assessing work based on objective criteria.
- » It is most important and essential to establish a robust labor conditions inspection mechanism, which methodology will specifically consider the tools for identifying all forms and elements of discrimination against women, including with respect to pay.
- » There are social security schemes in Georgia; still, unlike the Directive, Georgia legislation does not detail the schemes, provide for terms and discrimination cases specifically in the area of employment relations. It is expedient to introduce in Georgia legislation the provisions related to social security schemes that will be relevant to the goal and provisions of the Directive (sickness; invalidity; old age, including early retirement; industrial accidents and occupational diseases; unemployment).
- » It is expedient to specifically stipulate in Georgia legislation those social protection schemes that are of special focus in the context of discrimination considering the national specificity and identify a responsible body that will perform periodic inspection and produce a report on the mentioned matter.
- » Unequal access to opportunities is a fundamental element of discrimination. Female and male workers should be equally engaged in the labor process, they should be offered equal access to information about any opportunity and equal setting for making decisions. It is advisable to introduce in the Labor Code of Georgia a provision with respect to prohibiting discrimination with respect to the following aspects: a) qualifications enhancement, professional training and development, career development, professional mobility; b) taking such measures and offering such conditions to a woman who has returned from maternity leave that will make her competitive in working environment and will make her equal with respect to all those opportunities related to her employment, promotion, development, development of special skills, etc.
- » Although the Labor Code of Georgia stipulates that labor contract may not be terminated with a woman while she is on leave for pregnancy, birth of a child and child care, infant's adoptive parent's leave, and additional leave for child care (until a child turns 5 years old), it is advisable to introduce in the Labor Code of Georgia, similar to the Law of Georgia on Civil Service, an imperative approach on prohibiting to dismiss a woman, namely: "a female employee may not be dismissed during pregnancy or the period until a child turns 3 years old due to the reasons of reorganization of a public institution and/or its merging with another public institution or because of the results of employee evaluation."

- » It is expedient to govern any aspect of discrimination specific to labor relations under labor legislation. Therefore, it is advisable to reflect in the Labor Code of Georgia a norm similar to the provision in the Law of Georgia on Eliminating All Forms of Violence: "special or temporary measures introduced to promote or achieve factual equality, especially – in gender, pregnancy and maternity matters, as well as towards an individual with disability, shall not be deemed as discrimination."
- » The Law of Georgia on Public Service has recognized paternity leave (integration of paternity leave in the leave for pregnancy, birth of a child and child care in the part of child care). The wording of the provision of the Labor Code of Georgia shall explicitly entitle a father. It is advisable to introduce a uniform approach in the Law of Georgia on Public Service and the Labor Code of Georgia; Furthermore, it is necessary to have more accuracy and transparency in the regulation of financing aspects in the Minister's Order on Rule for Reimbursing the Leave for Pregnancy, Birth of a Child and Child Care.
- » In general, legislative regulation of maternity leave is somewhat imperfect, from the standpoint of terminology as well as content. Maternity leave and paternity leave are separate mechanisms and require individual regulation. At the same time, maternity leave that comprises three continuous and integral biological stages of pregnancy, birth of a child and breastfeeding, should be distinguished from child care leave. While, in the Labor Code of Georgia leave for pregnancy, birth of a child and child care fall under a single type of leave.
- » It is desirable to develop a policy document or a manual that will formulate the activities and rules to be performed for the prevention of victimization and/or for addressing the effects of victimization.
- » Towards ensuring equality, the Labor Code of Georgia has created a significant safeguard by imposing a burden of proof to employer in case of termination of labor contracts based on discrimination or other harassment, although it is advisable to have a more prominent stipulation of the approach of the Directive in the Code, namely, an employer has the burden of proof in case an employee refers to discrimination or in case of any dispute.
- » The Labor Code of Georgia refers to material responsibility for damages, at the same time, regulates the matter of compensation in case of termination of labor contract, which is determined by court. Although, the Labor Code of Georgia does not contain a provision for effective compensation for damages or reimbursement for damage to an individual on discrimination grounds. In general, the Labor Code of Georgia does not set special responsibility/sanctions for the breach of labor legislation.
- » It is advisable to explicitly prescribe the role of social partners with respect to discrimination in labor relations in the documentation governing functions and scope of the social partners' tripartite commission; it is also advisable to carry out activities based on which, through self-regulation, employers' practice will gradually develop towards mainstreaming discrimination policy in the management system. For this purpose, it is necessary to start discussion on the mentioned issue in social dialogue format.
- » It is expedient that the Labor Code stipulates not fixed compensation for maternity leave, rather, the scheme/method of calculating maternity leave reimbursement. In this respect, notably, the Law of Georgia on Public Service governs the principle of reimbursing for maternity leave.
- » Although the Labor Code of Georgia protects pregnant women, breastfeeding women and those caring for a child under the age of 3 from night work, the Code has no provision about cases as to how an employer should act and/or which activities it shall carry out when a woman's job and working functions involve

night work, how she should be transferred to daytime work or how her leave should be extended.

- » According to labor legislation of Georgia, it is prohibited to employ pregnant or breastfeeding woman for performing hard, harmful, dangerous work, although nothing is mentioned about cases when a woman was working in a hard, harmful and dangerous job setting and later got pregnant, gave birth and returned to employment relation during the period of breastfeeding. The provision of the Labor Code of Georgia on developing relevant conditions for pregnant and breastfeeding women is general and declaratory and the enforcement of the provision is not reinforced by imposing specific obligations on an employer such as provided for in the Directive: it is not clear as to which actions employer will use for testing labor conditions and assessment, based on which guidelines it operates and how it responds after assessment to remove the risks of impact. The matter requires regulation.
  
- » According to the Directive, as well as the Law on the Public Service, a pregnant woman shall be provided possibility to take medical examinations during working hours, without deduction of pay for such period. It is advisable to stipulate a similar approach in the Labor Code of Georgia.

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