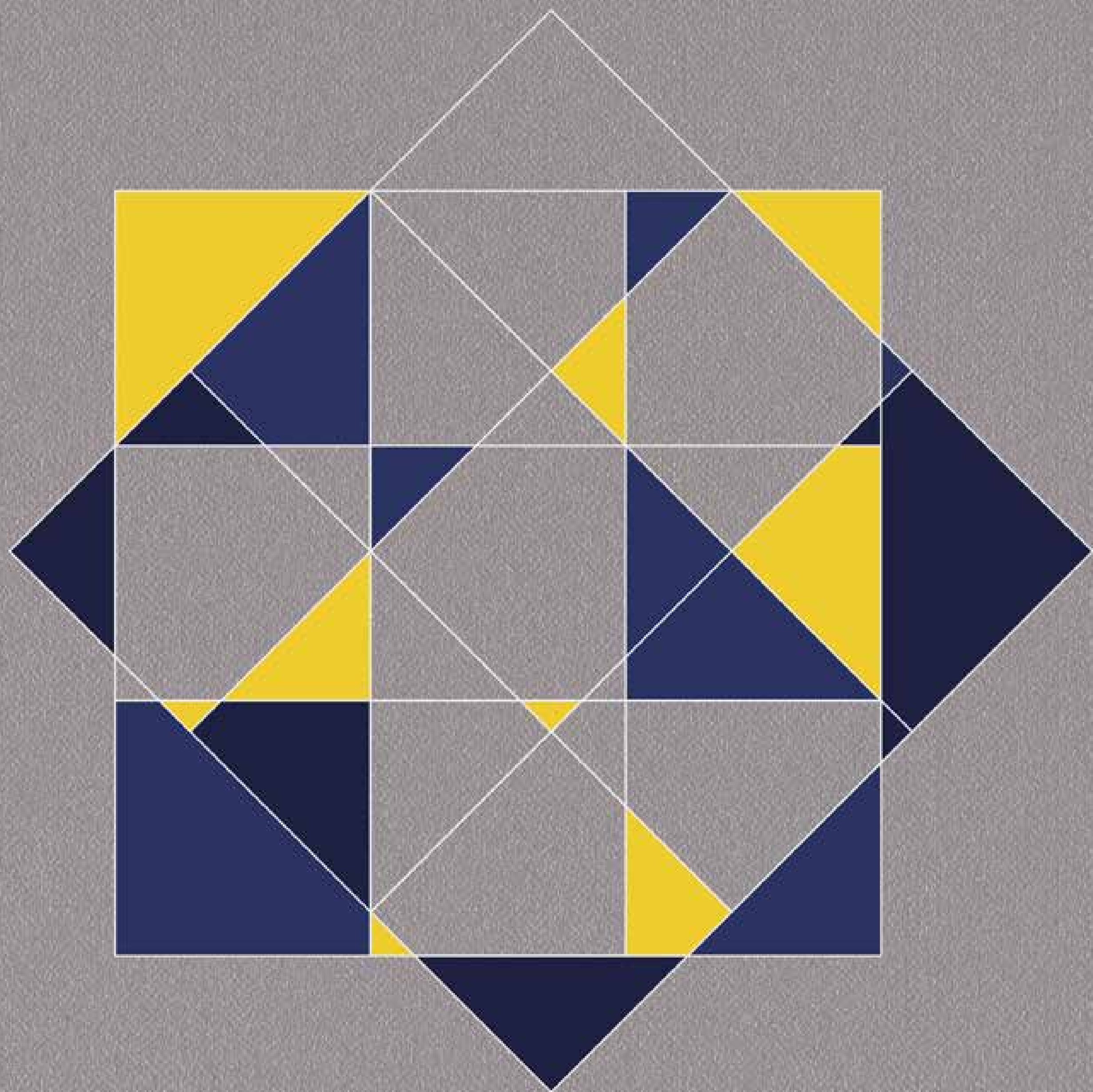
EQUALITY IN LABOUR RELATIONS



Equality in Labour Relations

(Georgian Legislation in the Context of EU Equality Directives)

Tbilisi, 2018

ადამიანის უფლებების სწავლებისა და მონიტორინგის ცენტრი

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Introduction

Prohibition of discrimination and equal treatment, despite its fundamental nature,[1] remains a significant challenge in Georgia both on normative and practical levels, which relates to enjoyment of different rights and is particularly evident in labour relations. Realization of equality principle implies existence of a legislative framework and policy, which will ensure substantive equality in different parts of societal relations.

In Georgia, actualization of equality law was related to enactment of the law of Georgia "On the Elimination of All Forms of Discrimination" (hereinafter "anti-discrimination legislation"),[2] which created common, general guarantees against unequal treatment. Before that, principle of equality was to a certain extent also reflected in the employment legislation.[3] Since then, the issue of discussion is strengthening and enhancement of guarantees of rights protection.[4]

According to Association Agreement between Georgia and the EU, Georgia has to ensure that the Georgian legislation in the spheres of anti-discrimination and gender equality converges with EU law and indicated international instruments.[5] By 2017[6] Georgia had the obligation of implementing three equality directives, namely: (1) Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or

1 General Comment No. 18 – Non-discrimination, Human Rights Committee (HRC), para. 1 (1989); General comment No. 20: Non-discrimination in economic, social and cultural rights (Art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), Committee on Economic, Social and Cultural Rights (CESCR), E/C.12/GC/20 (2009).

2 Law of Georgia "On Elimination of All Forms of Discrimination", N2391-IIს (2014). Enactment of the law represented part of the Action Plan on Visa Liberalisation concluded between Georgia and the EU. The Plan is available <http://migration.commission.ge/files/vlap-eng.pdf> accessed 22.06.2018

3 Organic Law of Georgia "On amendments to the Organic Law on "Labor Code of Georgia", N729-II (2013).

4 Public Defender as an equality body, Human Rights Education and Monitoring Center (EMC) (2017) <https://emc.org.ge/2017/08/01/emc-343/> accessed 22.06.2018

5 Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part (hereinafter „Association Agreement"), articles 348-349, XXX annex (27 June 2014); Visa Liberalization process also foresees raisig effectiveness of antidiscrimination law, see Association Agenda between the European Union and Georgia – 2017-2020, 10, 18-19, 46. Report from the Commission to the European Parliament and The Council: First Report under the Visa Suspension Mechanism, COM (2017) 815, 12 (20 December 2017) <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/news/20171220_first_report_under_suspension_mechanism_en.pdf> accessed 22.06.2018

6 According to para. 4 of Art. 431 of the Association Agreement, September 1 of 2014 is the date for entering into legal force of the rule on provisional application and referred to the parts of the agreement that shall be provisionally applied before the Agreement attained full legal force.

ethnic origin[7] (The Racial Equality Directive); (2) Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation[8] (The Employment Equality Directive); (3) Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services[9] (Gender Equal Access to Goods and Services Directive).[10] Currently, Parliament of Georgia is considering the draft law submitted by the Government on December 12, 2017, aimed at implementation of the mentioned directives in the legislation.[11]

The present research paper is intended to assess compliance of national legislation on labour relations with the referred directives and elaborate appropriate recommendations for transforming legislative framework. In addition, it is important that the process of implementing the EU Equality Directives correspond to complex nature of these documents and includes creation of an appropriate legislative framework, as well as its application in practice.

For this purpose, the first part of the research paper assesses grounds of discrimination foreseen by national legislation and their relation to the EU standards. The second part of the research paper analyses the need for regulating specific forms of discrimination and/or for changes related to existing categories of discrimination. The third part concerns special exceptional rules in the anti-discrimination legislation, while the fourth part covers issues of positive action. The fifth part of the research emphasizes the need for establishing appropriate legal protection mechanisms - concerns rights protection institutions and their mandate. The sixth part covers procedural regulations; the concluding part contains the components on awareness-raising about anti-discrimination legislation and ensuring inclusive process to facilitate the efficiency of equality politics.

7 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Racial Equality Directive 2000/43/EC).

8 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (Employment Equality Directive 2000/78/EC).

9 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 (Gender Equal Access to Goods and Services Directive 2004/113/EC).

10 Simultaneously, Georgia has an obligation to implement the Equal Treatment Directive (2006/54/EC) which will ensure realization of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. The provisions of the said Directive have to be fulfilled within four years after entry into force of Association Agreement. 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 (recast).

11 Draft law N 07-2/157/9 <https://info.parliament.ge/#law-drafting/14957> accessed 22.06.2018

1. Grounds of Discrimination

It is essential that the anti-discrimination legislation establish firm, unambiguous and systemic guarantees of equality protection, reflected in appropriate determination of discrimination grounds. *Protected grounds* are characteristics, which shall not become the basis of unfavorable treatment towards a person, listed in the organic law of Georgia "Georgian Labour Code" (hereinafter "Labour Code"), and the law "On the Elimination of All Forms of Discrimination".

EU legislation refers to the prohibited grounds of discrimination in the Charter of Fundamental Rights of the European Union in general,[12] as for their specific regulation it is important that the content of equality directives is analysed. The scope of protection of EU non-discrimination law became significantly comprehensive after adoption of the Directives in 2000. Before this date EU law only covered discrimination on the ground of sex. Based on the existing legislative framework the Racial Equality Directive (2000/43/EC) prohibits discrimination on the grounds of race and ethnic origin;[13] the Employment Equality Directive (2000/78/EC) lists protected grounds such as religion or belief, disability, age and sexual orientation;[14] While Gender Equal Access to Goods and Services Directive (2004/113/EC)[15] prohibits discrimination[16] on the ground of sex[17].

The Labour Code is problematic in terms of thorough and comprehensive determination of protected grounds in its several directions. Namely, the code sets out a closed list of prohibited grounds; in comparison to the law of Georgia "On the Elimination of All Forms of Discrimination", list of prohibited grounds is narrowly defined in the Labour Code; furthermore, several protected grounds are not appropriately drafted, while in certain contexts several grounds are entirely absent from the Code. It has to be noted that the legislation on Public Service does not contain shortcomings in this regard.[18]

12 Charter of Fundamental Rights of the European Union, European Union, Art. 21. After the Lisbon Treaty entered into force (2009 year), the Charter of Fundamental Rights became legally binding.

13 Racial Equality Directive 2000/43/EC, Art. 1.

14 Employment Equality Directive 2000/78/EC, Art. 1.

15 Gender Equal Access to Goods and Services Directive 2004/113/EC, Art. 1.

16 The jurisprudence of the Court of Justice of the European Union (CJEU) is relevant in terms of determining scope of protected grounds –precedents mainly relate to age, also in certain cases to protected grounds of religion or belief.

17 In turn, the EU legislation prohibits discrimination on the grounds of sex based on three main Directives, such as follows: (1) 2006/54/EC (regarding employment); (2) 2004/113/EC (regarding access to goods and services); (3) 79/7/EEC (regarding social security). It has to be noted that implementation of all these three Directives is foreseen by the Association Agreement. The deadlines for Directive 2004/113/EC is 2017, while for the other two – 2018, see Association Agreement, June 27, 2014, Annex XXX (27 June 2014).

18 Law of Georgia "On Public Service", Art. 9 (2015).

To address these problems it is important that the Labour Code converges with the approach in the Law "On the Elimination of All Forms of Discrimination", which consists in open-ended nature of the listed grounds of discrimination.[19]

Further, it is problematic that several grounds of discrimination foreseen in the Labour Code yields ambiguous interpretations. Namely, the Code currently in force foresees a protected ground "belonging … to a religious … organization". This formulations contain risks that prohibition of discrimination on the ground of religion is related to institutionalized belief systems. Such interpretation of a religion or belief, as protected grounds, is inadmissible according to the European Court of Human Rights (ECtHR),[20] stating that religion or belief are subjective categories and their limitation to religious institutions does not correspond to autonomous concepts of religion and belief. Therefore, it is important that the Labour Code foresees religion or belief as separate protected grounds.

Furthermore, it is important that the following prohibited grounds of discrimination are added to the list in the Labour Code: place of residence, health condition, gender identity and expression.

Georgian Government submitted draft amendments to the Parliament[21], which is aimed at implementation of Equality Directives,[22] and also include changes to the Labour Code. The version in the draft law does not eliminate the indicated shortcoming in the Code regarding provisions on prohibited grounds of discrimination, as the list of those grounds is still limited and closed. Furthermore, the proposed draft bill does not foresee changes related to addition or correction of protected grounds. Despite the fact that the EU directives do not

19 Closure of the list is not justified according to the jurisprudence of the Georgian Constitional Court (For instance, the Constitutional Court Decision of March 18, 2011 N 2/1/473 in the case Georgian citizen Bichiko Chonkadze and others against the Minister of Energy; Constitutional Court Decision of March 31, 2008 N2/1-392 in the case Georgian citizen Shota Beridze and others against Georgian Parliament), as well as the changes to the Constitution to acquire legal force, namely right to equality as set out in article 11 (will enter into legal force after the President elected in the upcoming Presidential elections will take an oath, see the Constitutional law of Georgia "Regarding Changes to the Constitution", N1324-რს, Art. 3 (2017).

