

INFORMAL AND NON-STANDARD EMPLOYMENT IN GEORGIA

Challenges and Possibilities to Reform



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Social Justice Center

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PART I

Introduction

This report examines the modern forms of non-standard and informal labor in Georgia. The objective of the report is threefold: on the one hand, it seeks to gather local knowledge about the labor, social and legal status of informal and non-standard employees; On the other hand, by interviewing those involved in informal and non-standard work, it seeks to update, validate and enrich the knowledge in the scientific literature pertaining to these sectors; Based on this information, the report offers the reader a legal analysis of the challenges and peculiarities identified, pointing out possible ways to address the challenges associated with informal and non-standard labor.

Why these two categories? Non-standard and informal labor are the two main frameworks that describe practices beyond formal and “standard” employment. The National Statistics Office of Georgia collects data on “atypical employment”, in which it considers the atypical work schedule (for example, working in the evening or night shifts) and the model (for example, working from home). The non-standard labor category that is the subject of this report diverges from this definition and is more comprehensive. In non-standard labor, we consider a variety of practices of regulating labor relations that are different from standard employment. These may include platform-based work (for example, couriers, drivers, and others who receive orders through various service providing platforms), part-time or on-call work (such as babysitters employed at an agency), and subcontracting, where instead of labor agreements there are service contracts (for instance, in case of catering workers). In such cases, the employee is often referred to as a “partner”, subcontractor or self-employed, even when the case concerns an employment relationship between the employee and their employer. In such a context, establishing an employment relationship becomes crucial and this topic is a key issue in the concluding sections of this report.

The informal labor category includes all labor relations that are not covered by any form of a formal contract. Such may be an employee employed in a formal enterprise who has neither an employment contract nor any other type of contract with the employer, as well as workers in entirely informally arranged enterprises.

These two categories are not mutually exclusive, but co-existent - problems, challenges, and peculiarities are often shared. Due to the variety of vague labor practices, it is often impossible to distinguish them in legal terms. This report thus combines two categories, which is both its strength and weakness. It is an advantage because this allows to cover a large part of the segment left behind by other aspects of the labor market and to highlight the systemic failures that are common to informal and non-standard forms of employment. The disadvantage lies in that when combining the two categories, not

enough attention may be paid to the diverse and specific factors within the non-standard and informal categories. Therefore, when possible, in reviewing findings, the report highlights the cross-cutting nature of the problems, while in other cases it indicates that the findings pertain to only one of the two categories of challenges or ways to solve them.

This report pays particular attention to the issue of definitions and categorizations, which is particularly important in the study of these sectors. In addition to the fact that categorization is related to many challenges, in many cases the issues of labor regulation or inspection, as well as the issue of workers' social protection, depend on their categorization - that is, whether the state and its various agencies (including the Labor Inspectorate) see and recognize labor relations. The relevant part of the report (Non-standard and Informal Employment - Concepts and Their Relevance for Georgia) shall discuss the definitions in more detail, and we shall return to the topic of the establishment of labor relations in the legal analysis section.

What causes the proliferation of informal and non-standard employment in Georgia and the world?

Empirical studies indicate that often the prevalence of informal or non-standard employment is stemming from the employers wish to avoid the obligations and responsibilities associated with standard, formal employment:¹ Informal and non-standard employment allows the employer to (1) hire and fire employees more easily as revenue increases or increases;² (2) avoid providing insurance and other benefits to employees; (3) pay a salary lower than the minimum wage, should it be fixed; (4) avoid liability in the event of production injuries; (5) disregard other protection guarantees provided for in the Labor Code, including norms related to the work schedule.

It is important to note that not only formal employment-related factors but also access to the informal labor market are pertinent in the spread of informal employment.³ Informal employment is highest in countries where unemployment is high and the penalties for informal employment are low.⁴ These circumstances make it easier for employers to find and employ a labor force agreeing with informal or non-standard labor.

1 Di Porto, E., Elia, L., & Tealdi, C. (2017). Informal work in a flexible labour market. *Oxford Economic Papers*, 69(1), 143–164.

2 Vallanti, G., & Gianfreda, G. (2020). Informality, regulation and productivity: do small firms escape EPL through shadow employment? *Small Business Economics*. doi:10.1007/s11187-020-00353-9

3 Yassin, Shaimaa, and François Langot. "Informality, public employment and employment protection in developing countries." *Journal of Comparative Economics* 46, no. 1 (2018): 326-348. Harvard

4 Henry, Stuart. "The Working Unemployed: Perspectives on the Informal Economy and Unemployment." *The Sociological Review* 30, no. 3 (August 1982): 460–77. <https://doi.org/10.1111/j.1467-954X.1982.tb00663.x>.

In addition to the factors mentioned above nudging employers towards informal and non-standard employment, circumstances may also push the employees towards informal and/or non-standard employment. For example, some employees - and we will discuss this in more detail below - may be motivated by the possibility of a flexible working regime for non-standard employment, or, in the case of informal employment, by the desire to be exempt from income tax. Researchers indicate that some of informal employment is voluntary.⁵ Therefore, when considering the prevalence of informal and non-standard labor, it is important to pay attention not only to the motivation of employers to rely on informal or non-standard labor but also on the factors why informal or non-standard employment may be preferred by the employees themselves.

The latter may be due not only to the lack of alternatives to informal or non-standard employment or its availability but also to the lack of benefits associated with formal employment. The lack of a decent minimum wage and unemployment benefit system, as well as problems related to the enjoyment of labor rights (enforcement of the Labor Code), make formal employment less attractive and less competitive than other forms of employment.

The spread of informal and non-standard employment is caused by a balancing of factors acting on the part of employers and employees, and different interventions may change both sides of the equation.⁶ For example, setting a minimum wage may push employers toward informal employment to prevent wage increases, however, at the same time, setting a decent minimum wage may make formal employment more attractive to workers. In such a case, the number of people dependent on social assistance will be reduced and some of them will become employees and taxpayers. The final effect of the minimum wage regulation will therefore depend on the ratio of these two conflicting influences. The same applies to other interventions aimed at improving the labor market, such as strengthening labor inspections or tightening regulatory working hours. In these cases, too, the total impact of these interventions on the prevalence of informal and non-standard labor depends on the effectiveness of enforcement and other social and economic circumstances.

Lastly, the proliferation of non-standard and informal forms of labor is facilitated by the emergence of new digital and platform technologies. Mobile phones and related apps create the opportunity for employees, employers, and consumers to connect in new ways. New technology creates new opportunities for labor organization. Examples of this are application-based courier services, marketing, training, consulting, and other

5 García, Gustavo A. "Labor informality: choice or sign of segmentation? A quantile regression approach at the regional level for Colombia." *Review of Development Economics* 21, no. 4 (2017): 985-1017.

6 Almeida, Rita, and Pedro Carneiro. "Enforcement of labor regulation and informality." *American Economic Journal: Applied Economics* 4, no. 3 (2012): 64-89.

online platforms. Algorithmic organization of labor allows the employer to employ the worker only when he/she needs it and only in the duration of the time required to provide a particular service. In addition, the platforms provide innovative means of monitoring, evaluating, and remunerating workers.

The reasons for the proliferation of informal and non-standard economies in Georgia are largely unexplored, although, based on international experience, it is possible to highlight several factors in this context as well. The spread of digital and especially mobile technologies in Georgia is growing. According to the National Communications Commission, the use of smartphones in Georgia is growing from year to year.⁷ The number of smartphone users in Georgia today exceeds 3.5 million and more than half of smartphone users use mobile internet. The increase in the number of users of smartphones and digital technologies, as well as the availability of the Internet in general, contributes to the increase in the volume of workforce available for platform work and the attainability of the market itself.

The labor reform implemented in 2017-2020 puts new demands on employees in the areas of working time regulation, workplace safety, and many other issues. At the same time, from 2019, along with income tax in Georgia, a mandatory contribution is accumulated in the pension system, which is shared by the employee and the employer. Therefore, the possible side effect of tightening labor legislation in terms of increasing interest in informal and non-standard employment is significant in the case of Georgia as well (however, on the other hand, the new regulations make formal employment more attractive and it is important to study and consider its impact as well).

In contrast to non-standard employment, the determinants of the size of the informal sector are studied more in-depth, both in Georgia and globally. High unemployment promotes access to informal employment. On the other hand, informal employment is a kind of “palliative means” for those who cannot find stable and formal employment.⁸ At the same time, informal employment is a way of “disguising unemployment” - some of the unemployed are employed informally, and the high unemployment rate is, therefore, an indicator of a large informal sector.⁹

The expansion of informal labor in Georgia is also conditioned by historical factors. The collapse of the Soviet Union was followed by a radical reduction in formal employment

7 Slonimczyk, Fabián. “Informal employment in emerging and transition economies.” IZA World of Labor (2014).

8 Williams, Colin C. “Informal sector responses to unemployment: an evaluation of the potential of Local Exchange Trading Systems (LETS).” *Work, Employment and Society* 10, no. 2 (1996): 341-359. Harvard

9 Bosch, Mariano, and William Maloney. *Cyclical movements in unemployment and informality in developing countries*. World Bank Publications, 2008.

in Georgia. During the first 10 years of independence, employment in the formal sector fell from 91 percent to 57 percent.¹⁰ Post-Soviet conflicts, the collapse of state institutions, and the deep socio-economic crisis have left parts of the population without jobs and incomes, and some – for instance, IDPs – were left homeless, some of whom have found employment in the informal sector.

