



# **Recommendations on Improvement of Legal Framework Regulating Labor Relations in Public Service to Prevent Gender Based Discrimination and Protect Labor Rights of Women in Public Service**

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*Promoting Rule of Law  
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GTUC is responsible for the content of the document and do not necessarily reflect the views of the East West Management Institute, USAID or the United States Government.

## **About the Project**

Georgian Trade Union's Confederation (GTUC) is implementing the project "Strategic Litigation and Awareness Raising campaign for women to ensure access to justice in labor relations at national and international level " within the framework of the East-West Management Institute (EWMI) project "Promoting Rule of Law in Georgia" (PROLoG) and with the support of the United States Agency for International Development (USAID).

The project aims to increase access to justice for women in labor disputes with particular focus on provision of legal assistance to women employed in public service on the issues such as gender based discrimination at workplace, unequal treatment of women applicants at the hiring stage, business trips, unreasoned termination of labor contract after maternity leave, wage difference, and sexual harassment at the workplace. In addition, the project envisages conducting of awareness raising campaigns to reduce and eradicate violations of women's rights in employment.

Within the framework of the project, 20 trainings have been conducted in Tbilisi and different regions of Georgia. Currently GTUC is dealing with 41 cases before Georgian courts, including the Constitutional Court of Georgia. These cases cover different labor rights issues. Some of them are pending deliberation, the others either have been resolved through friendly settlement, or have been won before the court.

Based on the shortcomings and challenges identified during the strategic litigation and awareness raising campaigns, GTUC has developed the package of the recommendations to improve the Law of Georgia on Public Service and correspondent bylaws, for the prevention of gender-based discrimination and protection of labor rights of the women employed in public service.

## **Prohibition of Gender Based Discrimination**

### **Acting Provision:**

According to the Article 9 of the Law of Georgia on Public Service all the public servants are equal in front of the law. It is prohibited to restrict, or interfere with the legal rights, freedoms and legal interests of any Georgian citizen part of legal public relations based on race, color, language, gender, age, nationality, origin, place of birth, or residence, economic condition or status, religion or belief, national, ethnic or social belonging, profession, marital status, health status, disability, sexual orientation, gender identity and expression, membership of political or other unions, including trade unions, belonging, political or other views, or other signs.

### **Problem Statement:**

Despite the fact that the Law of Georgia on Public Service prohibits discrimination and recognizes the need for equal treatment, the list of discrimination signs is not comprehensive and it does not cover some classic signs of discrimination such as: pregnancy or childcare, mother of many children, whereas the most unequal treatment and gender discrimination is linked with the abovementioned grounds of discrimination. Thus, GTUC believes that adding the health status, pregnancy or childcare, and mother of many children, to the list of classic signs of discrimination to the Law of Georgia on Public Service will reduce and prevent the facts of gender-based discrimination in public service.

### **International Standards:**

ILO Convention No. 111 on Prohibition of Discrimination in Employment and Occupation recognizes prohibition of discrimination on any grounds, including the gender discrimination and the others addressed in the GTUC recommendations.

The EU Directive 2006/54/EC is also important from this perspective, since it ensures the exercising of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, as well as the Directive 2007/78/EC establishing the general framework for equal treatment in employment and occupation.

### **Recommendation:**

GTUC recommends amending the article 9 of the Law of Georgia on Public Service in order to include the pregnancy, child care and mother of many children to the list of prohibited signs of discrimination. GTUC litigation practice proves that the discriminating treatment of women at workplaces, including the public service, is frequently based on the above-mentioned discrimination signs.

## **Business Trip**

### **Acting Provision:**

According to the Article 9 of the Law of Georgia on Public Service, a servant on the decision of the public institution may be sent on a business trip within the state, as well as abroad to exercise service authorities. However, Part 2, of the same article provides that procedure issues related to the business trip shall be prescribed by the governmental resolution.

Resolution #211 on the “Rules for sending the public servant on business trip, for the compensation of the business trip related costs and determining the compensation amount and conditions” issued on 25 April, 2017 by the Government of Georgia does not define sufficient provisions to ensure the protection of women’s labor rights during the business trip, accordingly it is not gender sensitive.