20 While considering human rights issues CJEU takes into account the scope of the European Convention of Human Rights, as well as interpretations of the European Court of Human Rights (ECHR), including interpretations related to religion or belief. For instance, see Case C-157/15 Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV Court [14 March 2017] Judgment of the (Grand Chamber); Case C-188/15 Asma Bougnaoui and Association de défense des droits de l'homme (ADDH) v Micropole SA, [14 March 2017] Judgment of the Court (Grand Chamber).

21 Draft law N 07-2/157/9 <https://info.parliament.ge/#law-drafting/14957> accessed 22.06.2018

22 However, the presented draft bills do not completely cover the content in the Equality Directives. On this issue, see 'Statement of "Coalition for Equality" directed to the Parliament of Georgia regarding enhancement of Anti-discrimination Legislation' <https://emc.org.ge/2018/02/07/emc_coalition/> accessed 22.06.2018

specifically address this issue, it is important that harmonization of the Georgian legislation with the equality directives is not arbitrary and considers not only a minimum standard upheld by the directives,[23] but the general anti-discrimination framework.

2. Forms of Discrimination

Equality Directives set out universal definitions of the concepts of discrimination, namely actions and treatment, which is held to be discrimination. Forms of discrimination set out by different EU directives, for the most part, coincide and cover the following forms: direct discrimination, indirect discrimination, harassment, instruction to discriminate, and victimization. However, corresponding to protected grounds and the specificity of their scope, certain directives provide for special forms of discrimination, such as sexual harassment (based on sex)[24] and reasonable accommodation (in labour relations).[25] Attention has to be drawn to the clarification in the directives that the protection guarantees foreseen are the minimum requirements. Therefore, considering the interpretations of the court and established good practice, this research paper will not omit to discuss forms of discrimination, such as intersectional discrimination and segregation.

Different acts/categories of discrimination, such as direct, indirect, multiple discrimination, instruction to discriminate, victimization,[26] harassment,[27] and sexual harassment[28] are foreseen by national legislation regulating different spheres. However, apart from the fact that discrimination forms recognized by the legislation are not systematically defined and do not cover all spheres, they do not fully correspond to forms determined by EU directives, while part of the existing concepts need modification and/or clear and systemic reflection in respective legislation.

23 Racial Equality Directive 2000/43/EC, Art. 6; Employment Equality Directive 2000/78/EC, Art. 8; Gender Equal Access to Goods and Services Directive 2004/113/EC, Art. 7.

24 Gender Equal Access to Goods and Services Directive 2004/113/EC, Art. 4 (4).

25 The concept of reasonable accomodation may not be limited to labour relations based on different legal instruments and documents (for instance th UN Convention on the Rights of Persons with Disabilities), however in this situation the concept is discussed only in the context of those 3 directives.

26 Law of Georgia "On Elimination of All Forms of Discrimination", N2391-IIს, paras. 2 and 5 of Art. 5, para. 1 of Art. 12 (2014).

27 Organic Law of Georgia "Labor Code of Georgia", №4113-რს, para. 4 of Art. 2 (2010).

28 Law of Georgia "On Gender Equality", №2844–Iს, subpara. 'b' of para. 1 of Art. 6 (2010).

2.1. Forms of Discrimination: Need for Legislative Regulation

Reasonable Accommodation

Georgian Legislation does not foresee a principle of reasonable accommodation in relation to any group, which is essential for achieving substantive equality for particular groups. The test for determination of the failure to provide reasonable accommodation does not coincide with those for other forms of discrimination, which in practice obstructs finding this form of discrimination and reduces the effectiveness of equality policy. For years the Public Defender of Georgia[29], non-governmental organizations[30] and representatives of academia[31] have expressed their concerns about the absence of reasonable accommodation in the legislation.

It has to be noted that the constitutional changes related to the principle of reasonable accommodation (which will inter into force after the President elected in 2018 takes an oath), states that the state shall create particular conditions for realization of the rights and interests of the persons with disabilities.[32] Georgian Constitution sets out this right as one of the components of equality.

Principle of Reasonable Accommodation according to the Equality Directives

The Employment Equality Directive (2000/78/EC) defines the principle of reasonable accommodation,[33] according to which the employer shall take appropriate measures, to enable a person with a disability to have access to, participate in, advance in employment, or to undergo training. Furthermore, this obligation is not unqualified, as the reasonable accommodation may not impose a disproportionate burden on the employer. According to the directive, this burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the State concerned.[34]

29 Monitoring Report on State Employment Programs for Persons with Disabilities, Public Defender of Georgia, 18-19 (2018).

30 'Statement of "Coalition for Equality" addressed to the Georgian Parliament regarding improvement of Georgian anti-discrimination legislation' <https://emc.org.ge/2018/02/07/emc_coalition/> accessed 22.06.2018; Public Defender as an Equality Body, Human Rights Education and Monitoring Center (EMC), 30 (2017).

31 Andrea Broderick, 'Reasonable accommodation according to the UN Convention on the Rights of Persons with Disabilities: The situation of Georgia', 2-3 (2017).

32 Constitutional law of Georgia "Regarding Changes to the Constitution", N1324-რს, para. 4 of Art. 11 (2017).

33 Employment Equality Directive 2000/78/EC, Art. 7(2).

34 Ibid. Art. 5.

Furthermore, according to the preamble of the directive, assessment whether the measure provided by the employer is appropriate is based on the criteria of effectiveness and practicality.[35] Appropriate measures may consist in adapting the premises and equipment, patterns of working time, the distribution of tasks or the provision of training or integration resources.[36] According to the Court of Justice of the European Union (CJEU), in the harmonization process national legislation shall clearly and exhaustively define principle of reasonable accommodation. In addition, there has to be appropriate state policy on the level of central government, and reasonable limits of delegation to local self-government bodies.[37]

Thus, the Employment Equality Directive (2000/78/EC) institutes the principle of reasonable accommodation, sets out criteria for appropriate measures to be taken by an employer and states that those may not create disproportionate burden; in addition, the directive discusses the active role of the state in the process in terms of devising and implementing appropriate policy.

Reasonable Accommodation according to the UN Convention on the Rights of Persons with Disabilities

Apart from Association Agreement, Georgia was bound by the obligation to institute the principle of reasonable accommodation as a result of ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD).[38] According to the Convention, denial to reasonable accommodation represents one of the forms of discrimination. Based on the CRPD, reasonable accommodation "means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms";[39] principle of reasonable accommodation imposes an obligation ex nunc[40] and is not subject to progressive realization, which points to immediate obligation to institute and implement it.[41] Reasonable accommodation is an indi-

35 Ibid. Rec. 20.

36 Ibid. Regarding reasonable accommodation see Andrea Broderick 'Reasonable accommodation according to UN Convention on the Rights of Persons with Disabilities: The situation of Georgia', 21-22 (2017).

37 C-312/11 Commission v Italy [2013], Court of Justice of the European Union, press release No 82/13 <https://curia.europa.eu/jcms/upload/docs/application/pdf/2013-07/cp130082en.pdf> accessed 22.06.2018

38 Convention on the Rights of Persons with Disabilities, A/RES/61/106, Art. 3 (24 January 2007).

39 Ibid. Art. 2.

40 General comment No. 2, Article 9: Accessibility, Committee on the Rights of Persons with Disabilities, para. 26 (2014).

41 General comment No. 4 on the right to inclusive education, Committee on the Rights of Persons with Disabilities, para. 31 (2016).

vidual measure, which shall create appropriate conditions for an individual. According to the content of the CRPD, reasonable accommodation exists as an obligation, unless it constitutes undue burden on the entity concerned.[42]

Definition of reasonable accommodation and recognition of the denial to it as a form of discrimination is significant for enjoyment of a number of rights.[43] Its significance is particularly evident in relation to the right to education, due to which the Committee holds that in the field of education realization of individual support and reasonable accommodation shall be a priority. This means that the principle of reasonable accommodation is established on the national and local, as well as institutional levels, in relation to all stages of education.[44] According to Convention standard, reasonable accommodation may not entail additional costs for persons with disabilities.[45]

Thus, taking into account the above standards, it is important that the harmonization process is used for elaborating adequate equality policy, the Employment Equality Directive (2000/78/EC) limits the principle of reasonable accommodation on the one hand to its beneficiaries and on the other, to its field of application. However, extending the principle of reasonable accommodation only to persons with disabilities is not a good practice, as the denial to reasonable accommodation has an equal effect on religious and ethnic groups.[46] Furthermore, denial to reasonable accommodation shall not be permissible in any sphere, as the limitation of the rule's material scope to labour relations contradicts the UN Convention on the Rights of Persons with Disabilities (CRPD). In addition, it has to be underlined that in 2015 the UN committee recommended to the EU, that the Racial Equality Directive (2000/43/EC), Gender Equal Access to Goods and Services Directive (2004/113/EC) clearly define the denial of reasonable accommodation, as a form of discrimination, which implies its application to spheres of social security, health, education and access to services.[47]

It is a subject of discussion in which documents principle of reasonable accommodation needs to be incorporated as a form of discrimination.[48] It is important that the concept of

42 General comment No. 2, Article 9: Accessibility, Committee on the Rights of Persons with Disabilities, para. 25 (2014).

43 General comment No. 4 on the right to inclusive education, Committee on the Rights of Persons with Disabilities, para. 4 (f) (2016).

44 Ibid. para. 28.

45 Ibid. para. 17.

46 Public Defender as an Equality Body, Human Rights Education and Monitoring Center (EMC), 42-43 (2017).

47 Handbook on European non-discrimination law, European Union Agency for Fundamental Rights and Council of Europe, 25 (2018).

48 Andrea Broderick 'Reasonable accommodation according to UN Convention on the Rights of Persons with Disabilities: The situation of Georgia', 5 (2017).

reasonable accommodation relates to all groups, all sphere and the mandate of a respective supervision body, including the authority of the Public Defender fully extends to identifying and establishing this form of discrimination.[49]

Legislative changes initiated in the parliament do not foresee a principle of reasonable accommodation,[50] which is a significant shortcoming in the proposed draft bill and does not satisfy the standard set by the respective EU directives.[51]

Intersectional Discrimination and Segregation

Intersectional discrimination and segregation as forms of discrimination are totally absent from the Georgian legislation, which indicates that there is need for reflecting those in the legislation. In the discussion regarding intersectional discrimination, it is important that its relation to multiple discrimination is considered. According to some views, intersectional discrimination is a form of multiple discrimination, however, there is a conceptual difference between those.[52] In both cases of multiple and intersectional discrimination, a person possesses several protected characteristics, however, in the first case protected characteristics are the reasons for unequal treatment independently, while in case of an intersectional discrimination several grounds operate and interact with each other at the same time in such a way that they are inseparable and produce specific category of discrimination.[53] It has to be noted that the Law of Georgia "On the Elimination of All Forms of Discrimination" foresees multiple discrimination[54], however, according to the view of the Public Defender, this provision does not have the resource to include intersectional discrimination, therefore it is important that changes are made.[55] The need to define intersectional discrimination as a separate form of discrimination is also pointed out by non-governmental organizations working in this field.[56]

49 Ibid. 6-7.

50 Draft law 07-2/157/9 <https://info.parliament.ge/#law-drafting/14955> accessed 22.06.2018

51 Employment Equality Directive 2000/78/EC, Art. 5.

52 Handbook on European non-discrimination law, European Union Agency for Fundamental Rights and Council of Europe, 60 (2018).

53 Ibid.

54 Law of Georgia "On the Elimination of All Forms of Georgia", N2391-IIს, para. 4 of Art. 2 (2014).

55 Special Report on Fight against Discrimination, Its Prevention and Situation of Equality, Public Defender of Georgia, 20 (2016); Special Report on Fight against Discrimination, Its Prevention and Situation of Equality, Defender of Georgia, 35 (2017).

56 'Statement of "Coalition for Equality" addressed to the Georgian Parliament regarding improvement of Georgian anti-discrimination legislation' <https://emc.org.ge/2018/02/07/emc_coalition/> accessed 22.06.2018

On the issue of intersectional discrimination the general recommendation of the Committee on the Elimination of Discrimination against Women (CEDAW)[57] is also of relevance. The CEDAW Committee urges states to "recognize and prohibit intersectional forms of discrimination".[58] There is also important jurisprudence of the European Court of Human Rights (ECtHR) relating to these forms of discrimination.[59]

Segregation, which is also absent from the national legislation is a form of discrimination, which refers to an act by which a natural or legal person separates other persons on the basis of one of the enumerated grounds without an objective and reasonable justification.[60] Public Defender of Georgia[61] and non-governmental organizations[62] have expressed their concerns regarding the problematic nature of the absence of segregation as a form of discrimination in the Georgian legislation.

European Commission against Racism and Intolerance recommends that the law sets out segregation as a form of discrimination.[63] The same commission points out the problem of such absence from the Georgian Legislation as well.[64]

The EU directives do not explicitly refer to segregation as a form of discrimination, however, states in the national legislation address forms of discrimination comprehensively for ensuring effectiveness of anti-discrimination law. For instance, in the Croatian anti-discrimination legislation, segregation is defined as 'forced and systemic separation on the basis of a protected ground in the law'.[65]

57 Ratified by Parliament Ordinance of 22 September 1994 N 561.

58 General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, UN Committee on the Elimination of Discrimination against Women (CEDAW), para. 18 (2010).