Traces of the post-Soviet transition can be found not only in the informal economy but also in its specifics. Aliyev (2015),¹¹ in his in-depth review of informality in the post-Soviet space, indicates that, unlike in Western Europe, informal interactions in the post-Soviet and post-communist context are not isolated, an exceptional phenomenon in the otherwise stable formalized environment, but part of cultural and political life. Here the daily economic and social interactions of the citizens are imbued with various forms of informality. Furthermore, scholars of post-communist informalism emphasize that, unlike in the Western experience, where the informal economy is perceived as a “transitional” phenomenon on the path of economic development, informal practices are more entrenched in the post-communist space and formalization does not inevitably result in economic growth.¹²

The post-Soviet transition has proven that the informal and shadow economy is a kind of refuge for workers left without income in a crisis. This feature of the informal economy was once again exposed in the context of the COVID 19 pandemic. The pandemic and related constraints have caused severe fluctuations in the labor market. According to studies, the negative impact of the pandemic in the informal sector was even more noticeable than in the formal sector. The number of employees in the informal sector has decreased more than in the formal.¹³ Problems with the payment of compensation to the unemployed, especially the lack of documentation provided and the lack of sectoral data, have once again highlighted the shortcomings of state policy and the dire consequences of existing policies. In cases where employees continued to work in a pandemic situation, systemic problems in terms of labor rights enforcement became apparent, which is particularly acute for non-standard and informal employees.¹⁴ non-standard and informal employees.

10 Karchiladze, Natia. “Gender Aspects of the Informal Economy: Following the Example of Women Traders in Tbilisi”. 2018

11 Karchiladze, Natia. “Gender Aspects of the Informal Economy: Following the Example of Women Traders in Tbilisi”. 2018 cy, 35(3/4), 182–198. doi:10.1108/ijssp-05-2014-0041

12 Morris, J. and Polese, A. (Eds) (2014), *The Informal Post-Socialist Economy: Embedded Practices and Livelihoods*, Routledge, New York, NY.

13 The impact of the pandemic on the labor market and the condition of employees; Giorgi Chanturidze, Tamar Surmava; USAID, July, 2021.

14 Labor rights during a pandemic. Social Justice Center. 2020

Structure of the Report

This report relies on three main forms of information collection and analysis: (1) expert contributions; (2) surveying those involved in informal and non-standard labor and the corresponding thematic analysis; (3) Desk research of the literature and legal evaluation of findings and empirical data. Taken together, these three components seek to identify key challenges related to informal and non-standard labor in Georgia and, based on legal and academic analysis, to facilitate an informed and inclusive discussion around them.

The introduction to the report is followed by a review by Ana Diakonidze, which, considering the Georgian context, discusses the importance of informal and non-standard labor according to the latest academic and institutional definitions of these categories. In addition to Ana Diakonidze's article, the report contains contributions from two other experts, Tamar Keburia and Salome Kajaia. Tamar Keburia's article, which assesses the anti-crisis assistance administered during the COVID 19 pandemic, refers to the established state policy towards informal and non-standard labor and, through it, discusses the prospects of formalization. These issues will be further discussed in the concluding sections. The article by the third expert, Salome Kajaia, is about workers whose employment status goes beyond the definitions of informality and non-standard work on which this report is based. The article, on the type of labor on the verge of formality and informality, employment and self-employment, is attached to the report.

In addition to the findings in the recent scientific literature, when describing the needs of employees in the informal and non-standard sectors, the report also relies on thematic research-based directly on interviews with workers involved in this type of work. Interviews with those involved in informal and non-standard work, on the one hand, ground the academic findings in the modern Georgian context, and on the other hand, try to highlight the most important concerns that point to the need to reconsider existing approaches of the legislature or the executive.

Lastly, during the preparation of the report, a legal analysis was conducted of the issues identified in the literature review and as a result of the employee survey. In addition to the answers received during the survey, this section relies on labor law and the analysis of contracts or other documents that regulate the relationship between the parties to the non-standard labor arrangements. The situation pertaining to the courier service is especially interesting in this regard. The report includes a document ("Legal Assessment of Contracts of Delivery Service Companies Operating in Georgia"), which specifically addresses this issue. Its purpose is to analyze the existing contracts with the persons employed in the delivery service and to assess their legal status. The document legally

reviews the contracts of several companies operating in the field of delivery services in Georgia, in order to identify the legal mechanisms and existing practices used to disguise the existing labor relations between the parties. It also discusses the challenges of regulating the informal sector, including physical security in the workplace, remuneration mechanisms, and the additional benefits of labor relations that are currently inaccessible to non-standard or informal employees.

These three forms of information collection and analysis (academic definition of concepts, employee surveys, and legal analysis) complement each other. As you will read in the report, in some cases the survey confirms the existence of challenges depicted in the literature, and sometimes encounters findings that are new or specific to the Georgian context. Legal analysis promotes an institutional understanding of the issues identified in the survey and indicates ways to address them through legislative or other interventions.

This report is neither comprehensive nor final. The study of informal and non-standard labor is associated with many methodological and empirical difficulties. Problems are particularly acute in Georgia, where lack of access to data, scarcity of existing knowledge, and non-transparent institutional practices do not allow for comprehensive analysis. Nevertheless, this report may serve as a useful and important starting point for both gathering knowledges about the informal and non-standard sectors and for finding solutions to the problems specific to this segment of the labor market.

Non-Standard and Informal Employment – Concepts and Their Relevance in Georgia

By Ana Diakonidze

What does non-standard employment mean?

In the past decade, the “new world of work” has been actively discussed in academic and political circles. This concept denotes gradual disintegration of “standard employment contract” and the establishment of new, more flexible, and non-traditional forms of labor and employment. “Standard employment contract,” or “standard employment” is a Western concept born in the era of Fordism. Broadly speaking, it is “a stable, open-ended and direct engagement between a dependent, full-time employee and their unitary employer” (Walton 2016). The following characteristics define the employment contract: personal subordination of the employee to the employer, mutuality of obligations between the two parties, and most importantly, economic dependency – employment relationship being the main source of income of the worker (Schoukens & Barrio, 2017). It should be noted that these definitions, formed in the Fordist era, underwent changes in the following decades in light of the developments in the service sector. For example, if in the Fordist era subordination referred to the execution of orders received from a direct supervisor, today it signifies functional subordination of workers in one group to another. With the development of the service sector, this has led to an increase in the number of skilled workers who have more autonomy in performing their responsibilities than those engaged in manual labor (Veneziani, 2009). It is also important to note that a standard employment contract guarantees employment stability and social security.

In contrast, non-standard labor is a general concept that refers to labor relations that lack the attributes of a standard labor contract. The International Labor Organization (ILO) distinguishes between four main forms of non-standard employment: a) temporary (fixed-term) employment, b) part-time employment, c) multiparty employment, and c) disguised self-employment (ILO, 2016). It is notable that the above-mentioned forms of non-standard employment are not mutually exclusive and the boundaries between them are blurred.

Temporary Employment, unlike standard employment, is limited to a certain period of time. The term “temporary” can be understood in a broad sense. Both individuals with a temporary contract of several years and those engaged in the so-called irregular or casual work can be described as temporarily employed. An example of the latter is

on-demand and/or wage workers. The employment contract in the first case is longer yet in both cases, the employment is temporary.

Irregular and casual work is mainly prevalent in developing economies where it arguably represents the dominant form of employment. It is notable, however, that similar forms of employment are growing in developing countries as well. For example, the so-called zero-hour workers in Europe whose contract does not oblige the company to establish minimum working hours and accordingly, a minimum wage. The worker is expected to perform the work when needed and for as many hours as needed (e.g. a company may have such an agreement with a translator).

Table 1: Forms of non-standard employment

Forms of non-standard employment	Examples
Temporary	<ul style="list-style-type: none"> - workers on a temporary contract hired for specific projects - on-demand workers - wage workers - domestic workers
Part-time	<ul style="list-style-type: none"> - part-time workers - on-demand workers - wage workers - seasonal workers
Multiparty	<ul style="list-style-type: none"> - workers hired through temporary employment agencies (babysitters, domestic helpers, cleaners and sanitation workers, etc.)
Disguised	<ul style="list-style-type: none"> - those working via online applications (e.g. taxi drivers, delivery workers, etc.) - freelancers

Source: ILO, 2016

Part-time Employment – this category includes any job that is not full-time. The classic example is part-time work, which is regulated by law in the majority of developed and developing countries. According to the EU directives¹⁵ and the conventions of the ILO¹⁶, a person whose working hours are less than the working hours of a person employed full-time in a similar type of work is considered a part-time worker. The Organization for Economic Co-operation and Development (OECD) defines part time work as working less than 30 hours per week.¹⁷

15 https://www.eumonitor.eu/9353000/1/j4nkv6yhcbpeywk_j9vvik7m1c3gyxp/vitgbgi1btxs

16 https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C175

17 <https://data.oecd.org/emp/part-time-employment-rate.htm>

Similar to the first category of non-standard employment, part-time employment means different things in different countries. In high-income countries, for example, this type of employment includes job sharing, progressive retirement, and so on. However, such practices are less common in the developing world. Here, the category of non-standard employment includes the already-mentioned “on-demand and wage workers” and more generally, those whose employment is unstable and unpredictable. It is important to consider part-time employment over a period of time (e.g. one year), because a worker may work full time on specific days yet may not have full-time employment throughout the entire year. A good example of this is seasonal employment.

Multi-party employment – workers in multi-party employment do not have a direct contractual relationship with the company/person they work for. There is also a third party – an agency or a company that hires workers to perform a specific job. Such agreements can take different forms. In some cases, temporary employment agencies hire workers and then rent them out to a company/household where the work is to be carried out. The service recipient (company or private individual) pays a fee to the agency, which in turn is obliged to pay wages, and in some cases, social contributions, to the worker. This is how domestic helpers, babysitters, cleaning staff, and other service workers are employed.