### **Problem Statement:**

GTUC practices proves that it is very problematic to reconcile family responsibilities with work because of the lack of provisions tailor cut to the needs of women. Nongender sensitive law particularly harms women since in Georgia, the family responsibilities are basically dealt by them. Accordingly, it is very important to have gender sensitive regulations in labor legislation for better protection of women in employment. This also refers to an issue such as business trip. It is often very difficult for women with family responsibilities to go on a business trip and leave family for several days, considering the fact that the resolution authorizes the employer to send any worker to a business trip without his/her consent. To overcome this challenge, the women protection guarantees should be established and relevant provision of the Labor Code should be drafted, that will prohibit sending of pregnant women, women who have recently given birth, or those who have children under age three, or are career of persons with disabilities to the business trip without their consent.

### **International Standards**

ILO Convention #156 concerning “Equal Opportunities and Equal Working Conditions for Men and Women Employees with family responsibilities”; European Social Charter, article 27, EU directive 2000/78/EC dating back to 27 November, 2000 on “Equal Treatment in Employment”. These standards prescribe, that national legislation and practice should provide the employees with family responsibilities with the opportunity to reconcile these responsibilities and work without any discrimination.

**Recommendation**

Georgian Government Resolution #211 issued on 25 April, 2017 on “the rule for sending the public servant on business trip, defining the volume and conditions for reimbursement and compensation of his/her business trip” shall prescribe the provision, that prohibits sending pregnant employees or those who have recently given birth, or those who have children under age three, or are caregiver of persons with disabilities to the business trip without their consent.

**Paternity leave****Acting provision:**

According to the part 6, Article 64 of the Law of Georgia on Public Service the parent taking factual care of a child can be eligible to take a leave from work. In the given case, the public servant is eligible to take a leave for 550 calendar days from the day of birth of a child. 90 days out of them shall be paid, only in case if the mother of the newborn has not taken the advantage of the leave prescribed in this article.

**Problem statement:**

We believe that this article is deficient, since the provided rule of taking paternity leave in fact excludes the possibility of taking paternity leave in reality. Particularly, since the imperative precondition of taking paternity leave is that the mother of the newborn should not have had used the so called maternity leave, in reality it is very difficult to imagine the situation when a woman has never used the maternity leave either prior to giving birth to a child or after, which is the obstacle for taking paternity leave.

In fact, the given provision provides exclusive right to a woman to use the maternity leave, which in this case is discriminative against the father and at the same time violates the rights of the mother and the child.

**International standards:**

ILO Conventions: #111 concerning “Prohibition of Discrimination During the Labor Relationships and Employment”, #156 concerning “Equal Opportunities and Equal Treatment for Men and Women Workers with Family Responsibilities” and #183 concerning “Maternity Protection” (article 27); European directive #2000/78/EC issued on 27 November, 2000 concerning “Equal Treatment in Employment”. The above mentioned international acts prohibit discrimination on any bases and meantime outline that legislation and practice in the country should enable the workers (men and women) with family responsibilities to effectively reconcile work and above mentioned responsibilities.

**Recommendation:**

Deriving from the best interest of a child, the Law on Public Service should provide both parents with the opportunity to spend some time with a child. Therefore, father shall be given the possibility to take a leave for child care purposes according the rule provided in the law.

### **Administrative Contract in Public Service**

#### **Acting Regulation:**

Compliant to the subparagraph “d”, Article 3 of the Law of Georgia on Public Service, public servant shall be the person employed based on the administrative contract. According to the subparagraph “g” of the same article, a person employed through administrative contract shall be the person supporting the public-political official exercising his/her authorities by providing line/sectorial advices, intellectual-technical assistance, or/and undertaking organizational-managerial functions and not holding the position envisaged by law for the servant and the persons employed on the bases of the labor contract. This issue is also regulated by the Resolution #205 issued by the Government of Georgia on 25 April, 2017 on “Approving the Standard Forms of Administrative Contract”. The resolution and the Chapter 8 of the Law do not prescribe the term of contract to be signed and there is a substantially different approach towards the public servant employed through labor contract compared to other public servants not employed on the bases of administrative contract. Compliant to the paragraph 2 of the article 82, contract with the employee may be terminated on the initiative of a party and the legislator requires only one-month prior notice on termination.