59 B.S. v. Spain App no 47159/08 (ECtHR, 24 July 2012).

60 General Policy Recommendation No. 7 on National Legislation To Combat Racism And Racial Discrimination, European Commission against Racism and Intolerance (ECRI), para. 16 (13 December 2002).

61 Special Report on Fight against Discrimination, Its Prevention and Situation of Equality, Public Defender of Georgia, 20-21 (2016); Special Report on Fight against Discrimination, Its Prevention and Situation of Equality, Defender of Georgia, 35 (2017).

62 'Statement of "Coalition for Equality" addressed to the Georgian Parliament regarding improvement of Georgian anti-discrimination legislation' <https://emc.org.ge/2018/02/07/emc_coalition/> accessed 22.06.2018

63 General Policy Recommendation No. 7 on National Legislation To Combat Racism And Racial Discrimination, European Commission against Racism and Intolerance (ECRI), para. 6 (13 December 2002).

64 ECRI Report on Georgia (fifth monitoring cycle), European Commission against Racism and Intolerance (ECRI), para. 8 (8 December 2015).

65 Croatia, The Anti-Discrimination Act, Art. 5(2) (2009).

The draft bill initiated in the Georgian Parliament does not contain changes in this direction, despite the fact that definition of this category of discrimination is essential for operation of an appropriate legislative framework of the rights protection in the field of employment.

2.2. Forms of Discrimination: Need for Changes

Harassment

Harassment as a form of discrimination is foreseen in the Labour Code,[66] according to which 'an act of direct or indirect harassment aimed at or resulting in an intimidating, hostile, humiliating, degrading, or abusive environment for that person, or creation of such circumstances for a person which directly or indirectly places the person in a unfavorable condition compared to other persons in similar circumstances is discrimination.' Despite foreseeing the concept of harassment in the Labour Code, the latter is not included in other important legislative acts. Among others, the concept of harassment is absent from the legislation on Public Service[67], and the Law of Georgian "On Elimination of All Forms of Discrimination".

Equality Directives state in relation to harassment that an unwanted conduct with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment will be deemed to be discrimination.[68] It is noteworthy that the content of the Directive is equally applicable to public and private sector.[69] Furthermore, the issue of harassment is not limited to labour relations (harassment is also referred to by the Racial Equality Directive (2000/43/EC) and Gender Equal Access to Goods and Services Directive (2004/113/EC)).[70]

The draft bill initiated in the parliament proposes a modified definition of harassment in the Labour Code, which improves the existing one and adequately addresses the standard in the Directive, as the component of violation of dignity is added to the provision on prohibition of harassment. However, the initiated bill does not add the definition of harassment to the

66 Organic Law of Georgia "Labor Code of Georgia", №4113-რს, para. 4 of Art. 2.

67 A specific form of harassment, sexual harassment is impermissible in Public Service, see Ordinance N200 of the Government of Georgia "On Defining General Rules of Conduct and Ethics at Public Institutions", Art. 15 (20 April 2017).

68 Racial Equality Directive 2000/43/EC, Art. 2(3); Employment Equality Directive 2000/78/EC, Art. 2(3); Gender Equal Access to Goods and Services Directive 2004/113/EC, Art. 2(c).

69 Racial Equality Directive 2000/43/EC, Art. 3(1); Employment Equality Directive 2000/78/EC, Art. 3(1).

70 Racial Equality Directive 2000/43/EC, Art. 2(3), 3(1)(e)-(h); Gender Equal Access to Goods and Services Directive 2004/113/EC, Art. 2(c), 3.

anti-discrimination legislation and the law on Public Service, which contradicts the purpose of the harmonization of the Georgian Legislation.

Sexual Harassment

The Need for Defining Sexual Harassment through Legislation

Despite broad definition of sexual harassment, the present subchapter will cover the shortcomings in the legislation related to sexual harassment only in labour relations. Legislative framework on labour relations, as well as anti-discrimination does not foresee sexual harassment as s form of discrimination. Only the legislative framework on gender equality points out that any unwanted verbal, non-verbal or physical conduct, aimed at or resulting in violation of a person's dignity or a degrading, hostile, abusive environment for that person, is prohibited in labour relations.[71] However, the said formulation does not clearly state that sexual harassment is a form of discrimination, which in practice obstructs finding of such discrimination in labour relations and indicates the need for its thorough regulation. Furthermore, when the results of a prohibited action is not clear, the regulation becomes devoid of a preventive effect. Since 2007, the Code of ethics and general rules of conduct in public service determined that sexual harassment is impermissible, and the public servant shall be informed about 'the internal and general procedures of disclosing such facts'.[72] Such provision is important for effective implementation of equality policy, however, the rule extends to public service only and the issue of effective disclosure of and response to sexual harassment in the public sector is still questionable.

Despite including prohibition of sexual harassment in the legislation regulating particular fields, clearly the existing normative framework is weak and insufficient as sexual harassment is not deemed to be a form of discrimination, which weakens the effectiveness of the protection; while protection guarantees against sexual harassment is totally absent from the Labour Code. The practice reveals that despite gravity of the problem of sexual harassment in labour relations, reporting rate is rather weak,[73] which in combination with other factors is caused by the absence of sexual harassment as a form of discrimination in the legislation. For

71 Law of Georgia "On Gender Equality", №2844–Iს, subpara. 'b' of Art. 6 (2010).

72 Ordinance N200 of the Government of Georgia "On Defining General Rules of Conduct and Ethics at Public Institutions", Art. 15 (20 April 2017).

73 Public Defender's Report on the Situation of Human Rights and Freedoms in Georgia in 2017, 125, 129-130 (2018) <http://www.ombudsman.ge/uploads/other/5/5139.pdf> accessed 22.06.2018

years, Public Defender of Georgia[74] and non-governmental organizations[75] have pointed out the need to qualify sexual harassment as a form of discrimination in the legislation. Report of the Working Group on the Universal Periodic Review also discusses the strengthening of the legislative framework and policy against sexual harassment in Georgia including in labour relations.[76]

Gender Equal Access to Goods and Services Directive (2004/113/EC)[77] refers to sexual harassment, while the Equal Treatment Directive (2006/54/EC)[78] covers the issues of sexual harassment in labour relations, which ensures realization of the principle of equal opportunities for and equal treatment of men and women in employment and occupation. The deadline for reflecting the latter principle in Georgian Legislation expires in 2018. The obligation to impose criminal or other sanctions for sexual harassment was undertaken based on Istanbul Convention as well.[79] General recommendation of the CEDAW Committee[80], relating to prohibition of sexual harassment[81] have to be also noted. Convention of the International Labour Organization (ILO) concerning Discrimination in Respect of Employment and Occupation[82] also prohibits discrimination based on sex.[83]

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74 Ibid. 124.

75 'Statement of "Coalition for Equality" addressed to the Georgian Parliament regarding improvement of Georgian anti-discrimination legislation' <https://emc.org.ge/2018/02/07/emc_coalition/> accessed 22.06.2018; Public Defender as an Equality Body, Human Rights Education and Monitoring Center (EMC) (2017); Gender Equality and Women's Rights, Preliminary Results of Monitoring of the Implementation of Human Rights-related Strategies and Actions Plans (2016-2017), Union "Sapari", 11-130 (2018).

76 Report of the Working Group on the Universal Periodic Review: Georgia, Human Rights Council, A/HRC/31/15, para. 117.12 (13 January 2015).

77 Gender Equal Access to Goods and Services Directive 2004/113/EC, Art. 2(d).

78 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 (recast), Art. 2(1)(d).

79 Convention on Preventing and Combating Violence against Women and Domestic Violence, CETS No.210, Istanbul, 11.V.2011, Art. 40. Chart of signatures and ratifications of Treaty 210 <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures?desktop=true> accessed 22.06.2018

80 Ratified by Parliament Ordinance of 22 September 1994 N 561.

81 General Recommendation No. 19: Violence against women, UN Committee on the Elimination of Discrimination against Women (CEDAW), para. 18 (1992); General Recommendation No. 12: Violence against women, UN Committee on the Elimination of Discrimination against Women (CEDAW), para. 18 (1989).

82 C-111, Discrimination (Employment and Occupation) Convention (1958).

83 According to ILO standards, individual legislative regulations/appropriate policy should exist independent from state policy on sexual harassment against discrimination based on sex, see Equality in Employment and Occupation, Special survey on equality in employment and occupation in respect of Convention No. 111, para. 179 (1996); C-111, Discrimination (Employment and Occupation) Convention, Art. 1 (1958).

The legislative changes initiated in the parliament do not foresee qualification of sexual harassment as a form of discrimination, which is a significant shortcoming of the draft law.

Employer's Responsibility in Relation to Sexual Harassment

Efficiency and adequacy of policies against sexual harassment in labour relations are defined by several components, among which, the employer's duty and consequent responsibility to combat sexual harassment, as defined by the legislation, is the most important.

In private labour relations, according to Georgian legislation, the employer does not have an obligation to create internal mechanisms to combat sexual harassment. Such obligations, however insufficient, are defined in the Public Service regulations which are related to the sub-legislative normative act adopted in 2017. The regulation indicates on the right of civil servants to receive information on prohibition of sexual harassment, as well as on the internal and general mechanisms for rights protection in cases of sexual harassment.[84] According to this ordinance, the public servant, especially the one on a high position, should treat any communication or action directed towards combatting sexual harassment with high sensitivity and confidentiality.[85] The content of these provisions indicate that in public service, in the relevant agency, there should be an appropriate policy in place on combatting sexual harassment. However, it is problematic that the responsibility of the employer is not clear in these processes.

According to the Equal Treatment Directive (2006/54/EC), it is essential that the state take preventive measures, which entails the responsibility of the employer as well[86] – to take preventive measures against harassment and sexual harassment in the workplace and in access to employment, vocational training and promotion.[87] The same is noted in the directive's preamble ("employers and those responsible for vocational training should be encouraged to take measures to combat all forms of discrimination on grounds of sex and, in particular, to take preventive measures against harassment and sexual harassment in the workplace and in access to employment, vocational training and promotion, in accordance with national

84 Ordinance N200 of the Government of Georgia "On Defining General Rules of Conduct and Ethics at Public Institutions", paras. 3 and 4 of Art. 15 (20 April 2017).

85 Ibid. para. 5 of Art. 15.

86 The Equal Treatment Directive (2006/54/EC) presented to the Commission by the European Parliament indicated not the encouragement but the employers' obligation, however the Commission did not share the proposed formulation of the European Parliament. See more here: Gender equality in employment and occupation Directive 2006/54/EC: European Implementation Assessment, European Parliamentary Research Service, I-17 (2015).

87 Equal Treatment Directive 2006/54/EC, Art. 26.

law and practice").[88] In this regard, it is important to consider Explanatory Report to the Istanbul Convention, which notes that even though the scope of the application of article regarding sexual harassment is not limited to the labour relations, acts of sexual harassment are prevalent in this sphere, and, as a rule, it is related to abuse of power and hierarchical relationship between the victim and the perpetrator.[89] Thus, international documents clearly see the role of the employers in combatting sexual harassment in the field of labour relations and leave the creation of adequate mechanisms, in accordance to the national context, to the state discretion.

Practice of EU Member States shows that considering high risks of sexual harassment in the field of labour relations, number of states envisage the clear obligations of the employer in this process.[90] The legislation of France,[91] Czech Republic[92], Belgium[93], Poland[94], Germany, Croatia, Italy, Slovenia, Ireland, Netherlands and Cyprus define the employers' responsibilities in this context.

For example, in Ireland, similarly to other countries, employer has a responsibility to take preventive measures against harassment.[95] In particular, according to the Irish legislation, the employer will be held responsible in the following cases: (1) where the employee is harassed at the place of employment or in the course of their employment by the persons employed at the same place, by the employer, or a client, customer or other business partner of the employer[96] and the circumstances of the harassment are such that the employer ought

88 Ibid. Rec. (7).

89 Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, CETS No.210, Istanbul, 11.V.2011, para. 209 <https://rm.coe.int/16800d383a> accessed 22.06.2018

90 Deirdre McCann, 'Sexual harassment at work: National and international responses, Conditions of Work and Employment Series No. 2', ILO, 27 (2005).

91 How employers in European countries should deal with workplace sexual harassment <https://www.iuslaboris.com/en-gb/resources/insights/a/how-employers-european-countries-should-deal-workplace-sexual-harassment/> accessed 22.06.2018

92 David Zahumenský, 'Czech Republic: Non-discrimination', European Commission, 61 (2017). See. Czech Republic, Labor Code, No. 262/2006, Sec. 265.

93 Emmanuelle Bribosia, Isabelle Rorive & Rizcalla, 'Belgium: Non-discrimination', European Commission, 52 (2017).

94 Łukasz Bojarski, 'Poland: Non-discrimination', European Commission, 51 (2017).