A slightly modified version of multiparty employment is when one company contracts a service rather than workforce from another company (e.g. cleaning, security service, catering, etc.). The latter, in turn, provides services with hired workers. In the case of multiparty employment, there may be several links between the worker and the service recipient, often obscuring to whom the former is accountable and who may be held responsible if workers’ rights are violated. Moreover, this type of employment is in the interests of the employer since it eliminates liability towards the “employee” as the latter is not in a formal employment relationship with the company.

Disguised self-employment – the ILO distinguishes between “genuine” self-employment and “disguised” self-employment. The former applies to workers who are not in an employment relationship since they do not have an employer. This means we are not dealing with an employment relationship (e.g. workers involved in subsistence agriculture in Georgia, or dentists, massage therapists, or other doctors who have their own practice at home or in a rented space and have no employees). Accordingly, the ILO does not consider “genuine self-employment” as a non-standard form of employment.

In contrast, there is a growing tendency around the world of workers who appear to be self-employed, but in reality, are in an employment relationship with a “contractor” (quasi employer). An example is taxi drivers and delivery workers, labeled as “independent

partners” by companies. Unlike in the case of “genuine self-employment,” these workers cannot independently decide when and how much to work, their activities are constantly being controlled and, most importantly, they are often economically dependent on a single company/application. Drivers of intercity minibuses in Georgia represent a good example – they formally rent the route from a transport company and transport passengers on their own. A service agreement is signed between the company and the driver yet the driver does not act as an independent entity since his/her working conditions (schedule, route, transportation conditions) are fully controlled by the transport company. Moreover, drivers are economically fully dependent on the mentioned work.

Many factors contribute to the spread of non-standard forms of employment. Especially noteworthy is the globalization of business – the emergence of multinational companies that operate through a global supply chain, technological development, the transfer of production from the developed to the developing world, and finally, the rise of the service economy. These trends have upended the labor legislation, which was developed according to the national context of a single country in the Fordist era. The globalization of labor processes produced a reality that could no longer be regulated by national labor law. With the reinforcement of the neoliberal paradigm since the 1970s, labor laws and general policies have become subject to liberalization in many countries. Consequently, employers globally had the opportunity to no longer register workers who produced their products or provided their services as “employees.” Instead, they became “independent partners,” or only engaged with the employees via a third party.

Informal Employment and Overlap with Non-Standard Employment

According to Recommendation 204 of the ILO, issued in 2015, informal economy “refers to all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements (ILO, 2018). In line with international standards, it is important to distinguish between employment in the informal sector and informal employment. The former is determined by a person’s workplace and the latter by the type of employment relationship one enters in a particular workplace. This distinction is relevant insofar as employment in the informal sector is, evidently, informal. Informal employment, on the other hand, is not limited to the informal sector – in many countries, informal employment is also found in the formal sector (ILO, 2018).

The informal sector typically includes a sum of unregistered enterprises that do not exist as independent legal entities. They are owned by household member(s) and as a rule, operate on a very small scale. In their case, there is no division between capital and labor (both the worker and the owner of the capital are the same) (e.g. small family enterprises in agriculture). As for “informal employment,” it is defined as an employment agreement that is not de facto or de jure subject to national labor law and income tax, and does not require the employer to provide social security or other employment-related benefits (e.g. paid leave, advance notice, etc.) (ILO/OECD, 2019).

The 2003 International Conference of Labour Statisticians identified the following types of informal employment:

1. Own-account workers and enterprise owners in the informal sector;
2. Contributing family workers;
3. Members of informal (agricultural) cooperatives; and
4. Informal workers engaged in the formal sector.

The above categorization shows that self-employment and informal employment overlap yet are not identical. The self-employed often engage in informal labor (e.g. street hawkers), as well as in formal labor (e.g. individual entrepreneurs who have no employees and work alone).

A large share of non-standard employment is also informal employment. The two concepts, however, are not identical (ILO/OECD, 2019). Considering that the ILO defines informal employment as an employment relationship that is not de facto or de jure subject to national labor law and income tax, and does not provide social security guarantees, a significant proportion of temporary and part-time workers fall into the informal employment category. The overlap between informal and non-standard employment mainly happens in the case of the so-called casual workers who work without a contract, and not in the case of experts employed in multi-year projects or individuals who are formally employed part-time.

As for multiparty workers and workers in disguised self-employment, they might seem formally employed since they usually work on a contract basis. However, in most cases, these contracts are service agreements rather than employment agreements. This in itself excludes these workers from social security systems and deprives them of the opportunity to enjoy the labor rights established by law. Judging based on the mentioned criteria, these workers fall into the category of “informal employment.” What complicates matters, however, is the fact that many of them (e.g. drivers employed via applications,

freelancers) may be registered as individual entrepreneurs and even pay certain taxes. Thus, it would be more accurate to say that this category is in a “gray zone” between the formal and the informal sectors.

Issues Related to Non-standard and Informal Employment

According to the ILO, the number of non-standard workers is increasing annually, although their share in the labor force varies by region (ILO, 2016). For example, in 2014, the rate of temporary employment in Europe ranged between 5% (Romania) and 25% (Poland). The contrast is also significant in the less developed economies of the world. In 2013, the share of non-standard workers was 0.1% in Qatar and 65% in Vietnam (ILO, 2016).

The chief problem common to the majority of non-standard and informal workers is the lack employment security. These workers do not have a stable, predictable employment, which is associated with many other challenges. Problem areas discussed in the specialized literature (e.g. Pulignano et al. 2021) can be summarized as follows:

- *Lack of financial stability*: non-standard workers earn much less than standard workers.¹⁸ For example, part-time employment in Europe and the United States involves significant wage fluctuations. Due to the nature of the employment, the worker may have a normal income in one month and no income at all in the next. Naturally, this has a negative impact on all other dimensions of the worker’s life;
- *Poor work-life balance*: unpredictable and non-fixed working hours disrupt the balance between personal life and work;
- *Health problems*: non-standard workers often have to work more hours full time, which causes fatigue, stress, and harms their health;
- *Lack of safety at workplace*: non-standard and informal employment often poses a physical treat to the worker. For example, street hawkers have to work in extreme weather conditions (strong heat, cold). The bonus system for delivery drivers working with applications increases the risk of traffic accidents. Delivery workers receive bonuses if they complete a certain number of orders in a short period of time. This encourages them to accelerate their vehicles, which is a major safety risk;

¹⁸ The hourly pay of a part-time employee is often much lower than of a full-time employee working the same job.

- *Lack of social security*: due to irregular and unpredictable income, workers are often excluded from national social security, which typically require a stable monthly contribution and set certain preconditions for membership (e.g. work experience). Non-standard workers do not satisfy these requirements;

- *Lack of unionization opportunities*: it is very difficult for non-standard workers to join trade unions since they are geographically dispersed. Consequently, they are deprived of the opportunity to protect their labor rights;

- *Lack of professional development opportunities*: non-standard and informal employment offers minimal opportunity for training and professional development. According to the ILO, the chances of transitioning from non-standard to standard employment are very low both in developing and developed countries (ILO, 2016). As such, this type of work is more a professional “trap” than an opportunity to transition to a standard job.

Informal and non-standard employment in Georgia

Informal employment is not new to Georgia. Like most post-Soviet countries, Georgia is a leading country in terms of the informal employment index. 2020 data of the National Statistics Office of Georgia¹⁹ suggests that the share of informal workers in the non-agricultural²⁰ sector is 31.7%.

Formal data on non-standard employment is scarce. Based on the labor force survey, the Statistics Office estimates that “atypical workers” made up 52% of the labor force in 2019.²¹ Under this category, the Statistics Office classifies workers who work evening and/or night shifts, on weekends and/or from home. According to the same source it can be identified that 33.4% of atypical workers are in hired employment, 39% are independent workers and 26% are contributing family workers. At the same time, 44.7% of the atypical workers are informal workers in the non-agricultural sector. Unfortunately, existing data does not provide for the opportunity for deeper analysis. Based on the described statistics, however, we can conclude that non-standard and informal labor is quite common in Georgia.

19 <https://www.geostat.ge/ka/modules/categories/683/dasakmeba-umushevroba>

20 This figure will be much higher in the agricultural sector, but since these workers fall into the category of “genuine self-employment,” they cannot be considered as non-standard workers and are not relevant to this analysis.

21 Author’s calculations based on labor force survey data.

When speaking about non-standard employment in Georgia, it is important to mention the specifics of the local context. The first concerns the phenomenon of “temporary employment.” According to the international standard, “temporary contract” is the opposite of indefinite contract. The EU Directive 1999/70/EC (1998)²² states that “contracts of an indefinite duration are, and will continue to be, the general form of employment relationship between employers and workers. [...] Fixed-term employment contracts respond, in certain circumstances, to the needs both employers and workers.” Indefinite employment has never been the norm in Georgia. Even today, we only find “indefinite” contracts in the public sector, while multi-year contracts predominate in the private sector. Hence, the latter is more a norm than a deviation from the norm in Georgia. As such, in the Georgian context, it would be more advisable to understand the “temporary” category as employment for a very short period of time (several days or months) since even one-year contracts have become the “standard.”

The second important issue concerns part-time employment. In Georgia, as in other low-income countries, non-standard employment implies working non-fixed and unpredictable hours rather than part-time employment. The number of hours one works in this case can be more or less than the full-time load. The ILO offers a similar interpretation of this category, especially when it comes to developing countries (ILO, 2016). Thus, Table 2, which shows categories of non-standard workers in Georgia, refers to this type of employment as “non-fixed working hours.”