#### **Problem Statement:**

Similar provision regulating the labor relationships existed in the Labor Code of Georgia up to 2013, when the amendment was entered to it, which clearly proved, that lack of term regulation and unreasoned termination of contracts on the initiative of the party would often serve as the precondition of unequal treatment and lead to severe violation of the internationally recognized labor rights. This has been the subject of criticism from the part of number of national and international organizations throughout many years.

GTUC experience also proves, that in the majority of cases, victims of violations were women, since the presented formulation of the law actually encourages unequal treatment because of pregnancy, labor, child care, or other family responsibilities and it often results in termination of the labor relationships on discriminating bases.

Although workers employed on the positions based on the Article 78 of the Law of Georgia on Public Service may have some particularities, minimal standards still need to be determined to prevent unequal treatment and to ensure the protection of internationally recognized labor rights.

#### **International standards:**

ILO Conventions: #111 concerning “Prohibition of Discrimination in Employment and Occupation” and #158 concerning “Employment Termination”, as well as the attached

recommendation #166, articles 4 and 24 of the European Social Charter, EU directive 2006/54/EC ensuring the Principle of Equal Opportunities and Treatment of Men and Women in Employment and Occupation and directive 2000/78/EC determining the General Structure of Equal Treatment in Employment and Occupation.

**Recommendation:**

A new provision should be added to the Article 81 of the Law of Georgia on Public Service, that would define minimal term of administrative contract as one year and in case of dismissal, part 2 of the Article 82 of the Law of Georgia on Public Service and part 2 of the Article 8 of the Resolution #205 issued by the Government of Georgia on 25 of April, 2017 should be deleted in order to guarantee legal protection of women from the arbitrariness of the employer. Article 8.1.11 of the same resolution shall be formulated as follows: On the initiative of the person employed through administrative contract, if person submits one month prior notice to the administrative body.

### **Suspension of Service Authorities of a Servant**

**Acting Provision:**

Article 55 of the Law of Georgia on Public Service prescribes the grounds for suspending service authorities of a servant. The provided list is imperative, however it should be taken into account, that it does not cover all the grounds for suspending labor relationships.

**Problem Statement:**

Grounds for the suspension of labor relationships provided in the Article 55 of the Law of Georgia on Public Service does not cover all the grounds for suspension and thus creates legislative gap and poses threat to of individuals exercising their labor rights in the absence of legal regulation. Particularly when the service authorities of the servant are suspended in case of strike. These circumstances serve as the grounds for the suspension of authorities that need to be reflected in the law accordingly. It should be noted, that according to the law, it is prohibited to dismiss a servant when his/her labor authorities are suspended. Unless similar restriction applies on the periods of strike, it will lead to their being unprotected from dismissal. The right to go on strike is the most important tool for the protection of labor rights, including gender equality and therefore absence of restriction may have negative impact on the labor rights of women. Particularly, when the subject of strike is the improvement of labor rights of women and ensuring gender equality in employment. Based on the GTUC practice, we may say that often one of the main demands of the strike is to guarantee gender equality and women's rights (such as maternity leave, flexible work schedule and flexible working time, protection guarantees against being dismissed during maternity leave and child care, training and retraining, various types of compensations, sexual abuse.....). Therefore it is important, that women are protected by relevant legal guarantees during this period.



**International Standards:**

ILO Convention #151 concerning “Protection of the Right to Organize and Procedures for Determining Conditions of Employment in the Public Service” and the ILO Convention #87 concerning Freedom of Association and Protection of the Right to Organize”. The above mentioned conventions recognizes and admits the significance of the right to go on strike in the context of freedom of association, including for public servants and protects the worker from negative intervention in the realization of this right, including from illegal firing from work.

ILO Convention #111 concerning “Prohibition of Discrimination in Employment and Occupation”; Directive 2006/54/EC on “Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in matters of Employment and Occupation”, Directive 2007/78/EC on “General Framework of Equal Treatment in the matters of Employment and Occupation”. These international acts ensure equality in labor relations and prohibit gender based discrimination in employment, including in the process of exercising the right to go on strike .