95 Gender Equal Access to Goods and Services Directive 2004/113/EC European Implementation Assessment, European Union, 1-17 (2017).

96 This category includes all persons, with whom the employer might reasonably expect to come in contact with in the workplace or otherwise in the course of their employmet. See Ireland, Employment Equality Act, Art. 14A(4) (1998) <http://www.lawreform.ie/_fileupload/RevisedActs/WithAnnotations/EN_ACT_1998_0021.PDF> accessed 22.06.2018

to have taken necessary steps to prevent it;[97] (2) where the harassment has occurred and the victim is treated differently in the workplace or otherwise in the course of their employment by reason of rejecting or accepting the harassment or it could reasonably be anticipated that they would be so treated.[98]

Furthermore, in case where the employer's responsibility is established precondition, the burden of proof that the employer took all the necessary steps is on the employer. In relation to the first case, the necessary measures entails taking preventive measures;[99] And in the second case, it includes the employer's responsibility in terms of preventing the victim from being treated differently, as well as working towards reversing the effects of such treatment.[100]

Italian legislation also points to the employer's direct obligation to take appropriate measures to protect employees, including providing safe labour conditions,[101] which also implies the employer's obligation to take adequate measures to prevent sexual harassment.[102] Norms of similar content are also included in the Cypriot legislation. Under the 2016 decision of the Cypriot Equality Institution, the Broadcasting Company not taking adequate measures against sexual harassment became the basis for holding the employer responsible.[103]

Similarly, the Dutch legislation envisages the employer's obligation, in relation to sexual harassment, to have the appropriate policy in place, which should be created based on consultation with the employee.[104] The legislation establishes that if the employer does not take appropriate measures to prevent harassment, it is responsible for the action of its employees, in accordance with those provisions of Civil Code, which refer to the employers' responsibility to establish good practice and adequate care.[105] In addition, the court case law has established that employers may be subject to moral damages in case of creating conditions for sexual harassment.[106]

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97 Ireland, Employment Equality Act, Art. 14A(1)(a) (1998).

98 Ibid. Art. 14A(1)(b).

99 Ibid. Art. 14A(2)(a).

100 Ibid. Art. 14A(2)(b).

101 Italian Civil Code, Art. 2087 <http://www.wipo.int/edocs/lexdocs/laws/it/it/it212it.pdf> accessed 22.06.2018

102 Chiara Favilli, 'Italy: Non-discrimination', European Commission, 39-40 (2017).

103 Corina Demetriou, 'Cyprus: Non-discrimination', European Commission, 55 (2017).

104 Netherlands, Working Conditions Act, 1999, Art. 12 <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/68800/113005/F-45642255/NLD78361%20Eng.pdf> accessed 22.06.2018

105 Rikki Holtmaat & Titia Loenen, 'The Netherlands: Non-discrimination', European Commission, 46 (2017).

106 Ibid.

In France, the employer is obliged to implement a policy that covers sexual harassment issues.[107] In addition, according to the Labour Code, the employer is obliged to provide trainings for the management to enable they prevent and identify cases of harassment.[108]

In Slovenia, until 2013, the employer was responsible in the context of general obligation.[109] However, after the adoption of the Employment Relationship Act, employer's direct liability was established in the event of violation of prohibition of discrimination, according to which those subject to protection are the employees and the candidates seeking employment.[110] This law determines the possibility of receiving compensations, which should be effective, proportional and discouraging the employer from repeating the violation.[111] Slovenian legislation sets protection of worker's dignity at work, which entails the employer's responsibility to take necessary measures and provide a working environment, where none of the workers is subjected to sexual or other harassment on the part of the employer or co-workers.[112]

Thus, good practice, in order to effectively combat sexual harassment, implies the employer's responsibility for the actions taken by the employees/third parties. This often comes from the employer's obligation to provide a safe and healthy environment.[113] In the corresponding court proceedings, the burden of proof is on the employer. In order to avoid liability, the employer, as a rule, needs to show that they have taken appropriate measures to prevent sexual harassment.[114] Appropriate measures in relation to sexual harassment implies the two main directions: (1) ensuring the development of anti-harassment policy[115] and its implementation and monitoring (2) considering the appropriate mechanisms for cases of harassment and their adequate implementation.[116] Consequently, the employer reacting only to specific

107 Ann Numhauser-Henning & Sylvaine Laulom, 'Harassment related to Sex and Sexual Harassment Law in 33 European Countries: Discrimination versus Dignity', European Commission, 17 (2011).

108 Ibid.

109 Slovenia, Code of Obligations, No. 97/07, Art. 147.

110 Slovenia, Employment Relationships Act (ZDR-1), No. 102-01/12-16/45, Art. 8 (2013).

111 Ibid.

112 Ibid. Art. 47.

113 Ann Numhauser-Henning & Sylvaine Laulom, 'Harassment related to Sex and Sexual Harassment Law in 33 European Countries: Discrimination versus Dignity', European Commission, 28 (2011).

114 Ibid. 17.

115 Policy document as an example <http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-suva/documents/policy/wcms_407364.pdf> accessed 22.06.2018

116 Guidelines on Sexual Harassment Prevention at the Workplace, ILO & Ministry of Manpower and Transmigration, 9 (2011)<http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms_171329.pdf> accessed 22.06.2018; Deirdre McCann, Sexual harassment at work: National and international responses, Conditions of Work and Employment Series No. 2, ILO, 27 (2005).

cases can not be considered as an appropriate measure, it is important that the appropriate preventive policies, including information policy, are in place. [117]

Instruction to Discriminate

According to the Law of Georgia "On the Elimination of All Forms of Discrimination", „any action carried out for the purpose of forcing, encouraging, or supporting a person to discriminate against a third person…shall be prohibited".[118] This formulation is problematic and requires separate changes in several directions: (1) Instruction to discriminate is not a form of discrimination under the applicable law. It is important that the norm clearly reflects that instruction to discriminate is a category of discrimination, which will increase its preventive effect. (2) According to the current edition, in order for an action to be classified as an instruction to discriminate the existence of intent should be proved. It is advisable that instruction to discriminate needs to lead to appropriate consequences not only in case of proven intent. Only the existance of an instruction to discriminate (without intent) should be understood as a qualifying factor, which eliminates the possibility of narrow understanding of instruction to discriminate. (3) Georgian legislation does not clearly define how the liability is shared between the instructor and the one actually conducting the task. According to the systemic interpretation, the instructor should be held liable, however the scope of responsibility in case of the one conducting the discrimination is vague. It is important that all actors involved in the discrimination are clearly legally liable.

EU Equality Directives create complex rights protection mechanism,[119] however directives do not define its content. In this regard, the international experiences partly differ. In relation to the intent of discrimination, there is the following practice: for example, in Bulgaria intentional instruction/encouragement to discriminate is regarded as discrimination.[120] Croatia views the issue differently, where, according to the 2012 amendment to the anti-discrimination legislation, existence of intent is no longer the necessary qualifying precondition.[121] National law varies greatly among the countries regarding the scope of liability for instructions

117 Guidelines on Sexual Harassment Prevention at the Workplace, ILO & Ministry of Manpower and Transmigration, 10 (2011).

118 Law of Georgia "On the Elimination of All Forms of Discrimination", N2391-II, para. 5 of Art. 2 (2014).

119 Racial Equality Directive 2000/43/EC, Art. 2(4); Employment Equality Directive 2000/78/EC, Art. 2(4).

120 Gender equality law in Europe Justice and Consumers: How are EU rules transposed into national law in 2016?, European network of legal experts in gender equality and non-discrimination, European Union, 15 (2016).

121 Developing Anti-Discrimination Law in Europe, European Commission, 56 (2014).

to discriminate. In a large majority of the countries, including Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, France, Germany, Hungary, Italy, Latvia, Luxembourg, Malta, Montenegro, Norway, Portugal, Romania, Serbia, Slovakia, Slovenia and Spain, both the instructor and the discriminator can be held liable.[122] In Estonia, Greece, Liechtenstein, Lithuania, and the Netherlands, only the instructor to discriminate can be held liable.

The draft law submitted to the Parliament of Georgia does not address the issue of defining instruction to discriminate as a form of discrimination and does not regulate the issue of withdrawal of the component of intent from the definition of instructing to discriminate. Also, legislative amendments do not include clarity on how the responsibility lies/is shared between the instructor and the discriminator.

Victimization

The definition of victimization is covered by the Georgian legislation – "No person may be subject to any negative treatment or influence for submitting an application or a complaint to relevant bodies or for cooperating with them in order to protect himself/herself from discrimination".[123] Thus, the victim can be not only the person who tries to protect his/her own rights, but also the one who has not been a victim of first hand discrimination, however he/she cooperates with the relevant bodies. In this case, it is problematic that victimization is understood as a prohibited action, however it does not constitute a special form of discrimination. In light of these considerations, there is a danger of narrow definition of those subjected to victimization and, effectively, disallowing them from addressing Public Defender/courts[124], since, according to the Georgian anti-discrimination legislation, only those persons can utilize mechanisms for protection against unequal treatment who have been victims of discrimination.

The issue of victimization is covered by the equality directive,[125] according to which, the person in connection with any legal proceedings aimed at enforcing compliance with the principle of equal treatment is subject to protection, which indicates wide definition of directive.

122 A comparative analysis of non-discrimination law in Europe 2017, European network of legal experts in gender equality and non-discrimination, European Commission, 57 (2017).

123 Law of Georgia "On the Elimination of All Forms Of Discrimination", N2391-II, para. 1 of Art. 12 (2014).

124 Ibid.

125 Racial Equality Directive 2000/43/EC, Art. 9; Employment Equality Directive 2000/78/EC, Art. 11; Gender Equal Access to Goods and Services Directive 2004/113/EC, Art. 10.

3. Grounds for Excluding Discrimination

The EU Equality Directives indicate cases where differential treatment is not considered discrimination. Georgia's anti-discrimination legislation also includes such situations.[126] In order to assess the compliance of Georgian legislation to EU directives, it is important to compare general and concrete grounds justifying differential treatment.

According to the "Law of Georgia on the Elimination of All Forms of Discrimination", there is no direct or indirect discrimination, when "such treatment or creating such conditions serves the statutory purpose of maintaining public order and morals, has an objective and reasonable justification, and is necessary in a democratic society, and the means of achieving that purpose are appropriate".[127] Additionally, the same law sets the standard, according to which differential treatment is based on "an overwhelming state interest and the necessity of state intervention in the democratic society".[128] In light of these legislative regulations, public and private persons are differentiated. In particular, standard for the public function implementing organs is much higher – the law requires to be used the „strict scrutiny test", and in relation to private persons – "rational bases test".[129]

According to the Equality directives, provision, criterion or practice will not be considered indirect discrimination, when it is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary (also, in case of acting in accordance with reasonable accommodation).[130] Thus, indirect discrimination is subject to general limitation. It is noteworthy that, as a rule, direct discrimination cannot be justified according to general margins. Justifying direct discrimination is possible in labour relations on grounds of religion or belief, a particular disability, age, or sexual orientation[131], if in concrete cases unequal treatment is the based on occupational requirements, is connected to age or religious organization. It is important that according to the Racial Equality directive (2000/43/EC) direct discrimination on racial and ethnic grounds cannot be justified according to the general legitimate aims (less favourabe treatment based on occupational requirement is allowed).[132]

126 Law of Georgia "On the Elimination of All Forms of Discrimination", N2391-II, paras 7 and 9 of Art. 2 (2014).

127 Ibid. para. 1 of Art. 2.

128 Ibid. para. 9 of Art. 2.

129 For more details, see: Public Defender as an Equality Body, Human Rights Education and Monitoring Center (EMC), 51-57 (2017).

130 Racial Equality Directive 2000/43/EC, Art. 2(b); Employment Equality Directive 2000/78/EC, Art. 2(b)(i); Gender Equal Access to Goods and Services Directive 2004/113/EC, Art. 3(b).

131 Employment Equality Directive 2000/78/EC, Art. 2; Racial Equality Directive 2000/43/EC, Art. 2.

132 However, discrimination on racial and ethnic grounds is justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary. See: Racial Equality Directive 2000/43/EC, Art. 2.2.b); Compare: Employment Equality Directive 2000/78/EC, Art. 2.2.b).

According to the Georgian legislation, in relation to direct and indirect discrimination, there are same criteria for less favourabe treatment, creating conditions or environment which shall not be considered discrimination.

In addition, for the purposes of this research, the subject of particular interest is the scope of labour relations where the case of differential treatment may not be considered as discrimination if it is derived from the occupational requirement.

According to the Georgian Labour Code „the necessity for differentiating between persons, that arises from the essence or specificities of the work or the conditions of its performance, serves to achieve a legitimate objective and is a proportionate and necessary means of achieving that objective, shall not be deemed discrimination.".[133] The same idea, but not identical formulation, can be found in the Law of Georgian "On the Elimination of all Forms of Discrimination" („Any distinction, exclusion, or preference with respect to a particular job, activity, or sphere, based on its inherent requirements, shall not be considered discrimination").[134] It is clear that the "specific requirements" component is more general than the standard provided by the Labour Code and, as far as the legislation regulating the public service does not provide for this content, the standard set by the anti-discrimination legislation will be extended. This, in turn, creates a different standard in the labour relations of the private and public sector.