Some forms of labor listed in Table 2 are “old” and others relatively “new” for Georgia. For instance, the first two categories are quite familiar. There is a significant overlap between the two and therefore, the table offers shared examples. The listed examples are illustrative, which means that in individual cases, one might find attributes typical of either both (temporary and non-standard) or only one category of non-standard employment.

It is crucial to note that in certain cases, individual workers who fall into these two categories may not be considered as non-standard workers. For example, a babysitter or a beauty salon employee who works full time and has a multi-year (even one-year) verbal agreement with the employer fails to satisfy two criteria of non-standard employment – temporary labor and non-fixed hours. The person may be informally employed, but fit the understanding of “standard employment.” Even the ILO, when discussing the status of domestic workers, only refers to them as non-standard workers when they work part-time, unsystematically and/or with several employers (ILO, n.d.).

²² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31999L0070>

The appearance of the third and fourth categories of workers is associated with technological innovations and changes in business processes in Georgia, as in the rest of the world. Thus, unlike the first and second groups, they represent “new” forms of non-standard employment. It should also be noted that temporality and non-fixed working hours are clearly applicable in their case (obviously with some exceptions).

Table 2: Non-standard Employment in Georgia

Forms of non-standard employment	Examples from Georgia
Temporary	- Beauty salon workers who go to work only when they have client appointments; - Handymen (on-demand workers);
Non-fixed working hours	- Construction site workers; - Daily workers; - Domestic workers (hired by families for a few hours or days).
Multiparty	- Babysitters hired through the agency; - Security staff; - Cleaners and sanitation workers; - Catering staff.
Disguised self-employment	- Delivery workers, taxi drivers, babysitters, and tutors working via applications; - Freelancers; - Beauty industry workers; - Fixed route drivers.

Source: author’s analysis

Georgia is not unique in terms of the overlap between non-standard and informal employment. As in the rest of the world, a large share of non-standard workers are informally employed or in the “gray zone.”

The Needs of Workers in Georgia

Workers engaged in non-standard and informal labor in Georgia face similar challenges as their counterparts in other parts of the world. Clearly, the most important problem for both groups of workers is employment stability and related financial security. In terms of income, there is a large variation among informal and non-standard workers. Research (Beerepoot & Lambregts, 2014; D’Cruz, 2017; Eisenmeier, 2018;) shows that drivers employed through applications and freelancers working on online platforms earn fairly good wages for the local context. On the other hand, scholars working on these issues

argue that “on-demand” workers have to engage in unregulated labor to earn minimum wages (Hunt & Machingura, 2016).

Irrespective of income differences, workers in each category face the lack of security. In this regard, Georgia differs from the developed economies of the West and some other low-income countries as it has neither unemployment insurance nor unemployment assistance systems. The only social security benefit is targeted social assistance, which has no direct connection with an individual’s employment status. As such, neither informal and non-standard workers, nor standard employees benefit from this social security feature. Even so, those involved in irregular and non-standard labor are in a worse place. This became clear during the Covid-19 pandemic, when the state started issuing one-time unemployment benefits to those who lost their jobs due to the pandemic. Informally employed individuals were the least to benefit from the financial assistance since the state did not have a mechanism to identify them (Diakonidze, 2021).

As already mentioned, the ILO considers non-standard labor as a “trap,” from which the chances of transitioning to standard employment are low. The lack of a proper social security system in Georgia further exacerbates this problem. Finding a “better” job usually requires a higher level of competence and qualification.²³ Even if there are free retraining opportunities in the country (e.g. state vocational schools and vocational courses offered by the state Agency for Employment Promotion), they are less accessible to non-standard informal workers since they require taking time off work, which this type of workers cannot afford.

It should also be noted that informal and non-standard workers are generally deprived of the rights and benefits offered by the Georgian labor law (maternity leave, annual leave, overtime pay, etc.). An important innovation in this regard was the 2020 amendment to the Labor Code, according to which the law regulates the labor of part-time workers and extends to them the guarantees that apply to full-time employees. Furthermore, the Georgian labor law favors lifelong employment.

The above overview clearly shows that problems faced by informal and non-standard workers are complex and difficult to address. When developing relevant policies, it is important to distinguish between three analytical categories: the informal nature of labor, being in the “gray zone,” and non-standard labor (beyond the gray zone). In the

²³ I should mention here that “higher level qualification” is a necessary but insufficient condition for finding a “good job.” A person might resort to non-standard/informal work because very few “good jobs” are available in the country and not because she lacks qualifications. Even if the second scenario is also common in Georgia, it does not weaken the argument that a “good job” requires appropriate (higher) competence.

case of non-formal work, one of the solutions is to move the employment relationship to the formal sector so that the worker can enter the social security system and enjoy labor rights. However, “formalization” of an employment relationship is quite “expensive” – the employee pays income tax, the employer - social contributions, etc. The state can encourage the formalization of labor relations by reducing these costs. There are numerous similar precedents around the world. For example, in Slovenia in the 2000s, a new employment concept of “small work” was created, which granted legal status to those who worked up to 20 hours per week or 40 hours a month with a wage not exceeding 50% of minimum wage. The state exempted the employers from drawing up a contract as long as they registered the workers for social security. Their cost of health and pension contributions were also reduced. As a result of the initiative, 15% of household workers registered for social security (ILO, n.d.).

In the case of non-standard labor, recognition of the employment status at the legislative level may lead to certain rights. In some countries, labor law recognizes non-standard forms of employment relations and accordingly, grants some rights to non-standard workers. For example, Chilean labor code recognizes the status of “domestic workers.” In 2014, the maximum limit of working hours was set for domestic workers; in Thailand, a special labor regulation of 2012 granted domestic workers annual leave, paid holidays, and one rest day weekly. In Brazil, a domestic worker enters an employment relationship only when she/he is employed full time (workers who work two days or less for a household do not have an employment relationship with the employer). Similar regulations also exist in Switzerland, Uruguay, Burkina Faso, etc. (ILO, 2016).

The priority in the case of “gray zone” workers is for the state to recognize such “labor agreements” as “employment relationships,” which will automatically enable the workers to enjoy their labor rights. There are many interesting developments in this regard. For example, in 2016, the Italian government issued a labor act that defines different categories of self-employed workers, among them “those performing activities coordinated by the client,” which includes delivery drivers and others who work via platforms. The act entitled these workers to certain labor rights.²⁴

Clearly, this is not an exhaustive list of examples. The mentioned policy measures may not fully meet the needs of non-standard and informal workers, but they provide a sufficient foundation to start thinking of similar solutions in Georgia.

24 <https://www.eurofound.europa.eu/publications/article/2017/italy-new-rules-to-protect-self-employed-workers-and-regulate-ict-based-mobile-work>

Needs of Those Involved in Non-Standard and Informal Labor: Thematic Research

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Introduction

This research studied the working conditions of both informal and non-standard workers, in order to determine the main characteristics of the types of informal and non-standard labor in Georgia. To this end, qualitative data were collected through interviews. The thematic analysis presented in this chapter allows us to consider non-standard and informal employment categories as, on the one hand, independent categories and, on the other hand, as practices with similar characteristics, which further allows us to discuss the policies necessary to regulate these segments.

Methodology

The next part of the report is a thematic overview of the needs in the informal and non-standard sectors, based on interviews conducted as part of the research. An in-depth semi-structured interview format was selected for conducting the interviews, which, in terms of methodology, is in-between “no method” and “all method” approaches (Kvale, 1996 p. 83). This format allows the interviewer to gather information on pre-defined topics. But, at the same time, it leaves room for thematic enrichment according to respondents’ responses. The interviews were conducted once, and the prepared questionnaire contained both purposefully closed-ended and open-ended questions. The selection of respondents was based on the snow-ball principle, as well as the principle of data saturation. The former involves the method of selecting respondents, when the researcher, with the help of respondents, finds and selects each subsequent respondent; The latter implies that the researcher stops recruiting new respondents at a stage when he/she can no longer see the possibility of obtaining new information.

The survey included 14 respondents involved in informal and non-standard labor. They represent the economic sectors of interest for the purposes of the report - tourism, domestic work, auto service, transport, courier services, and prophylactic services. In addition, the authors of the report spoke with representatives of service platform providers. The pre-defined topics in the questionnaire included the nature of the respondents’ past

and present employment relationships (in this regard, it was particularly productive to talk to workers who have different forms of employment experience). Their working conditions, pay, knowledge pertaining to formalization and organization, social security, and the impact of the COVID 19 pandemic on their daily lives and working conditions. Where possible, documentary material was also collected from respondents for legal analysis. At the analysis stage, part of the respondents' responses were distributed according to the topics dictated by the literature below, while the findings from other responses sustain the different parts of the report.

The scale of the study does not allow quantitative conclusions to be drawn, thus the report does not contain quantitative findings on the frequency of different concerns or the prevalence of relationship forms. At the same time, it is important that the selected group of respondents is not considered representative and that the attitudes or concerns mentioned in their interviews are not generalized. The main characteristic of the informal and non-standard sectors is the diversity and heterogeneity of the practices. There are often more differences than similarities between the sub-categories of these sectors. Diversity is, thus, a major challenge in regulating and exploring these sectors, therefore this section of the report, which addresses key needs, is more of an overview of the most important topics rather than a comprehensive list.