**Recommendation:**

The following grounds for suspension of authorities should be added to the Article 55 of the Law of Georgia on Public Service: a. strike

### Overtime Work

**Acting Provision:**

According to the article 61, paragraph 2 of the Law of Georgia on Public Service, overtime work shall be reimbursed by overtime remuneration or granting additional rest time proportional to undertaken overtime work upon the preference of the servant.

According to the paragraph 2 (d) of the Article 2 of the Law of Georgia on Remuneration in Public Institutions, bonus is the amount intended for the reimbursement of the overtime work or/and implemented additional functions, including the work undertaken during night hours, on holidays/week-ends and in working conditions posing threat to health undertaken by the worker. Compliant to the article 27 of the same Law, work undertaken overtime and in night hours, on holidays/week-ends, or in the conditions posing threat to health shall be compensated according to the number of worked hours and the remunerations amount, in compliance with the rule determined by relevant public institution within the threshold amount prescribed by this law.

**Problem statement:**

Different from the Organic Law of Georgia, the Labor Code of Georgia, the Law on Public Service does not prescribe general standard and rate for the reimbursement of overtime work, which provides space for practicing various discriminative approaches in public institutions. GTUC

experience proves, that overtime work in public sector is a well established practice in Georgia. This issue is particularly problematic for women with family responsibilities. The absence of clear provision concerning the reimbursement of overtime work makes the situation even worse. Specifically, the law does not prescribe the obligation for reimbursement of the overtime work with increased rate, which is an actual breach of the international standard and may serve as the bases for gender discrimination. The late fact may be reflected in paying less to women compared to men. Thus, it is crucial for the overtime work compensation rate to be clearly and directly defined in the law to avoid the issue being decided by the employer based on his/her subjective attitude towards the employee.

**International standard:**

European Social Charter Article 4, directly states the right of the employee to receive the payment for the overtime work with increased rate.

ILO Convention #111 concerning “Prohibition of Discrimination in Employment and Occupation”; Directive 2006/54/EC on “Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in matters of Employment and Occupation”, Directive 2007/78/EC on “General Framework of Equal Treatment in the matters of Employment and Occupation”. These international acts ensure gender equality in employment in respect to any right.

**Recommendation:**

Additional paragraph is recommended to be added to the Article 61 of the Law on Public Service formulated as follows: Overtime work shall be reimbursed with increased hourly rate.

## **Right to Conduct Collective Negotiations**

**Acting Provision:**

Article 67 of the Law on Public Service guarantees the right of the employee to become the member of the GTUC.

**Problem Statement:**

Although the law provides Article 67 guaranteeing the right of the employee to establish and become the member of trade unions, be elected in the management bodies of the trade unions and take part in its activities, this provision still does not directly envisage the right of a person to

conduct collective negotiations with the employer that is one of the most significant components of the activities of the trade unions. Collective negotiation is of the fundamental principles recognized by the ILO and the most important tool for the protection of gender equality and women's labor rights. It should be outlined, that one of the main issues of collective negotiations is often the labor rights of women that on their side are reflected in labor contracts that have the priority over the individual contracts. They provide better and stronger guarantees for the protection of women's rights and are binding to be fulfilled. Therefore, it is important that public servants could also have the right to use it to improve their authorities, including to ensure gender equality.

**International Standard:**

ILO Convention #151 concerning "Protection of the Right to Organize and Procedures for Determining Conditions of Employment in the Public Service". This convention guarantees the right of public servants to establish trade unions, become its members and conduct collective negotiations, that is one of the vital tools of ensuring gender equality according to the ILO standards and is one of the four strategic goals of the ILO.

ILO Convention #111 concerning "Prohibition of Discrimination in Employment and Occupation"; Article 6 of the European Social Charter; Directive 2006/54/EC on "Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in matters of Employment and Occupation", Directive 2007/78/EC on "General Framework of Equal Treatment in the matters of Employment and occupation".