Important standards are set by the the directives in relation to the work factors, as grounds for justifying less favorable treatment. In particular, these are Racial Equality Directive (2000/43/EC)[135] and Employment Equality Directive (2000/78/EC)[136]. Accordingly, occupational factors can be grounds for justifying differential treatment if the nature of the particular occupational activities concerned or of the context in which they are carried out constitute a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate. Thus, differently from the Georgian legislation, directives additionally indicate that the characteristic should be a genuine and determining occupational requirement. The package of legislative amendments discussed by the Parliament does not include changes in this regard.

133 Organic law of Georgia "Labor Code of Georgia" №4113, para. 5 of Art. 2 (2010).

134 Law of Georgia "On Elimination of all Forms of Discrimination", N2391-IIს, para. 8 of Art. 2 (2014).

135 Racial Equality Directive 2000/43/EC, Art. 4(1).

136 Employment Equality Directive 2000/78/EC, Art. 4(1).

4. Positive Action as Part of Anti-discrimination Policy

Contemporary trends in the law of prohibiting discrimination seek not only to achieve "formal equality" but also "substantial equality" ("substantial equality" can also be understood in terms of "substantive equality", "de facto equality", "actual equality"). The basis for this tendency is that the regulations, which are equally applicable to everyone, are unable to eliminate existing inequalities. Consequently, the concepts of "positive action", "special measures", and "concrete measures" have emerged, which means the introduction of such an approach leads to prevention of inequality and its compensation for specially vulnerable groups.[137] The EU directives provide two directions for achieving substantive equality: (a) determining the concept of indirect discrimination and (2) encouraging positive action. These aspects are interconnected and, therefore, when the legislator, employer or service provider does not provide positive action, thereby the risk of indirect discrimination increases.[138] Equality Directives contain a general record of positive action and set out their goal to achieve full equality.[139]

The legislation and practice of EU member states provide for specific experience of positive action for the persons with disabilities by determining the quotation system[140] as well as using other mechanisms. The practice of using positive action in relation to gender equality also exists in different countries including Ireland, the Republic of Macedonia, Spain, Sweden and Great Britain. It is essential that regulation of positive action is not counterproductive[141] and clearly has the resource to eliminate or prevent less favorable conditions.[142]

Law of Georgian "On the Elimination of all Forms of Discrimination" notes that discrimination is not a special and temporary measure that has been developed to encourage or achieve actual equality. It also emphasizes the specific areas and addressees of such actions, including gender equality issues, pregnancy and maternity issues, as well as policy towards persons

137 Handbook on European Non-discrimination Law, Council of Europe, 40 (2013).

138 Ibid.

139 Racial Equality Directive 2000/43/EC, Art. 5; Employment Equality Directive 2000/78/EC, Art. 7; Gender Equal Access to Goods and Services Directive 2004/113/EC, Art. 6.

140 Margarita Ilieva, 'Country Report Non-discrimination: Bulgaria 2016', European Commission, 66 (2016); Dieter Schindlauer 'Country Report Non-discrimination: Austria 2016', European Commission, 62 (2016); Lovorka Kušan & Ines Bojic, 'Country Report Non-discrimination: Croatia 2016', European Commission, 71 (2016).

141 C-366/99 Joseph Griesmar v. Ministre de l'Économie, des Finances et de l'Industrie, Ministre de la Fonction publique, de la Réforme de l'État et de la Décentralisation [29 November 2001].

142 Ibid. para. 64.

with disabilities.[143] However, the national legislation quite rarely involves concrete examples of positive measures in relation to people belonging to different groups, which indicates the weakness of anti-discrimination policies.

5. Execution of the Equality Legislation

Together with creating a legislative guarantee of the right to protect equality, it is essential to ensure an effective institutional system and procedures for its execution, which also constitutes the requirement of the Equality Directives. Specifically, the directives outline basic standards for the protection and enforcement of the rights, for that, it is important to define the process of implementation to ensure the efficiency of the existing protection system.

Thus, in the context of the enforcement of equality policy, the given study assesses the efficiency of the protection mechanisms, and the existence of proper procedures, which should ensure maximum benefit of equality. In this regard, the research is not only about the relation of the national institutional model and the directives, but also the consideration of good practice of EU member states.[144] Besides, the subject of assessment is the existence of information on the rights and means of protection and the involvement of interested organizations and social partners to a degree.

The Efficiency of the Equality Protection Means

The Racial Equality Directive (2000/43/EC), and Employment Equality (2000/78/EC) Directive underline the importance of the means of protection of the rights.[145] According to the directive on Equal Treatment (2006/54/EC), the implementation of the equality principle means “adequacy” of legal and administrative procedures. [146]

In addition to the normative guarantees provided by the Euro directives on the efficiency of the system, the CJEU practice is also worth mentioning. According to it, including the EU

143 Law of Georgia “On Elimination of all Forms of Discrimination", N2391-IIს, para. 7 Art. 2 (2014).

144 Equality Directives indicate that States have discretion to maintain or adopt such rules that will contribute to the protection of equality principle at a higher level. Racial Equality Directive 2000/43/EC, Art. 6; Employment Equality Directive 2000/78/EC, Art. 8; Equal Treatment Directive 2006/54/EC, Art. 27.

145 Racial Equality Directive 2000/43/EC, Rec. 19; Employment Equality Directive 2000/78/EC, Rec. 29. For the purposes of increasing effectiveness of the right, it is proposed to take into consideration the component of representation and support for victims by unions and legal entities.

146 Equal Treatment Directive 2006/54/EC, Rec. 29.

standards in the national legislation should be assessed by using various criteria. Including, with relation to courts and tribunals, the principle of equivalence and effectiveness is worth mentioning. The principle of equivalence means that the established rules should not be worse than the one established for such situations by national legislation; and according to the principle of efficiency, regulation should not be such that the execution becomes "virtually impossible or difficult".[147] According to CJEU, any regulation in the national system should be viewed in conjunction with the active institutions.[148]

The European Parliament's appeal on Gender Equal Access to Goods and Services Directive (2004/113/EC), should also be emphasized, which calls upon the Commission to evaluate transparency and efficiency of the national organs or the appeals mechanisms on equality issues, which simultaneously means the existence of dissuasive sanctions.[149] According to the mentioned standards and practices, the specified criterion is directed to the judicial system as well as, the equality institutions.

The Institutional System of Equality Rights Protection in Georgia

The Public Defender of Georgia and common courts constitute the system of support for the protection and/or equality policy implementation against discrimination in the field of labour relations at the national level. The Labour Conditions Inspection Department, despite its functional content, is not yet part of the system operating against discrimination.[150]

The Public Defender of Georgia. Starting from 2014, according to the law on elimination of all forms of discrimination, the Public Defender of Georgia (hereinafter "Public Defender") supervises the process of eradicating discrimination and ensuring equality,[151] and carries

147 Case C-246/09 Susanne Bulicke v Deutsche Büro Service GmbH, Judgment of the Court [8 July 2010] (Second Chamber), para. 25; Access to justice in Europe: an overview of challenges and opportunities, European Union Agency for Fundamental Rights, 17 (2010).

148 Case C-246/09 Susanne Bulicke v Deutsche Büro Service GmbH, Judgment of the Court [8 July 2010] (Second Chamber), para. 35.

149 On the application of Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services, (2016/2012(INI)), European Parliament, para. 39 (20 February 2017)<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2017-0043+0+DOC+XML+V0//EN> accessed 22.06.1018

150 An organ within the Ministry of Labour, Health and Social Affairs of Georgia was created in 2015. see Order of the Minister of Labour, Health and Social Affairs of Georgia "On approval of the provisions of the structural subdivisions of the Ministry of Labour, Health and Social Affairs of Georgia", №01-1 / n (6 January 2015).

151 Law of Georgia "On Elimination of all Forms of Discrimination", N2391-II, para. 1 of Art. 6 (2014).

out the supervision over discrimination cases following an appeal from physical and legal persons or group of persons or his or her own initiative. The Public Defender has the authority to end the case with a settlement, and if it's impossible to settle the case and the act of discrimination is confirmed, has the right to refer to the appropriate person with a recommendation for the restoration of the victim's rights. Within the existing mandate, the Public Defender also has the right to issue a general proposal, and if the administrative agency does not respond to the recommendation, and there is sufficient evidence to prove the discriminatory treatment, the Public Defender may appeal to a court. The Public Defender also gathers statistical data to support the equality policy and administers awareness raising policies, cooperates with relevant international and local institutions and civil society representatives.[152]

The Public Defender, within the said mandate, represents a general supervisory, campaigning and quasi-judicial function, but a limited mandate and the mentioned hybrid nature, create problems in terms of its effectiveness. Some essential factors define the problem of the Public Defender, as a equality authority: (a) despite the Public Defender's mandate in public and private spheres, private individuals do not have the obligation to provide information about the case to the Public Defender's Office, which in some cases makes it impossible to study the fact of discrimination and causes termination of the case due to insufficient evidence;[153] (b) The Public Defender's decisions is not binding to private persons that makes the recommendations fully dependent on the will of the discriminator. In addition, the Public Defender, in contrast to the indirect mechanism of coercion with respect to administrative bodies, does not have the opportunity to appeal to court with regards to private entities with a request to issue an act or a court order;[154] (c) The limited timeframe for appealing to the court in the condition of a limited mandate of the Public Defender causes the interest of alleged victims of the discrimination to address the judiciary system, which leads to the non-use of equality mechanism and weakens its significance; (d) The Public Defender is obliged to suspend the proceedings if the administrative proceedings are underway on the same fact in the higher administrative body that creates risks of delaying the process, whereas the administrative proceedings and proceedings within the Public Defender's Office may not be considered as alternative mechanism;[155] (e) There is no record in the legislation that would provide the Public Defender with the possibility

152 Ibid. para. 2 of Art. 6.

153 Against the background of the challenges in the private sector, the large number of discrimination cases is still visible, which makes it even more important to eliminate legislative shortcomings (for example, 27% of cases in 2017 and 45% cases in 2016 are documented in private sector). See Special Report on Fight against Discrimination, Its Prevention and Situation of Equality, Defender of Georgia, 35 (2017); Public Defender as an Equality Body, Human Rights Education and Monitoring Center (EMC), 61-66 (2017).

154 see Law of Georgia "On Elimination of all Forms of Discrimination", N2391-II, subpara. "g" of para. 2 of Art. 6 (2014).

155 Special Report on the fight against discrimination, its prevention and equality, the Public Defender of Georgia,10-11 (2016).

of using preliminary/temporary measures to protect the interests of victims of discrimination; [156] (f) If a case ends in settlement, the Public Defender, prepares a settlement act and supervises its implementation.[157] However, the legislation does not provide any outcome for the failure to comply with the terms of the settlement, which leaves the Public Defender's authority ineffective;[158] there are number shortcomings in the normative and pragmatic level beyond the mentioned fundamental issues that significantly reduce the efficiency of the Public Defender's activities, which has been the basis for the NGOs[159] and the Public Defender itself to request to strengthen the response mechanism of the Public Defender and the mandate itself. [160]

The Judicial System. The judiciary is an important component of the institutional system for supporting equality,[161] which deals with discrimination related cases in a special procedural way.[162] The result of the discrimination cases in the judicial system may be related to the termination of discriminatory action and/or elimination of its consequences[163] and compensation for moral and material damages.[164]

At the normative level, the challenges for effective justice in cases of discrimination is mainly related to the time limits for appealing to the court (3 months, and 1 month for termination of employment contract); as well as, the restriction in the cases against the administrative

156 Public Defender as an Equality Body, Human Rights Education and Monitoring Center (EMC), 58-60 (2017).

157 Law of Georgia "On Elimination of all Forms of Discrimination", N2391-II, para. 3 of Art. 8.

158 Public Defender as an Equality Body, Human Rights Education and Monitoring Center (EMC), 82 (2017).

159 In the framework of the work of the Public Defender, as an equality institution, it will be indicated on the following shortcomings: the need to simplify the provisions of the applicant's assumptions to move the defendant to the respondent. The question of admissibility of evidence; Participation of third parties in the case hearing; Necessity of taking into account the launch of a case based on the application of civil organizations; the issue of defining the general proposals by the legislation. See Public Defender as an Equality Body, Human Rights Education and Monitoring Center (EMC), 66-80, 87-90 (2017).