Main findings of thematic research

Unstable remuneration

Often, the remuneration for work of non-standard and informal employees varies drastically from an order to order. In the absence of a standard price, the amount and terms of reimbursement are determined on the basis of verbal negotiation. This type of instability is somewhat reduced by the platform regulation of labor in cases where the price of the service is fixed. Such is the case, for example, with the platforms for auto-repair services, which rely on the fixed price of craftsman services. However, platform regulation does not necessarily mean the existence of a fixed tariff. The price of services on some platforms varies from order to order - this is the case, for example, with most courier and transportation platforms. There is also a platform that partially regulates the price - the minimum price and price ceiling of services craftsmen and cleaners are pre-determined, although the possibility for tariff variation remains.

It is noteworthy that for those involved in platform labor, where labor demand and supply vary algorithmically according to demand-supply, working on a busy schedule does

not necessarily mean better pay, as the increased price in high demand conditions only lasts a short time - until the number of service providers on the platform increases. The experience of those involved in platform labor shows that the increasing technologization of labor relations and the possibility of real-time price changes put the worker, who brings their labor to a dynamic and changing market, in an even more vulnerable position.

As for the informal sector, the price of the labor in this case is usually determined by verbal agreement. In this case the employee and the employer note in the survey that they are guided by the “established market price”, although most respondents who are engaged in informal work indicate that the remuneration for work extremely fluctuates.²⁵

Unstable income

Income instability is caused not only by fluctuating price of labor but also by fluctuating demand for labor. The most common and one of the most problematic differences between hired employment and non-standard/informal employment is unstable income.

For most people involved in non-standard labor, income depends on production (drivers, craftsmen, couriers, etc. employed on different platforms). For those involved in platform work, the obvious and sharp division of work schedules between the periods of overwork and underwork is particularly noticeable. This period can be one specific day, week, month, or season. During the busy period, it is difficult for workers to find time for other life responsibilities or interests, and during the insufficiently busy period, due to dependence on production, there is a severe lack of income.

Seasonally volatile income deserves a separate category because in this case, the instability is no less sharp, but it is predictable. The best example of this is a specific craft such as an air conditioner repair person. Demand for the services provided by them increases in the summer and virtually disappears in the winter period. On a larger scale, the most notable cases of seasonality are found in the tourism sector, where winter and summer resorts are loaded and unloaded at different times of the year. Seasonally fluctuating incomes are also found in agriculture and many other sectors.

As a result, persons involved in informal and non-standard work often find it difficult to even name their average income. Contrasting cycles of overwork and under-workload,

²⁵ Interviews #4,5,7,8.

fluctuating labor prices, and seasonal volatility make it difficult for them to determine their income. As a result, it often becomes impossible for them to make life decisions pertaining to finances, and income instability does not allow them to accumulate savings. This, in turn, leaves them in a position of constant financial vulnerability, which increases the risk of excessive debt burden and predatory lending.

It should also be noted that part of the respondents think that entirely commission-based pay, rather than fixed earnings, which is what most of the platform service providers rely on, is not the problem, but the advantage of this type of employment. Such a system allows workers to work harder and therefore earn more when they feel the need to do so and, no less important, to refuse to work when they need to spend time elsewhere. In the case of full-time employment, remuneration (usually and to a large extent) is fixed. This, in turn, creates a minimum income margin - that is, a more or less guaranteed income that does not depend on labor intensity. However, at the same time, the fixed remuneration of labor imposes a defined maximum remuneration. Under the current wage structure, when the average wage in the country is low and often fails to meet living needs, some employees perceive the issues pertaining to fixed and low-wage employment associated with full-time employment as more problematic and worry less about the lack of guaranteed income.

Occupational safety

Non-standard and informal labor is prevalent in sectors where physical safety is a major concern for employees. Such are, for example, working conditions in informal employment in the mining industries, open quarries in Tkibuli or Chiatura, as well as construction works in large cities, etc. The study also identified the tourism sector as a problematic workplace, in terms of safety, which is often not considered a physical threat-inducing place of work, but where drivers and guides have long, physically difficult, and largely unregulated work to do. According to the respondents involved in this type of activity, there are frequent cases when a driver serving a tour group has to drive for more than 15 hours (when travel agencies plan long-distance routes in such a way that the driver arrives at the destination and meet a tourist group, which the driver must provide services to, without taking a break).

The safety of those involved in non-formal and non-standard labor cannot be ensured by the employer - who does not recognize their responsibility - nor by the labor inspectorate, whose mandate is vague in a number of non-standard and non-formal employment sectors, and practice is scarce (the role of labor inspection will be discussed in later

chapters). According to the interviews of the respondents, those working in the field of auto repair services also face physical safety risks in these conditions of disorganized workspaces. As for the couriers, in the international literature, a number of papers are devoted to the issue of whether couriers' remuneration structure encourages them to engage in risky practices - to speed up and violate traffic rules for fast delivery.²⁶

Nevertheless, none of the surveyed workers had private or employer-offered health insurance, and there is no short-term health insurance practice (valid for the duration of the service delivery, for example during a touristic tour).

The issue of physical safety has become particularly relevant in the context of the COVID 19 pandemic. Among respondents, in cases where they did not stop working in an epidemic situation, COVID 19 regulations (social distance, appropriate equipment) were occasionally and voluntarily enforced by both themselves and their customers. However, among the respondents, there were also cases when the service platform provider took control of safety - for example, one of the house cleaning platforms provides security equipment to the employees and checks the adherence to the cleaning protocol that changed in a pandemic situation.

Control of the completed work

One of the main challenges in the conditions of informal and non-standard regulation of labor is the supervision of employees and the evaluation of the work done. In the absence of a formal employment contract, where the obligations of the parties and the measures to be taken in the event of a dispute over the quality of the work performed are pre-determined, in the case of non-standard and informal arrangements, these levers are often vague or non-existent.

Although employers and service providers are more likely to talk about the importance of oversight and evaluation, it is also in the interest of the employees themselves to have this part of the employment relationship explicitly regulated, as it is in their interest to properly and fairly evaluate their work. Evaluating the quality of the work done allows them, on the one hand, to prove their qualifications and, on the other hand, to think about correcting their shortcomings if necessary. Evaluating the work done - and pre-defining its criteria - is also necessary to avoid disagreements with customers.

26 Christie, Nicola, and Heather Ward. "The health and safety risks for people who drive for work in the gig economy." *Journal of Transport & Health* 13 (2019): 115-127. Harvard

In the informal sector, there are virtually no oversight and evaluation mechanisms other than verbal evaluation. However, in the case of non-standard labor, the labor platform offers employers new leverage to control employees and evaluate the work done. Such is the case, for example, with the Consumer Rating system, which assigns a rating score to the service provider. Customer evaluation becomes the most important data for those involved in platform work, as it largely determines the number of orders, and in some cases the amount of remuneration.

The platform regulation of labor and the digital model of remuneration integrated in it create an additional mechanism for controlling the completed work. An example of this is the remuneration model, where the remuneration is not provided to the contractor until the recipient of the service confirms compliance with their request. A respondent from one of the platforms that rely on this model of remuneration said in an interview that this type of remuneration scheme is the best means of quality control because in case of advance or cash payment the platform actually loses control over the contractor and, vice versa, retains it in case of delay of remuneration. Respondent notes that remuneration usually is not delayed for long, adding another step between job performance and remuneration provides an opportunity for the platform to instruct the worker to correct the work done at the request of the customer.

In the case of non-standard regulation of labor, the issue of ensuring that the workers show up at work is also acute. When contractors do not have a mandatory work schedule, this poses a risk of a shortage of contractors. To reduce this risk, platforms resort to various forms of encouragement and punishment. For example, in rainy weather, when the demand for courier service increases radically, the platforms offer couriers an increased tariff, while in times when the tariff is low, the couriers' motivation is ensured with a weekly or monthly quota system.

It is important that while service platform providers are using increasingly sophisticated technological leverage to monitor or evaluate employees and work performed, laborers are unaware of these mechanisms. Sometimes they do not understand the reason for the negative evaluation by the user (which they usually cannot appeal). Even when the average rating and other rating scores are crucial in determining pay and workload, the method of calculating them and the exact mechanism of operation of the system are sometimes unknown to the employee. Moreover, giving up work or falling behind on a job performance compared to a weekly or monthly plan may also be a prerequisite for restricting access to the platform.

Moreover, the platform organization of labor, for those involved in this type of labor, is even linked to a lack of oversight, which indicates the invisibility of the levers of control and influence - we will return to this issue below when discussing the attractiveness of non-standard labor. There are likely other [and more informal] practices of quality and employee control in the informal sector that have not been covered in this report but call for research attention.

Choice and rejection of formal employment

Informal and non-standard employment, in some cases, is seen by employees as their choice. Some of the respondents prefer informal and/or non-standard employment to hired employment. The interviews revealed a variety of subjective and objective reasons predicating this attitude. Some of them are specific to a particular sector, and some can be considered as more or less universal factors. Some of these factors directly relate to the possible benefits of non-standard and informal regulation of labor, while others respond to the negative associations that, for respondents, are related to formal and hired employment.

Flexibility

For those workers who have to combine several activities or adjust to other employment, such as work-related responsibilities, platform, and/or other types of non-standard work may be the only solution. Among the laborers surveyed were students for whom platform work is a source of additional income. They devote their free time to work. There are also cases when workers combine non-standard and temporary informal employment with agriculture-related work. For these and many other groups, formal and full-time employment does not offer the type of schedule that is acceptable or possible for them, and non-standard and informal employment is associated with a flexible work schedule.