**Recommendation:**

An article should be added to the Article 67 of the Law of Georgia on Public Service directly stating the right of the public servant to conduct collective negotiations. Besides, it should indicate that the chapters 10 and 12 of the Labor Code of Georgia apply to public servants.

**Reorganization**

**Acting Regulation:**

In compliance with the Article 103 of the Law of Georgia on Public Service, movement or/and reduction of positions in public institution shall be considered as reorganization.

**Problem Statement:**

The Law of Georgia on Public Service defines the term of reorganization for the labor legal purposes. However, this provision of article 103 contradicts with the judicial practice established by the Common Courts, as well as the grounds for termination of labor contract. Increase and decrease of the number of positions should be the result of reorganization and not visa versa. The reorganization itself may serve as the bases for termination of the employees' contracts. In the framework of the acting provision of the article 103, the employer is provided with the possibility to reduce number of positions without any procedure and justification/reasoning and it can automatically be considered as reorganization and become the bases for dismissal of employees. According to the existing practice, reorganization serves as one of the most frequently used grounds for dismissing employees. The given formulation of the provision increases the risk of unfair treatment of workers. GTUC practice proves, that during the reorganization, when the employer determines the persons to be dismissed on the bases of reorganization, majority of them are women with family responsibilities, or with minor children, or with many children. The National Statistics Service published the same data proving, that in crisis that also envisages reorganization, majority of those who loose jobs, are women.<sup>1</sup>

**International Standard:**

ILO Convention #111 concerning "Prohibition of Discrimination in Employment and Occupation" and #158 concerning "Employment Termination", as well as the attached recommendation #166, articles 4 and 24 of the European Social Charter, EU directive 2006/54/EC ensuring the Principle of Equal Opportunities and Treatment of Men and Women in Employment and Occupation and directive 2000/78/EC determining the General Structure of Equal Treatment in Employment and Occupation.

**Recommendation:**

The following sentence is recommended to be deleted in the Article 103 of the Law of Georgia on Public Service: Movement or/and reduction of positions in public institution shall also be considered as reorganization.

**Evaluation of a Servant****Acting Provision:**

Compliant to the article 53 of the Law of Georgia on Public Service the Public Institution is obliged to evaluate all servants on all hierarchical positions annually in accordance with the

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<sup>1</sup> [www.geostat.ge](http://www.geostat.ge)

servantevaluation rule approved by the Government of Georgia on “Rules and Conditions of Evaluation of Public Servant”. A servant is evaluated based on the assessment of the document materials and interviewing. The Evaluation is conducted by the immediate manager of the servant and with the involvement of the representative of the Human Resources Unit of the Public Institution.

**Problem Statement:**

The available practice proves, that an interview is the most subjective form of person evaluation. Therefore, this process should be undertaken by applying much higher standard of fairness, equality, and transparency principles.

Evaluating a servant through interviewing implies the highest risk of unequal treatment. Fair and reasonable division of burden of proof in such disputes is problematic. Evaluation is an issue that may lead to change in the wage of the employee in the future, lead to the decision on dismissal in the process of reorganization and etc. Therefore, maximum objectivity of the evaluation procedure is substantial for the employee. One of the ways of ensuring objectiveness is the audio recording of the interview. Probability of unequal treatment of women in the servant evaluation process is higher, since except for the fact, that for example a women returning back from the maternity leave naturally needs certain time to raise qualification, family responsibilities and change of family status, that is normally known for the employer has negative impact on the attitude to the woman. All the above mentioned may at the end result in low, or negative evaluation of the woman.

**International Standard:**

ILO Convention #111 concerning “Prohibition of Discrimination in Employment and Occupation” and #158 concerning “Employment Termination”, as well as the attached recommendation #166, articles 4 and 24 of the European Social Charter, EU directive 2006/54/EC ensuring the Principle of Equal Opportunities and Treatment of Men and Women in Employment and Occupation and directive 2000/78/EC determining the General Structure of Equal Treatment in Employment and Occupation.

**Recommendation:**

Paragraph formulated as follows is recommended to be added to the Article 53 of the Law of Georgia on Public Service: “The interview shall be audio recorded on the request of the person under evaluation”.