160 Draft legislative proposal <http://www.ombudsman.ge/ge/diskriminaciis-prevenciis-meqanizmi/siaxleebi/sakanonmdeblo-winadadeba-saqartvelos-parlaments-diskriminaciis-yvela-formis-agmofxvris-shesaxeb-kanonis-gaumdjobesebis-miznit.page> accessed 22.06.2018; The Public Defender called on the Parliament to make amendments to strengthen the anti-discrimination mechanism <http://ombudsman.ge/ge/news/saxalxo-damcvelma-parlaments-antidiskriminaciuli-meqanizmis-gadzlierebis-miznit-cvlilebebis-migebisken-mouwoda.page>_accessed 22.06.2018;_Special Report on Fight against Discrimination, Its Prevention and Situation of Equality, Public Defender of Georgia, 29 (2016);

161 Law of Georgia "On the Elimination of all Forms of Discrimination", N2391-II, Art. 11.

162 Law of Georgia "Civil Procedure Code of Georgia", №1106–I, section seven[3] "Legal proceedings in discrimination cases".

163 Ibid. Part 3 of Art. 363[2].

164 Ibid.

bodies in respect of the types of lawsuits and the ambiguity[165] of the scope of entry into the actual circumstances of the dispute by the court in the same process. There are gaps in judicial practice beyond the normative framework that affects the efficiency of the judiciary. [166]

The Labour Conditions Inspection Department. The Department, which should constitute an important supervision of labour rights protection, including realization of the right to equality in labour relations, has virtually no mandate to supervise cases of discrimination at workplaces. In accordance with the provisions of the Department, its activities formally cover discriminatory cases, their causes, creating records and issuing recommendations;[167] as well as, supporting elimination of labour discrimination. However, in reality, the department does not use the mandate defined by the statute and does not have the practice of studying the alleged discrimination facts.[168] Also, apart from the formal record in the statute, the Department does not have a legislative framework necessary to study cases of discrimination, which makes it impossible to detect and eliminate such facts.

Including 2017, in spite of the note in the statute, the mandate of the department has completely excluded the labour rights, including equality issues. The 2018 State Program for Inspection of Labour Conditions, which includes the supervision of labour rights, does not indicate the enactment and strengthening of the authority to study and eliminate the discrimination facts. In addition, the implementation of the inspection within the program depends on the employer's consent and/or the expressed interest to be fully or partially involved in the program[169]. Consequently, the Department does not have the authority to freely access the workplaces and his decisions only have recommendatory nature. At the same time, the existing normative framework of the Department and the practice shows that its mandate does not actually apply to discrimination cases.

165 Public Defender as an Equality Body, Human Rights Education and Monitoring Center (EMC), 95-99 (2017).

166 Execution of anti-discrimination legislation of Georgia: one year results, "Coalition for Equality", 53 (2015); National Mechanism against Discrimination: Analysis of Legislation and Practice, Georgia's Democratic Initiative, 29 (2016).

167 Appendix 12, the provisions of the Labor Conditions Inspection Department, subpara. c) of Art. 2. Order of the Minister of Labour, Health and Social Affairs of Georgia "On approval of the provisions of the structural subdivisions of the Ministry of Labour, Health and Social Affairs of Georgia", №01-1 / n (6 January 2015).

168 Labour Inspection Mechanism Assessment and Labour Rights Status in Georgia, Human Rights Education and Monitoring Center (EMC), 137 (2017).

169 Ordinance of the Government of Georgia No. 603 "On Approval of State Program for 2018 of Labor Conditions Inspection", para.1 of Art. 2 (29 December 2017).

Thus, the labour relations of equality and non-discrimination policy enforcement is substantially weakened by the low effectiveness of national equality mechanisms (Public Defender), which is linked to its limited mandate and the exclusion of the supervisory authority (Labour Consditions Inspection Department) from the system for the fight against discrimination, which indicates the necessity for the institutional strengthening and the additional leverage.

The Standards of the Directive and Good Practice on Equality Protection Institutional System

The Equality Directives establish minimum standards in respect of rights protection and indicate that it is necessary, at the national level, to have a court and/or administrative and in case of necessity, settlement procedures.[170] Some of the directives, in this regard, also envisage specific requirements. In particular, according to Racial Equality Directive (2000/43/EC), the obligation of States is to establish an institution responsible for the elimination of cases of discrimination on racial or ethnic grounds, whose mandate must be extended to labour relations.[171] Also, the the Equal Treatment Directive (2006/54/EC) requires the functioning of an equality body working on gender discrimination in the field of labour relations.[172]

In order to implement the requirements set out in the directives, EU Member States and candidates have different mechanisms for the protection of equality principle that is expressed in the following types of institutional models: [173]

The specialized institution that only works on equality issues is the leading institutional model of EU member states.[174] The experience shows that, as a rule, the scope of the equality institution is not limited to labour relations. In some cases, a part of specialized institutions work only on issues of ethnic and racial and sexual discrimination.[175] An equality entity, in

170 Racial Equality Directive 2000/43/EC, Art. 7(1); Employment Equality Directive 2000/78/EC, Art. 9(1); Gender Equal Access to Goods and Services Directive 2004/113/EC, Art. 8(1).

171 Racial Equality Directive 2000/43/EC, Art.13.

172 Equal Treatment Directive 2006/54/EC, Art. 20.

173 Developing Anti-Discrimination Law in Europe, European Union, 86 (2015) <http://ec.europa.eu/justice/discrimination/files/comparative_analysis_2014.pdf> accessed 22.06.1018

174 Equality at Work: Tackling the Challenges: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Office, 55 (2007).

175 According to the EQUINET 2017 data, the only member of the EU member states is Spain, where the equality institution only covers discrimination on ethnic and racial grounds (Council for the Elimination of Ethnic or Racial Discrimination).

the appropriate jurisdiction, may exist in the form of one or more bodies; however, there are practices of their union in European experience. For example, in France in 2011, the Equal Opportunity and Anti-Discrimination Commissions merged. In 2014, Ireland united the Equality and Human Rights Commissions.[176]

The ombudsman institute generally works on human rights issues and covers issues of protection of the equality principle in labour relations. In this case, some countries did not create a new institution for the purpose of ensuring/monitoring the execution of anti-discrimination legislation, but instead, this function was added to the acting body with the mandate to supervise human rights.

Labour inspection supervises the execution of labour legislation and in this regard, also represents a body of protection against discrimination in labour relations. The following circumstances are considered as the advantage of the model of discrimination case proceedings by the Labour Inspection: as a rule, the Inspectorate, without any appeal from the specific person, can enter the relevant institution and receive information that is unavailable for employees. Also, if the initiator of the inspection is an employee or group of employees, the inspectorate begins to act in an abstract manner and reduces the "burden" on the source of the complaint (in case of appropriate authority). [177] The scope of the work of the labour inspectors, as a rule, includes making of mandatory decisions, the existence of sanctioning mechanisms, opening the case to the court or involvement in the ongoing court proceedings.[178] The protection of the principle of equal treatment is ensured by labour inspection organs, in Finland, Hungary, Lithuania, Latvia, France, Greece, Poland, Portugal, Romania, Slovakia, and Spain.[179]

The experience of EU Member States shows that there are number of countries, where a labour inspectorate, as well as, an equality bodies/ombudsman institute both work on issues of discrimination in labour relations. Examples of such countries are: Czech Republic, Latvia, Lithuania, France, Poland and Slovakia.[180] There are also experiences, where together with labour inspec-

176 A Comparative Analysis of Non-discrimination Law in Europe, European Commission, Brussels, 107 (2016).

177 Equality at Work: Tackling the Challenges: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Office, 58-59 (2007).

178 Equality at Work: Tackling the Challenges: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Office, 59 (2007); Annex 2 – Overview of Ex-officio Procedures Available in EU Member States for Investigating Violations of the Principle of Equal Treatment in Employment European Anti-Discrimination Law Review, issue 17, 39.

179 Developing Anti-Discrimination Law in Europe, European Union, 86 (2015).

180 A comparative analysis of non-discrimination law in Europe 2017: The 28 EU Member States, the Former Yugoslav Republic of Macedonia, Iceland, Liechtenstein, Montenegro, Norway, Serbia and Turkey compared, European Union, 84 (2017).

tion, equality institutions cover a limited range of protected areas: Finland, (gender and gender identity); Portugal (gender and sexual orientation); Spain (race and ethnic origin).

In the part of separating the authorities between equality organ/public defender and labour inspection, it is important to create unified picture of existing systems based on the examples of specific countries. In Latvia, the Ombudsman (as an equality institution), as well as, a labour inspection,[181] whose mandate and authority is different, which includes the possible difference in results, both review the cases. In particular, the decisions of the ombudsman in the Latvian model are of a recommendatory character and the labour inspection decisions are legally binding.[182] In the named system, the ombudsman's mandate is of a supportive character as the Ombudsman primarily encourages reconciliation during the study of alleged discrimination and issues recommendations in case the settlement is impossible.[183] The Ombudsman may represent the alleged victims in court, as well as, submit an alternative appeal in its own name to the court after the case study.[184] At the same time, the ombudsman conducts independent research and analysis on discrimination issues, prepares recommendations and publishes reports.[185]

In the case of Lithuania, in labour relations, the execution of the anti-discrimination legislation, apart from courts, is supervised by the Labour Inspectorate and equality institution – the Office of the Equal Opportunities Ombudsperson. The mandates of those institutions cover both private and public sectors. The Labour Inspectorate issues recommendations and adopts decisions, which are mandatory.[186] In the Member States, the ombudsman, as an ex officio institution working on violation of the principle of equality in labour relations, mostly makes recommendatory decisions, but the Ombudsperson's office has a bigger authority.[187] In particular, it is authorized to impose an administrative penalty[188] and give notice

181 See State Labor Inspection Law (2008) <https://likumi.lv/doc.php?id=177910> accessed 22.06.1018.

182 Protection Mechanisms against Discrimination <http://www.tiesibsargs.lv/lv/pages/cilvektiesibas/diskriminacijas-noversana/aizsardzibas-mehanismi-pret-diskriminaciju> accessed 22.06.1018.

183 Anhelita Kamenska, 'Latvia: Country Report: Non-Discrimination', European Commission, 75 (2016).

184 Ombudsman's Office of the Republic of Latvia <http://www.equineteurope.org/spip.php?action=memberdata_pdf_export&arg=8&hash=2cbe05ed2cd0a8377aa8a6670c887166397b29ea&redirect=%23SELF> accessed 22.06.1018.

185 For other issues see: Ombudsman's official website: Protection Mechanisms against Discrimination <http://www.tiesibsargs.lv/lv/pages/cilvektiesibas/diskriminacijas-noversana/aizsardzibas-mehanismi-pret-diskriminaciju> accessed 22.06.1018.

186 Annex 2 – Overview of Ex-officio Procedures Available in EU Member States for Investigating Violations of the Principle of Equal Treatment in Employment European Anti-Discrimination Law Review, issue 17, 39.

187 Ibid.

188 Law on Equal Opportunities for Women and Men, Republic of Lithuania, 1 December 1998 No VIII-947, As last amended on 15 July 2014 No XII-1023, Art. 24 (4) <http://www.lygybe.lt/en/legal-acts/439> accessed 22.06.1018; Janka Debrecéniová, Ex officio Investigations into Violations of the Principle of Equal Treatment: the Role of Labour Inspectorates and Other Bodies, European Anti-Discrimination Law Review, issue 17.

to the employer in case of violation of anti-discrimination legislation.[189] In addition, if the requested information is not provided by a specific entity (in public and private sectors), the legislation provides for the relevant results (for example, fine).[190] Apart from the named Ombudsperson office, the Ombudsman Institute of general mandate is also functioning in the country, which does not work on discrimination in the field of labour.[191]

It is essential that at the initial stage of the implementation of the directives, the supervisory body(ies) for the elimination of discrimination and equality are correctly defined. European experience shows that within the national systems, in addition to the judicial system, there are also specialized and general mechanisms of equality and labour inspection, and their functioning may have oversight nature over the equality policy, in the labour relations, which may also mean the existence of different mandates. At the same time, the existing models show the existence of several criteria that define efficiency, such as the obligation for the parties to provide information to the supervisory body and also the adoption of the decisions, which are obligatory. The legislative package submitted to the Parliament of Georgia, does not envisage a change in this direction, which, in the conditions of limited mandate of the national equality mechanism and the absence of mandate of the Labour Inspection Department, should be regarded as a major deficit in the implementation of the Euro directives.

The Execution of the Decisions on Discrimination

The relevance of the equality policy is largely determined by the possible consequences of the decision on the facts of discrimination and the issues of its enforcement. According to the Civil Procedure Code of Georgia, a person is entitled to address a court to end discrimination or eliminate its consequences and receive compensation for moral and/or material damages.[192] The Public Defender of Georgia, as the national equality institution, is authorized to issue recommendations and general proposals, which may, at the same time, indicate a termination of discrimination or

189 Law on Equal Opportunities for Women and Men, Republic of Lithuania, 1 December 1998 No VIII-947, As last amended on 15 July 2014 No XII-1023, Art. 24 (6) <http://www.lygybe.lt/en/legal-acts/439> accessed 22.06.1018; Janka Debrecéniová, Ex officio Investigations into Violations of the Principle of Equal Treatment: the Role of Labour Inspectorates and Other Bodies, European Anti-Discrimination Law Review, issue 17.

190 Law on Equal Opportunities for Women and Men, Republic of Lithuania, 1 December 1998 No VIII-947, as last amended on 15 July 2014 No XII-1023, Art. 25; Code of Administrative Offences, Republic of Lithuania, consolidated version from 12 January 2016, Art. 187^5.