Freedom from taxes

Freedom from taxes was often cited as an advantage of informal and non-standard relationships among respondents. Interestingly, those involved in informal labor emphasize this factor even when the tax burden that would arise in the case of the formalized employment relationship is unknown to them. Not much is known about tax liabilities beyond the income tax for the surveyed workers, although this factor is still often cited as the reason

for the choice. The importance of this factor may be due to the fact that the income tax is one-fifth of the remuneration, while the legislation does not set a tax-free minimum.

Freedom from regulations

Some of those involved in informal labor consider the lack of regulations as one of the advantages of informality. For example, the interviewed minibus driver emphasizes the fact that his car, due to its condition and the number of seats in it, does not comply with the regulations regarding the transfer of passengers. A similar position is found in the informal auto repair sector, where the employee may not have access to the knowledge and resources necessary to meet workplace standards and performance standards. In such cases, there is a perception that an informal work arrangement would exempt the service provider from complying with these types of regulations, whereas if the relationship were to be formalized, it would be subject to scrutiny and fines.

Subordination and invisible control

Many respondents involved in non-standard and informal labor who do not have a single stable employer or use a platform application point to the advantages of this type of employment relationship that they do not have a “boss” and are therefore not subordinate to anyone else. This finding underscores the importance of “false self-employment” - that is, the status of an employee who considers him/herself self-employed, as indicated by his/her formal status (if any), but the employee depends entirely on one employer or one platform.²⁷ Their employment status, in terms of subordination, does not differ substantially from that of a hired employee, although their employer and their control and oversight mechanisms are informal or invisible.

Lack of information about formalization::

Even when there is a desire to formalize the relationship and subject it to legal regulation, employees often do not have access to information about the procedures required for it. What changes the formalization of labor relations implies in terms of tax liabilities, compliance with regulations, reporting, and working conditions are unknown to the informal workers employed in the various sectors.

²⁷ Statistical definition and measurement of dependent “self-employed” workers. D. Hunter and K. Leslie with inputs from M. Frosch, F. Eberlein and J. Humphrys. ILO. 2018

Conclusion

Thematic research reveals that among the problems associated with informal and non-standard employment, the issue of unstable pay, which translates into highly volatile income, is an important issue; As well as occupational safety and the unregulated relationship between employee and employer, which includes new and often problematic practices of work control, subordination, and dependence.

The growing prevalence of non-standard labor in Georgia and around the world raises new questions about the links between these two types of employment: Does the modern, platform-based non-standard labor increase or decrease the prevalence of informal employment? Can non-standard labor be considered as a way to partial formalization? Does the spread of non-standard forms of labor make it difficult or easier to regulate working conditions and provide decent employment opportunities for the population of the country?

Analysis of platform-based employer contracts and interviews with workers involved in this type of labor revealed that non-standard platform labor in several areas performed a transitional function between full informality and partial formalization. Transition not in the sense that non-standard labor is the stage before formal employment, but in the sense that it is an incomplete, partially regulated space that is different from both formal employment and fully informal labor. While non-standard work does not offer the employee the same protection guarantees that characterize formal employment,²⁸ in the case of platform-based employment, some of the issues that are particularly acute in the informal sector are partially regulated. That is, in other words, an employee engaged in non-standard platform labor is not as vulnerable as an informal worker, and not as protected as a formal and hired employee.

An example of this is the mechanisms introduced by platform-based labor providers to regulate remuneration, qualification checks, and the relationship between the customer and the employee. For example, while informal labor does not include a formal document regulating labor relations at all, non-standard labor platforms enter into terms and conditions with both employees and service recipients, where certain prior issues pertaining to labor and service relations are discussed (more on this will be discussed in the legal analysis). Moreover, the wages for those involved in informal work are not formally recorded, but those involved in non-standard labor have access to income-generating platforms through which they can obtain loans or, in pandemic conditions, social

28 Donovan, Sarah A., David H. Bradley, and Jon O. Shimabukuru. "What does the gig economy mean for workers?." (2016). Harvard

assistance; Their work is visible to the state as well. The evaluation of the work by the customer is also a mechanism for approving the qualification and checking the quality of the work performed, which allows employees to demonstrate their skills.

Interviews with respondents highlighted concerns about the lack of investment opportunities in skills and qualifications. Employees, as well as platform-based service providers, emphasize the fact that in the conditions of informal regulation of labor when there are no sectoral standards and/or licenses, nothing confirms the skills of the worker, and their motivation for the development and desire to invest in this is lost. In this regard, too, in the case of platform-based labor, the issue is partially resolved in new ways. The platforms apply new methods of qualification testing - including the test assignments, the successful or unsuccessful performance of the candidate determines whether the employee can access the platform.

In addition to the fact that when it comes to regulating labor relations, platform-based labor is a kind of transitional framework between formality and informality, the systemic impact of the spread of platform-based labor on the nature of the labor market should also be considered. Often non-standard, platform labor creates the opportunity for the new economic activity and thus facilitates the creation of new jobs. An example of this is the courier service in Georgia, where the emergence of platform providers has employed thousands of couriers, and the size of the food delivery sector has tripled in one year (from 2019 to 2020).²⁹ In such cases, when the number of providers of a particular service increases sharply it is obvious that platform employment attracts employees who did not work before entering the platform or were involved in other types of activities.

However, there are cases when platform labor replaces the existing, informal forms of activity instead of creating new jobs. An example of this would be a craftsman who was a craftsman even before they got on the platform, although they were doing the job completely informally. In such cases, switching to the platform expands the number of potential customers and partially resolves the problems of remuneration and working conditions, which is confirmed by those respondents who have experience of switching from informal labor to platform-based non-standard labor. However, the increase in customers is often at the expense of the niche market - for example, platforms in the field of auto-repair services serve younger and more technologically savvy users, while informal auto repair shops frequent older and more experienced car owners.

The opposite is when platform-based non-standard labor replaces the formal workplace. An example of this could be the case where employers prefer a platform-based supplier

(outsourcing) to a full-time and formally employed employee. This is often the case with highly skilled or creative professions when, for example, employers turn to creative work platforms instead of hiring a designer. However, studies in other countries indicate that such cases are rare and that mostly self-employed and especially informally self-employed workers switch to platform labor.³⁰

There is also competition between the informal and non-standard nature of labor. This is the case when non-standard and informal and formal service delivery practices are prevalent in the same sector. An example of this is the transportation sector, where there are drivers who work fully informally, as well as drivers employed on platforms and transport companies, where drivers work full time and formally. In such cases, we may also get a kind of market segmentation, where informal workers occupy the most low-wage category, while platform suppliers create a parallel, niche, and growing market for the delivery of services and goods (auto repair sector).

The proliferation of platform-based labor significantly alters the existing redistribution in the labor market between formal and informal forms of labor. On the one hand, the platforms offer partial formalization to part of the informal employees and also offer them new protection guarantees. However, on the other hand, this type of labor also creates new problems that require their mechanisms of regulation. Systematically, platform labor is both an alternative to informal labor and formal full-time employment, making the impact of its spread entirely contradictory and complex in the labor market.

Finally, how do we understand that workers in some cases consciously and purposefully choose non-standard (and in some cases informal) employment over standard employment? Here it is important to emphasize once again the fact that this choice is conditioned not by the inherent nature of non-standard and informal labor, but by the specific circumstances characteristic of the modern Georgian context. In addition to the fact that non-standard or informal employment may be associated with certain benefits today (flexibility, less tax burden), it is also important that common forms of formal employment do not meet these needs. This means that understanding the benefits of non-standard or non-formal employment is also essential to understanding the failures of current formal and standard employment practices.

30 Schwellnus, C., et al. (2019), "Gig economy platforms: Boon or Bane?", OECD Economics Department Working Papers, No. 1550, OECD Publishing, Paris, <https://doi.org/10.1787/fdb0570b-en>.

How Legislation Explains the Advantages of Formal Labor Relations

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Introduction

Determining the main characteristics of the types of informal and non-standard employment also made interesting the legal analysis of the types of labor relations presented in Georgia. At first, it is essential to legally explain what defines informal employment and what type of legal regulation is non-standard employment. Besides, it is interesting to consider the legal regulations and standards that can be used to address the main concerns and problems of informal and non-standard work.

Georgian legislation imposes specific standards at the beginning of labor relations, which any labor agreement must meet. These standards are an attempt to create a certain labor balance in order, on the one hand, to protect the possibility of economic activity carried out by employers, and on the other hand, to provide employees with a healthy, safe, and decent working environment. An employee gets under visible area for the state with an employment contract. The employee participates in the creation of common welfare, pays taxes, and on the other hand, enjoys various social protection schemes. However, as demonstrated during the coronavirus period when organizing social benefits, state aid to persons employed under employment contracts is relatively smooth and easy.

In contrast, the absence of an employment contract turns the workplace into informal employment, while various types of civil contracts to cover the employment relationship (services, partnerships, etc.) make labor a non-standard employment relationship. In particular, an employment relationship is non-standard when the employee-employer relationship meets the criteria of a labor nature. However, an employment contract is not concluded. In both informal and non-standard employment, labor legislation is disregarded. Consequently, when the employee and the employer are out of the employment relationship from a legal point of view, all the guarantees and the opportunity to receive social benefits (pension, insurance, etc.) disappear for the employee. As for the employer, all obligations disappear, including labor safety, protection of working conditions, and consideration for their staff universal or private social protection systems. The disappearance of formal labor relations, on the one hand, means unprotected labor, unregulated working hours and pay, the lack of social protection for employees, and, on

the other hand, its uncontrolled nature, leads to a dangerous trend - more and more employers decide to disguise, conceal labor relations in various ways and to free themselves from additional regulations, which ultimately becomes the most significant barrier at the national level in the process of striving for decent working conditions.

Creating and developing safe jobs in various workplaces, ensuring a healthy working environment for employees is one of the most important social responsibilities guaranteed under the Constitution of Georgia and, at the same time, a challenge.

Today, the labor legislation of Georgia is still being developed. In the last decade, several labor law reforms have created some minimum guarantees for employees. Workplace safety, more or less regulated working hours, paid leave and other additional benefits are the advantages that are the prerogative of the people formally employed today. Enjoyment of these rights in non-standard and informal employment is almost completely ruled out. Unfortunately, the focus of the reforms carried out in different periods has never been to identify informal jobs, see the needs of those employed in such a sector, and identify steps for further formalization. Consequently, this sector still faces the most acute challenges.

Given the interviews with employees in informal and non-standard sectors and their concerns about the work process, it is interesting how and to what extent labor legislation can regulate these issues at the legislative level and normalize labor relations.

Physical safety of the employee

Safe labor is one of the foundations of Georgian legislation and the paramount right of the employee today. Creating a safe workplace environment is the employers' responsibility.³¹ Given the growing trend of workplace injuries, work-related injuries, and deaths,³² additional legislative regulation on labor safety was needed. In 2019, the Organic Law of Georgia on Labor Safety additionally regulated the employer's obligations to ensure the safety of the work environment. Additional components of occupational safety and, above all, liability measures have been determined, including the various monetary sanction mechanisms for employers in the event of non-compliance with safety standards.³³

31 Labor Code of Georgia, Article 45, Part 1

32 "No year without death cases" <https://www.hrw.org/ka/report/2020/01/08/332898>

33 Organic Law of Georgia on Labor Safety, Chapter 7

Hazardous labor

Unfortunately, adherence to the workplace safety standard is mainly related to formal labor relations. Contrary to this, the legislation can still not ensure a tangible, actual result in cases where we are dealing with informal and non-standard employment.

Unlike the informal sector, in non-standard employment conditions, there are usually written agreements between the parties. The evaluation of the contracts makes it clear that such a relationship meets all the standards of labor relations. These typically include subordination of the parties, regulated rights, and obligations. Employers fully manage the workflow of the employee, the concepts of the work to be performed, the rules and conditions of remuneration. However, despite this, the employer considers himself only a contractor and avoids any labor obligation with the disappearance of the concept of labor relations.

In both informal and non-standard employment, the purpose of the parties' oral or civil legal agreements is, at first glance, only a specific task to be performed. Against this background, any danger arising at work, even if objective danger, is the employee's sole responsibility. Consequently, the employee has to perform the job at any risk because the ability to receive remuneration depends on the performance of the work.

In contrast, the employer has no obligation to create a safe working environment in the informal or non-standard employment sector. For example, the lack of safe labor regulation is why an informally employed driver may have to drive for 15 hours a day, while a non-standard contracted courier needs to move quickly at any time of the day or night to complete all orders that increase the risk of accidents.³⁴ With the motivation for timely delivery of orders, couriers face various dangers, which rarely result in accidents and severe physical injuries. Taking these risks becomes an obligation for both guides and couriers. Otherwise, none of them will receive the agreed remuneration.³⁵

Significant disadvantages of non-standard employment are seen in the example of one of the platform companies, which offers workshop services to customers and publishes the form of the contract with the craftsmen on its website.³⁶ The agreement regulates the future employment relationship between the craftsman and the company. Although it

34, „Courier Records” - <https://indigo.com.ge/articles/kurieris-chanacerebi-beqa-shatirishvili/>

35 “Legal Assessment of Contracts of Delivery Service Companies Operating in Georgia” <https://socialjustice.org.ge/ka/products/sakartveloshi-mokmedi-mitanis-servis-is-kompaniebis-khelshekrulebebis-samart-lebrivi-shefaseba>

36 „Terms of the Agreement” - <https://www.caru.ge/Home/TermsAndConditons>

meets all the standards for identification as an employment relationship, the company states from the outset that this relationship is not an employment relationship, and the employed craftsman is not an employee of the company. The contract does not contain any provisions regarding working conditions, working hours, and any guarantees and safety of the employed craftsman. The company fully manages the employee's work, the concepts of the work to be performed, the terms and conditions of remuneration. However, unfortunately, it presents himself only as a contractor and fully discharges his legal obligations.

In the context of such practices, workplaces become risk-averse. These people work at the cost of their safety, and the state can not protect their labor rights through any mechanism.

Occupational safety is not a narrow legal term and cannot be considered one-time and incidental physical safety. Overworked working regimes and the environment are the factors causing the threat to physical security in the future. The combination of these components makes the place of employment dangerous. Neither informal nor non-standard employment agreements include oral reservations (in the case of informal arrangements) or records (non-standard employment) regarding occupational safety and its constituent components. The agreement only covers the work performed, and the remuneration received in return, eliminating the legal obligation to regulate the work regime, arrange the work environment. The standard of safe and healthy labor is recognized under the legislation.

It is noteworthy that the Law of Georgia on Occupational Safety defines occupational safety issues, essential standards, and principles for any workplace. The purpose of this law is to ensure the protection of both employees and any person in the workplace from any danger.³⁷ The mentioned norm implies that in determining the principle of safe labor, the decisive factor is not the legal aspect (e.g., the existence of an employment contract) but the actual situation (the performance of any kind of labor). Consequently, today, any job in the country is subject to this principle of law. At any place of employment, compliance with safety standards is mandatory. This is confirmed by several protocols of the Labor Inspection when the activities carried out by individuals were inspected. Regardless of whether there were labor contracts with employees, the individual, who initiated some work, was found to have violated safety standards in accordance with the Law of Georgia on Labor Safety and was instructed to correct them; This is a significant precedent and implies an assessment of the actual situation for workplace safety. However, even under these regulations, the functioning of certain types of non-standard or

³⁷ Law of Georgia on Labor Safety, Article 1

informal employment is not linked to a single, defined job. For example, it is difficult to determine the work area when providing courier services. Therefore, the obligation to comply with labor safety standards in the workplace becomes challenging to decide on, especially when the employer does not consider himself a party to the employment relationship.

Non-existent health monitoring

Labor law separates the concept of night employment. Working at night is, in most cases, not a choice but a lack of other means. Consequently, high labor standards are of particular importance to night workers. Before the 2020 labor reform, night workers did not have any tangible labor guarantees, although, to date, night workers are entitled to free health checks and periodic monitoring.³⁸ Unfortunately, this minimum benefit, so far, remains only the right of formally employed persons.

The working regime of persons employed under informal and non-standard contracts is often associated with night work. One example is couriers whose working time is unlimited and not subject to any regulation. In the current reality, human health monitoring is based on the presence/absence of formal employment contracts. All persons employed at night who do not have an actual employment relationship with the employer are left without rights in this regard, and the employer does not provide a check on their health status.

Pandemic

The 2020 Coronavirus pandemic has more severely raised the issue of occupational safety, whereas jobs recognized as non-working relationships were found to be beyond any control. In the absence of employment contracts, employers have, in many cases, refused to comply with any minimum standards of safety. Informal employment has become one of the most vulnerable areas under the pandemic. Given its specifics, informal employment is typically associated with mobility, contact with different groups of people, and extended stays outdoors. In the informal sector, remote work is virtually excluded; hence the state-recommended “stay-at-home policy” meant staying for casual workers without pay. Therefore, the threat of a pandemic for the informally employed people has shifted to the background, forcing them to forget about the restrictions and safety standards imposed in exchange for remuneration and to continue hazardous work. For

38 Labor Code of Georgia, Article 28, Part 5

example, informally employed nurses/babysitters did not stop working in the pandemic. However, the specifics of babysitting work are related to the presence of someone else in the workplace and direct contact with other persons. It doubled the risk of contracting the virus, not only for nannies but also for their family members.³⁹ In the context of informal employment, opportunities for protection of any kind in the workplace were found beyond the control of the state.

In a pandemic, it became clear that working people were protected differently by the presence/absence of an employment contract. While formal employment and informal or non-standard work serve a more or less “identical” purpose and involve working in exchange for remuneration, workers under the employment contract receive relatively safe labor guarantees, state control, and even state benefits. In contrast, non-standard or informal employees were left out of control and, in many cases, could not even receive state assistance.

It can be said that the pandemic prompted informally or non-standardly employed people to try to take steps towards formalization and demonstrated the small but tangible benefits of formal employment.

Remuneration

An employment relationship means the possibility of receiving remuneration in exchange for the activities performed. According to the Labor Code of Georgia, remuneration is an essential condition of employment. The law stipulates that the remuneration of the parties and the procedure for its payment must be known and defined to the parties.⁴⁰ Although the form and amount of remuneration depend on the agreement between the parties, the legislation provides a necessary provision, according to which remuneration must be paid at least once a month.⁴¹ The indicated regulation is a framework that gives the employee a sense of more or less stability and the opportunity to plan for the future of themselves and their dependents based on their income.⁴²

However, this regulation only applies to formally existing labor relations. Informal labor and non-standard employment cannot meet this minimum standard due to the absence

39 “Labor Relations and Social Protection during a Pandemic “-<https://socialjustice.org.ge/ka/products/shromiti-urtiertobebi-da-sotsialuri-datsva-pandemiis-dros-sakartvelos-shesakheb-angarishi>

40 Labor Code of Georgia, Article 14, Part 1. Subparagraph “f”

41 Ibid, Article 14, part 3.

42 Work for a brighter future - https://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_662410.pdf - pg: 35.

of employment contracts. In both cases, the employee receives remuneration due to their own activities. Still, both the amount of remuneration and the frequency of its receipt are not predetermined and are primarily related to the employee's amount and frequency of work. In the conditions of such "regulation," there are several significant problems that people in both the informal and non-standard employment sectors face daily. The employee is forced to meet the demand as quickly as possible - the speed increases, the risk of accidents, physical or mental exhaustion increases. And the ability to receive adequate compensation is directly proportional to the risks mentioned. Accordingly, we receive a situation when an employee is forced to neglect safety risks to some extent and sacrifice their health to receive adequate remuneration. Unfortunately, these risks only increase for employees since the employer has removed all labor obligations, and the employee's replacement is not a problem for him.