191 See The official website of the Lithuanian Ombudsman <http://www.tiesibsargs.lv/en> accessed 22.06.1018.

192 Law of Georgia "Civil Procedural Code of Georgia", №1106 -I, article 363^2, part III (1997).

elimination of its consequences. If the public entity fails to comply with the decision of the Public Defender, the Public Defender has the right to appeal to the court; the mechanisms used by the Public Defender in case of private entities is the so-called Name and Shame practice, in cases, where a private entity does not fulfil the decision at its own will.[193]

The Equality Directives refer to the sanctions that imply the obligation of States to include such measures and to use them in case of violation of the provisions of the directive.[194] The directives also indicate that if the national legislation provides compensation, it should be effective, proportionate and convincing.[195] The Equal Treatment Directive (2006/54/EC) directly indicates that in cases of sexual discrimination in labour relations, legislation should include compensation or repatriation options for sexual discrimination.[196] The latter must be "genuine" and "effective" and "dissuasive" and "proportionate"[197] in relation to the damage inflicted. In the context of the same directive, the CJEU has a "solid presumption" that the victim must be able to receive compensation for the purpose of restoring equality (except where other means of restoration are used, for example, rehiring).[198]

The Racial Equality Directive (2000/43/EC) and Employment Equality Directive (2000/78/EC) only establish minimum standard and not specifically in relation to the nature of the responsibility. Most countries use civilian sanctions. In case the discrimination is established, the possible result could be: ending discrimination, restoring of the status quo, fines/administrative penalties, compensation for damages for non-pecuniary damage, the decision to publish, activity license termination, exclusion of the possibility accepting public goods, an obligation to implement anti-discrimination policy, criminal sanctions, and so forth.[199]

The issue of compensation is usually determined by a court or a specialized court (labour tribunal).[200] There is no uniform approach to whether the institution of equality in addition to the

193 For details see Special Report on Fight against Discrimination, Its Prevention and Situation of Equality, Public Defender of Georgia, 12 (2016).

194 Racial Equality Directive 2000/43/EC, Art. 15; Employment Equality Directive 2000/78/EC, Art. 17; Gender Equal Access to Goods and Services Directive 2004/113/EC,Art. 14.

195 Ibid.

196 Equal Treatment Directive 2006/54/EC, Art. 18.

197 Ibid.

198 Access to justice in Europe: an overview of challenges and opportunities, European Union Agency for Fundamental Rights, 55 (2010).

199 Katrin Wladasch, 'The Sanctions Regime in Discrimination Cases and its Effects', Ludwig Boltzmann Institut of Human Rights, EQUINET, 19 (2015) <http://www.equineteurope.org/IMG/pdf/sanctions_regime_discrimination_-_final_for_web.pdf> accessed 22.06.2018

200 Ibid.

court has the power to use sanction. In number of cases, decisions of equality institutions are not legally binding and consequently imposing sanctions is not in their competence. For instance, in the Netherlands and Austria, the conclusions of equality institutions are of a recommendatory character. However, in such cases, there are experiences, when the decisions made by equality authorities may be an important prerequisite for the final decision making and the victim may have the opportunity to appeal to the court with the request to implement the decision by the equality authority. For example, if the Equality Institute of the Netherlands determines the fact of discrimination, the victim may apply to a court to impose compensation and other sanctions.[201] At the same time, the equality body may apply to the Court in case of non-fulfilment of its conclusion/notice and obtain a decision, which obliges the party to enforce the measures.[202]

There is a different approach in certain countries, where decisions made by the equality institution are mandatory and their role is active in imposing sanctions. For example, Bulgaria, Cyprus, Denmark,[203] Finland, [204] France,[205] Hungary,[206] Lithuania, Romania.[207]

At the same time, the experience demonstrates that a labour inspection, for example, in Czech Republic, Poland, Romania, and Estonia, has the mandate to impose sanctions in

201 Access to justice in Europe: an overview of challenges and opportunities, European Union Agency for Fundamental Rights, 46 (2010).

202 Public Defender as an Equality Body, Human Rights Education and Monitoring Center (EMC), 109 (2017).

203 An equality institution can make a decision about rehiring.Comparative study on access to justice in gender equality and anti-discrimination law, DS-30-11-209-EN-N, Milieu, February 2011, Annex IE – Sanctions.

204 Equality Institution prohibits continuation or repetition of discriminatory action, and imposes penalties. Court powers are broader and can cancel a contract that includes discriminatory provisions. Also, the criminal law provides for a fine which depends on the income or the deprivation of liberty of the violation of the equality principle for up to 6 months. Comparative study on access to justice in equality and anti-discrimination law, DS-30-11-209-EN-N, Milieu, February 2011, Annex IE – Sanctions. Comparative study on access to justice in gender equality and anti-discrimination law, DS-30-11-209-EN-N, Milieu, February 2011, Annex IE – Sanctions.

205 Labour tribunals take decisions on these issues, sanctions are also envisioned under the Criminal Law (fine up to 45000 EUR, up to three years of imprisonment). Comparative study on access to justice in gender equality and anti-discrimination law, DS-30-11-209-EN-N, Milieu, February 2011, Annex IE – Sanctions.

206 Equality Institution takes decisions on limiting access to the employer for governmental and EU funds; discontinuation of discrimination; the obligation to publish the decision taken; additional penalties (within € 175-21000). Comparative study on access to justice in gender equality and anti-discrimination law, DS-30-11-209-EN-N, Milieu, February 2011, Annex IE – Sanctions; Access to justice in Europe: an overview of challenges and opportunities, European Union Agency for Fundamental Rights, 46 (2010).

207 The equality institution's authority covers administrative sanctions (administrative warning / penalty). Access to justice in Europe: an overview of challenges and opportunities, European Union Agency for Fundamental Rights, 46 (2010).

equality issues.[208] Practices are different in terms of decision-making regarding penalties: for example, in Bulgaria, the Equality Institute imposes a penalty that will be doubled during repeated violations;[209] In Hungary, a labour inspector applies to the equality institution with a petition to impose penalty;[210] In Latvia, the administrative penalties are imposed only by the labour inspection.[211]

The legislative package submitted to the Parliament does not include the amendments in this regard, and does not regulate the competences of the Public Defender and Labour Condistions Inspection Department, which creates doubts about of proper enforcement of the anti-discrimination legislation.

Time Limits to Appeal to Equality Mechanisms and a Court

One of the major components of the effectiveness of protection of equality rights is the reasonableness of the timeframe to appeal to the equality mechanisms or courts. The given subchapter focuses exclusively on terms of appealing to equality institutions and does not cover the terms of the duration of a case, which in itself, is an important criterion for exercising the right.

The appeal of an alleged victim of discrimination to the Public Defender, for the purpose of reviewing the fact of discrimination, is not restricted by any term. The case for appeal to the court is different. According to the procedural legislation, the deadline for applying to the court by the alleged victim is three months, which is calculated from the period when the person has learned or should have learned the circumstances that he or she deems discriminatory.[212] However, the legislation includes a specific provision, which reduces the term of a three-month period to 30 calendar days, in case of termination of the contract in labour relations.[213]

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208 Katrin Wladasch, 'The Sanctions Regime in Discrimination Cases and its Effects', Ludwig Boltzmann Institut of Human Rights, EQUINET, 20 (2015).

209 The Court has the right to impose the following sanctions: termination of the violation, restoration of the existing situation and imposing compensation.

210 Comparative study on access to justice in gender equality and anti-discrimination law, DS-30-11-209-EN-N, Milieu, February 2011, Annex IE – Sanctions;Access to justice in Europe: an overview of challenges and opportunities, European Union Agency for Fundamental Rights, 46 (2010).

211 Ibid.

212 Law of Georgia "Civil Procedure Code of Georgia", №1106 -I, Sec.2 of Art. 363^2 (1997).

213 Organic Law of Georgia "On amendments to the Organic Law on "Labor Code of Georgia", N729-IIს, Sec. 6 of Art. 38 (2013).

Since it is impossible to use the Ombudsman and judicial mechanisms at the same time, and the Public Defender has no chance to use effective enforcement mechanisms, particularly in the private sector, due to the limited period, an alleged victims of discrimination, as a rule, is forced to apply to a court and is forced reject the possibility that the Public Defender also carries out the proceedings. These circumstances turns the Public Defender, as an institution of equality, into a seldom used mechanism for victims of discrimination, which is directly related to the unreasonable of the terms of appeal to the court. It is therefore important that the legal system provides the possibility for the alleged victim to be able to use both protection mechanisms, which is possible through the simultaneous functioning of the Public Defender's Institute and the judicial system.

The EU directives do not include the instructions on timeframe. The CJEU assesses the timing regulatory arrangement based on the principles of efficiency and equivalence. The scope of the last principle is narrowed in relation to the limitation period. As for the effectiveness of the principle, the term of the application set by the national legislation will pass this test, if it does not make the exercise of the right "practically impossible or exceptionally difficult".[214] For the assessment of the practice of realization of the principle, the experience of EU member States and Candidates is an important source. The practice shows that the terms for appealing to the relevant mechanisms for discrimination cases in the field of labour relations, are significantly longer, as compared with national regulation. The limitation periods for labour relations include: Belgium – 1 year, Denmark – 5 years,[215] Netherlands – 6 months, Lithuania – three years, Poland – three years.[216]

It is important to mention the issues of sexual harassment in relation to the timeframes for appeal. Taking into consideration the national challenges, for the alleged incidents of this form of discrimination, it is essential to be longer than the total limitation period. Such experience, for instance, Austria (total period for appeal is six months and in case of sexual harassment – 1 year).[217]

The draft law, submitted to the parliament of Georgia, does not provide for extension of the terms for equal treatment violations appeal and also does not include the Ombudsman's initiative, according to which, the Public Defender's appeal will result postponement of the dates, as defined by the relevant articles of the legislation.[218]

214 Case C-246/09 Susanne Bulicke v Deutsche Büro Service GmbH, Judgment of the Court [8 July 2010] (Second Chamber), para. 25; Access to justice in Europe: an overview of challenges and opportunities, European Union Agency for Fundamental Rights, 17 (2010).

215 Comparative study on access to justice in gender equality and anti-discrimination law, DS-30-11-209-EN-N, Milieu, February 2011, Annex IC.

216 Ibid.

217 Ibid.

218 The legislative proposal of the Public Defender of Georgia <http://www.ombudsman.ge/ge/diskriminaciis-prevenciis-meqanizmi/siaxleebi/sakanonmdeblo-winadadeba-saqartvelos-parlaments-diskriminaciis-yvela-formis-agmofxvris-shesaxeb-kanonis-gaumdjobesebis-miznit.page> accessed 22.06.2018

6. The Issue of an Involvement and Participation in Case Proceedings

According to the anti-discrimination legislation of Georgia, in the ongoing investigation on the alleged discrimination at the Public Defender's Office, an organization, institution or union, whose activities include protection against discrimination, can be involved in the case as the third party,[219] for which the consent of the person, who considers himself/herself as a victim,[220] is necessary, which, also represents the standard of directive. According to the Georgian Civil Procedure Code, it is possible that the representatives of the parties in the court were organizations, associations, other legal entities whose activities are directed against discrimination or includes protection against discrimination, although civil organizations cannot exercise the actio popularis. The role of the Public Defender in court proceedings is also seen in the possibility of submitting Amicus Curie. [221] However, other interested parties have no such right.

The Directive provides a component of the increased judicial protection of the right of alleged victims of discrimination, which is expressed, on the one hand, by the involvement of interested organizations and on the other, ensuring the involvement of equality institutions. States should ensure that the organizations, associations or other legal entities having a legitimate interest in the directives being enforced have the opportunity to engage in the processes (given the existence of the pre-determined legislation).[222] In accordance with the Racial Equality Directive (2000/43/EC) and the Equal Treatment Directive (2006/54/EC), one of the functions of the equality body should be to provide independent assistance to victims of discrimination in the case proceedings.[223]

On the other hand, the experience of EU Member States is various in this regard: in most cases, NGOs have the opportunity to carry out legal representation on behalf of the victim or by representation; in some countries, a victim's consent is not required, such as Bulgaria, Hungary, Italy, Slovakia, where there is a possibility to submit actio popularis; There are cases, where the role of NGOs is limited.[224] In addition, the role of trade unions is worth

219 Law of Georgia "On the Elimination of all Forms of Discrimination", N2391-II, para. 1 of Art. 11 (2014).

220 Ibid. para. 2 of Art. 11.

221 The Organic Law of Georgia "On the Public Defender of Georgia", Art. 21 (e).

222 Racial Equality Directive 2000/43/EC, Art. 7.2; Employment Equality Directive 2000/78/EC, Art. 9.2.

223 Racial Equality Directive 2000/43/EC, Art. 13 (2); Equal Treatment Directive 2006/54/EC, Art. 20 (2) (a).

224 Access to justice in Europe: an overview of challenges and opportunities, European Union Agency for Fundamental Rights, 39 (2010).

mentioning. In particular, professional unions can initiate legal proceedings, while fulfilling certain criteria, in Bulgaria, Belgium, Denmark, France, Italy, Malta, the Netherlands, Poland, Romania, Spain and Sweden.[225] In Cyprus, Hungary and Italy, trade unions have a right to collective action (when a group of persons is victimized or is impossible to identify victims).[226]

In a small number of countries (Hungary, United Kingdom) equality bodies can represent individuals before the Court. Approximately one-third of EU member States can initiate legal proceedings on behalf of the victim or in their own name, but in the latter case, as a rule, the victim's consent is required. Equality Institutions can also address a court with a popular appeal in Belgium, Hungary and Ireland.[227]

As the good practice demonstrates, a number of countries in relation to equality institutions and other interested persons go beyond the minimum standard set by the directives and take into account the component of a popular appeal.[228]

The draft law, submitted to the Parliament of Georgia, does not envisage legislative amendments that would review and expand the circle of persons, who would be able to participate in the process of promoting the implementation of anti-discrimination legislation in various forms and intensity.

7. The Spread of Information and Encouraging the Dialogue

The Equality Directives indicate the State's obligation to provide information on the prohibition of unequal treatment and the rights protection mechanisms,[229] although directives do not make concrete suggestions regarding the means of dissemination of information. The Employment Equality Directive (2000/78/EC), being an exception, which considers the

225 Ibid.

226 Ibid.

227 Ibid.

228 Law of Georgia "On the Elimination of all Forms of Discrimination", N2391-II, para. 2 of Art. 6 (2014).

229 Racial Equality Directive 2000/43/EC, Art. 10; Employment Equality Directive 2000/78/EC, Art. 12; Gender Equal Access to Goods and Services Directive 2004/113/EC, Art. 15.

obtaining information at the workplace as one of mechanisms.[230] Despite the existence of such guarantee in the national legislations of the EU Member States and the candidates, the European Commission defines the small number of discrimination cases, as the challenge, which, in its view, is due to the lack of information on the existence of rights protection.[231]

Under the Georgian legislation, the Public Defender carries out various activities to raise public awareness on discrimination issues, which is a significant authority.[232] However, regulatory law on labour relations still does not contain clear mechanisms for access to information on equality issues. It is noteworthy that there is the Ordinance of the Government of Georgia "On Defining General Rules of Conduct and Ethics at Public Institutions",[233] which contains provisions on informing employees about sexual harassment, but it cannot be considered as satisfactory regulations for the purpose of appropriately disseminating the information.

The positive characteristic of the legislative package, submitted in the Parliament of Georgia, is that it establishes the obligation of the employer in the private sector to disseminate information. In particular, according to the amendments proposed in the Labour Code, prior to signing a contractual agreement, the employer will inform a candidate on the legislative provisions of the principle of equal treatment. However, the proposed regulation is not as sufficient, as it does not apply to regulatory legislation on public service, and it is particularly important to include the obligation to refer to the information about the means of protection of rights, in case of violation of the principle of equal treatment.

It is essential for the effective implementation of equality policies to include the participants of labour relations, as well as, the actors working in the field of anti-discrimination and to

230 Employment Equality Directive 2000/78/EC, Art. 12.

231 36% of victims of discrimination, according to the Agency for Fundamental Rights European Union minorities and discrimination survey (EU-MIDIS), did not use the means of procetion of the right, due to the absence of information. See Opinion of the European Union Agency for Fundamental Rights on the situation of equality in the European Union 10 years on from initial implementation of the equality directives, The European Union Agency for Fundamental Rights (FRA), 3, 17 (2013); Report from the Commission to the European Parliament and the Council, COM(2014) 2 final, Brussels, 5 (2014). <http://ec.europa.eu/justice/discrimination/files/com_2014_2_en.pdf> accessed 22.06.2018; Jan Tymowski, 'The Employment Equality Directive European Implementation Assessment', European Parliamentary Research Service, 17 (2016). <http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536346/EPRS_STU(2016)536346_EN.pdf> accessed 22.06.2018.

232 Law of Georgia "On the Elimination of all Forms of Discrimination" N2391-II, subpara. (i) of para. 2) of Art. 6 (2014)

233 Ordinance N200 of the Government of Georgia "On Defining General Rules of Conduct and Ethics at Public Institutions", Art. 15 (20 April 2017).

exchange information between parties, which is special principle characteristic of labour relations. In order to encourage social dialogue, the Tripartite Commission for Social Partnership has been established in Georgia, which was created following the 2013 amendments to the Labour Code of Georgia.[234] The Commission is still unable to provide effective social dialogue despite its important mandate,[235] which is the main reason for criticism against it.

The work of the working groups established within the Tripartite Commission and also with the Gender Equality Council of the Parliament, is a positive trend, which has the resources to strengthen social dialogue and the extent of cooperation with social organizations, however, the work of the social partnership Tripartite Commission's recent work demonstrates that they only cooperate with social partners, which excludes community groups, which deteriorates the working group's positive practices.

According to the EU directives, countries have the obligation to take appropriate measures to encourage dialogue with social partners,[236] and to organize dialogue with non-governmental organizations working on relevant issues.[237] With the experience of EU member states and candidate countries, the implementation of these provisions was less formal.[238] However, there are number of countries that have established permanent institutions for the involvement of those actors. Among them are Slovakia, Slovenia, Belgium, France and others.[239]

It is important that the government and other social partners to understand the role and importance of social and civil dialogue and to ensure the establishment of open and collaborative approaches to issues of labour relations. Thus, it is important to take into account the normative framework establishing the social dialogue to include the support and promotion mechanisms of such communications and create recommendatory co-operative platforms on the path of execution of relevant legislation.

234 Organic Law of Georgia "On Amendment to the Organic Law of Georgia on "Labor Code of Georgia", N729-II (12 June 2013).

235 Nino Elbakidze & Tinatin Nadareishvili, Trade Union Rights and Key Labor Standards, Performing Political Part of the Association Agenda – First Year Assessment, 83-97 (2015); Association Implementation Report on Georgia, Joint Staff Working Document Brussels, SWD(2016) 423 final, 10 (2016).

236 Racial Equality Directive 2000/43/EC, Art. 11; Employment Equality Directive 2000/78/EC, Art. 13.

237 Racial Equality Directive 2000/43/EC, Art. 12; Employment Equality Directive 2000/78/EC, Art. 14.

238 A comparative analysis of non-discrimination law in Europe 2017: The 28 EU Member States, the Former Yugoslav Republic of Macedonia, Iceland, Liechtenstein, Montenegro, Norway, Serbia and Turkey compared, European Union, 121(2017).

239 Ibid. 123.

Recommendations

For determination of appropriate grounds of discrimination, it is essential that:

- The closed list of protected grounds in the Labour Code should be made open-ended;
- The following grounds of discrimination should be added to the list determined by the Labour Code: place of birth, health condition, gender identity and expression;
- The Labour Code should change the protected ground of discrimination "belonging … to a religious … organization" with the formulation "religion or belief".

In terms of defining recognized forms of discrimination in the Georgian legislation, it is important that:

- The denial to reasonable accommodation as a form of discrimination is included in the Law of Georgia "On the Elimination of All Forms of Discrimination", in the Labour Code, in the Law of Georgia "On Public Service" and other special legislative acts;
- The test/standard for realization of a reasonable accommodation principle is determined, which will foresee criterion of an "undue burden";
- A state policy is devised, that will introduce appropriate state support mechanisms for proper realization of a reasonable accommodation principle;
- The Georgian legislation foresees intersectional discrimination and segregation as forms of discrimination.

For the purpose of bringing the forms of discrimination enshrined in national legislation in line with EU directives, it is important that:

- Protection from harassment is equally applicable to labour relations at public and private spheres, in accordance with the Employment Equality Directive (2000/78/EC). Harassment is understood as a form of discrimination under the Law of Georgia "On Public Service";

- The concept of harassment is defined in the Law of Georgia "On the Elimination all Forms of Discrimination", in accordance with minimum requirements set in the Racial Equality Directive (2000/43/EC) and Gender Equal Access to Goods and Services Directive (2004/113/EC), and incorporates all spheres, including access to goods and services, social protection and education spheres;

- Sexual Harassment as a form of discrimination is defined in the Labour Code, the public service regulatory law and the Law of Georgia "On the Elimination of All Forms of Discrimination";

- Public and private spheres legislation determines the responsibility of the employer for appropriate regulation of sexual harassment issues in the field of labour. In particular, the legislation establishes the obligation of the employer to introduce internal organizational policies and mechanisms against sexual harassment;

- Amendments to the anti-discrimination law are made, which define instruction to discriminate as a form of discrimination. It is also recommended that the intent be removed from the concept of instruction to discriminate;

- Sharing of liability between the instructor and the discriminator is clearly defined and the liability in relation to both actors, in accordance with best practice, is established;

- Georgian legislation clearly defines victimization as a form of discrimination. Additionally, victimization should be noted in the Labour Code and the public service regulating legislation.

In order to allign regulation of grounds for justifying discrimination with the EU directives, it is important to:

- Revise the general standards of justification of direct and indirect discrimination according to the scope of the Equality Directives;

- Have the qualification criterion added to the Labour Code norm, which allows for differential treatment on grounds of occupational factors, that grounds for less favourabe treatment should be a "genuine and determining occupational requirement";

- Have the public service regulatory legislation define the standard set by the Labour Code in consideration of the proposed recommendation, which will regulate the instances of unfavorable treatment in relation to the essential occupational requirements.

In order to strengthen positive action, as a part of anti-discrimination policy, in the national legislation, it is important that:

- The Government actively works in the direction of concrete positive actions in labour relations with particular emphasis on gender equality and persons with disabilities, which should be based on active participation of relevant groups;

- The labour legislation (the Labour Code and the Law of Georgia "On Public Service") reflects the positive action norm as formulated in the Law of Georgia "On the Elimination of All Forms of Discrimination".

In order to increase the efficiency of the institutional framework for combating discrimination and the relevant procedures:

- It is essential that the Labour Conditions Inspection Department is equipped with the full mandate to inspect the cases of violation of the right to equality in labour relations. In addition, in the exercise of the powers of inspection, the Department should have the mandate of free access to the workplace and the powers to make mandatory decisions; It should be ensured proportionate and reasonable sanction system;

- Immediately take appropriate measures that increase institutional capacity of the Labour Conditions Inspection Department and equip them with appropriate quantity and resources of inspectors to ensure effective disclosure of the cases of discrimination and relevant reaction;

- The Public Defender should be entrusted with the mechanism of enforcement of its recommendation in relation to private entities by filing the lawsuit before the court, which means the existence of a mandate to appeal to the court in case of non-compliance with the recommendations of private entities. In addition, it is advisable to limit the appeal of the court only by the rule of appellation and the scope of court control should be limited to the recommendation of the Public Defender only by examining the procedural and essential deficiencies while considering the case;

- In order to strengthen the mandate of the Public Defender, as an equality body, the legislation shall take into account the direct and clear obligation of private entities to provide the Public Defender with important information for the case, and carry relevant responsibility in case of not doing so; the Public Defender shall be entitled to use the temporary measure to protect the victim's interests; The Public Defender shall be granted the mechanisms for monitoring the settlement agreement and the ability to use appropriate effective measures in case of non-compliance with the terms of the agreement, which may mean the application to the court agains the breaching party;

- It is essential that the legislation includes the mechanism of suspension of the limitation period of the court in case of appeal to a public defender in relation to termination of the contract in labour relations;

- The term of common limitation period for appeal to the court should be extended for at least one year; and a period of limitation for appearing in court for cases of sexual harassment, at least 2 years.

In order to increase the involvement of equality entities and other stakeholders in the case proceedings of discrimination:

- It is important to start discussing the possibility of increasing the subjects to appeal to the court on discrimination cases, including professional unions and other interested persons;

- Legislation defines the authority of public organizations working on issues of equality to present the popular appeal (actio popularis) on the discrimination cases before the Public Defender and the Common Courts that may be related to limited category of cases;

- Along with the Public Defender, other interested persons be allowed to present Amicus Curiae in civil cases in the process of reviewing discrimination cases in the Common Courts, which will help the judiciary to consider and discuss the opinion of the neutral position and apply it in the proceedings if necessary;

- The consent of the alleged victim of discrimination should not be an obligation for the involvement of third parties in the case that will ensure support for the equality body by providing legal considerations.

In order to promote information on the principles of equal treatment and to encourage dialogue between the parties, it is important:

- For effective combat against discrimination in labour relations it is important that the Labour Code emphasize the obligation of the employer, before the labour contract is concluded, to inform the candidate not only about the existing legal provisions on the violation of the principle of equal treatment, but also concerning the means of protection in case of violation of the principle of equal treatment;

- Employer's obligation to provide information to potential employees on the principles of equal treatment and the means of protection should include the public service regulatory legislation as well;

- The normative framework for social dialogues to take into account the provisions that will facilitate and encourage participation of social partners and community organizations in matters of equality policy and, in case of necessity, create open and inclusive platforms of cooperation.