More labor – more remuneration?

Unfortunately, Georgia has not yet set an accurate and effective minimum wage.⁴³ In such conditions, remuneration is hugely different and cannot be pre-defined. This problem, of course, also applies to formal employment, although in such cases, the amount of remuneration for the employee and the frequency of its receipt is pre-perceived and known. In contrast, in the informal sector and non-standard employment, there is only an imaginable amount of pay for the employee and the frequency of its receipt, which is directly proportional to the amount of work performed. Interviews of employees showed that this, in some cases, also triggers the motivation of employees. The employee subjectively decides that they will work more hours during the day and therefore receive higher pay. However, the reality is different.

For example, for couriers employed in the service sector, with the increase in the scale of courier services, the scale of "more work" also increases, often involving 12-14 hours of work per day. As mentioned, more work combined with the opportunity to earn more pay directly increases occupational safety risks. However, in some cases, the remuneration does not even go in line with the frequency of labor. Employees under the non-standard contract point out that despite their best efforts and willingness, there are weeks, even months when there is no proper demand in the consumer market, and consequently, their pay is declining. From job to job in principle and with the money earned, it is clear that employees simply cannot gain a decent salary. The amount generated is unplanned and unpredictable. Therefore, all attempts of the employee to plan and ensure the financial stability of the future in any way are highly fragmented.

43 Decree N351 of the President of Georgia of June 4, 1999 on the amount of the minimum wage

Employee control mechanisms

Payment of remuneration

Employment quality control in labor relations is the right of the employer. However, in formal employment, both parties to the contract are usually aware of the predetermined standard and criteria for evaluating the work to be performed and the employee's ability to disagree and dispute the assessment made by the employer, which may affect their pay. However, as a rule, formal employment also includes a list of criteria that, if not met, the work performed by the employee will not be considered proper. The result may be brought by non-performance, such as sanctioning the employee, deducting a certain amount of pay, etc.

In contrast, in non-standard employment, all of the above criteria are incredibly vague, and the employee has no opportunity to influence it in any way. In non-standard jobs, the employee is often paid only after performing a specific activity. The degree of performance of the activity is not a pre-identifiable criterion for the employee. As for informal employment, the quality control mechanisms are even more fragmented and uncertain. The employee's job control is only related to verbal assessments, and any kind of leverage to protect their rights, in this case, is entirely absent and annulled.

User's assessment

In non-standard employment, a mechanism is often found to provide a job control scheme when the quality of an employee's work is determined with an assessment made by the client. This scheme is mainly used in platform employment when the client has an opportunity to evaluate the services received electronically. Evaluation directly affects the employee's remuneration. This assessment is practically unidentifiable for the employee; he cannot question and dispute the assessment and consequently the material damage caused to him. Moreover, client evaluations have a multiple and continuous impact on employees. For example, a courier whose ratings are less than specific criteria do not receive the desired number of orders in the future, thus losing any opportunity to receive proper and acceptable remuneration.

Such a mechanism becomes a universal lever of employee control in non-standard employment. The employee in this scheme does not have any rights and guarantees at any stage. The only solution for him is to agree to a passive role in the scheme and continue working on some, even a small salary.

Additional benefits and social protection

Paid leave

The 1970 ILO Convention recognizes the right of every employee to take at least three weeks of paid leave a year.⁴⁴ This refers to the employee's vacation period, which can be used at their own will at any time of the year, with the right to pay and other social benefits. The 2003 European Working Directive set a minimum standard for four weeks per year of paid leave.⁴⁵ The Labor Code of Georgia regulates the right of an employee to take paid leave for 24 days a year and unpaid leave for 15 days a year.⁴⁶ The right to leave is an essential and recognized guarantee of the employee. The purpose of this is to balance the lives of those involved in labor relations and the practice of physical or mental relaxation.

Unfortunately, the right to leave is almost wholly restricted in non-standard or informal employment conditions. In the absence of employment contracts, the employee's desire for leave, vacation is directly proportional to the loss of money generated during this period. Consequently, leave practices do not usually exist in these sectors.

Maternity leave

The right to maternity leave is one of the most important rights for employees. Several EU directives, ILO conventions, and recommendations⁴⁷ provide for the mandatory nature of maternity leave as a fundamental right for employed parents and call on States to make maximum use of maternity leave for employed parents in domestic labor law. Proper realization of this right is directly related to the country's planning and implementation of adequate parenting policies. It plays a crucial role in family planning and family management, which determines the level and ability of decent living in the country. The Labor Code of Georgia offers employees with employment contracts the opportunity to take a total of 730 days of maternity leave. This period is related to the period of

44 Holidays with Pay convention N132 - https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C132 - Article 3, Para 3.

45 Directive 2003/88/EC of the European Parliament and of the Council - <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088> - Article 7. Para 1

46 Labor Code of Georgia, Article 21, Part 1, Part 2

47 Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU Art. 5(1)(2) - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L1158>

pregnancy, the birth of the newborn, and the period for the child's care.⁴⁸ The employee has the right to suspend the employment contract for 730 days, keep the workplace and return to work after maternity leave.⁴⁹ In addition to maintaining a job, the Labor Code of Georgia also provides for maternity leave payment. Out of the above 730 days, the paid are 183 days. Unfortunately, the Labor Code sets a minimum amount of GEL 1,000 for maternity leave throughout the entire leave, issued once by the state.⁵⁰ However, it should be noted that this amount of remuneration is the minimum amount paid by the state. This does not limit any employer to maintain the monthly payment for a certain period of maternity leave or give him other financial assistance. The social responsibility that some employers in the Georgian labor market show today and provide the employee with the right to relatively decent maternity leave.

The possibility of taking maternity leave, its remuneration is now an opportunity for persons employed under a labor contract, and people engaged in informal if non-standard labor cannot enjoy this right. In this context, the challenge and the problem of the employee in the formal or informal/non-standard sector are the same - the possibility of decent parenting during pregnancy and the birth of a newborn and ensuring minimum standards, which today most of the Georgian population cannot get even at the level of rights. There is no right to maternity leave for informal employees working under non-standard contracts.

Funded pension

In 2018, the Law of Georgia on Funded Pensions came into force.⁵¹ Funded pension refers to a scheme set up by the state in which formally employed persons, in proportion to their salary, collect a monthly amount that can be used upon reaching retirement age. Similar pension schemes are accepted methods in many countries where employees secure their retirement future. It is noteworthy that the pension scheme in Georgia is linked to additional funds allocated by employers and the state. In particular, each formally employed person included in the funded pension scheme receives a different monthly salary from both the employer and the state. All this money is accumulated in the savings scheme, and the right to use it will be available after reaching retirement age. Accumulative pension is one of the social tools with which the state tries to create a relatively decent retirement period for the citizens to encourage people to be formally employed and thus receive additional benefits.

48 Labor Code of Georgia, Article 37

49 Labor Code of Georgia, Article 46, Part 2, Subparagraph "g"

50 Labor Code of Georgia, Article 39

51 Law of Georgia on Funded Pensions -<https://matsne.gov.ge/ka/document/view/4280127?publication=3>

Unfortunately, this tool is only accessible under formal employment conditions. In non-formal and non-standard employment conditions, the employee usually fails to get into the funded pension scheme, he has no assistance from either the state or the employer, and is forced to create special savings for his future in his way, which is often a wholly impossible and unattainable task with fragmented labor and fragmented pay.

Labor Inspection

Obviously, the state needs a legislative tool to establish non-standard labor, meet the needs of the non-formal sector, analyze their challenges, and formalize labor relations. Labor inspection is one of the main levers of states, enabling the enforcement of labor legislation at the institutional level. The Labor Inspectorate can be one of the main pillars of states in successful social reforms, the creation of decent working conditions, and the improvement of the employees' situation.

According to the International Labor Organization standards, labor inspection has three main directions in the economic market.⁵²

- Awareness-raising in labor relations.
- Avoid labor rights violations by providing information, training, and warnings.
- Identify and punish for violation of labor rights.

Balancing between these aspects depends on the country's domestic policy and approach. The states' experience is different, but with the current approach, encouraging compliance with legislation is more effective than sanctioning non-compliance. This is a tool through which employers' immediate response to violations and the constant effort to eliminate them becomes a natural obligation due to incentives and ultimately helps to adapt to a healthy work environment.

ILO Convention No. 150 of 1978 on the Administration of Labor stipulates that when the conditions and situation in the country so required, the signatories to the Convention shall ensure that the mandate of the Labor Inspectorate is strengthened and that inspections should be carried out in the informal sector, as well as in various types of employment and self-employment.⁵³

52 The Regulatory Framework and the Informal economy, Labour inspection, What does it involve? - https://www.ilo.org/wcmsp5/groups/public/--ed_emp/--emp_policy/documents/publication/wcms_210455.pdf

53 Labour Administration Convention N150, 1978 - https://www.ilo.org/dyn/normlex/en/f?p=NORML-EX PUB:12100:0::NO::P12100_INSTRUMENT_ID:312295,art.7

It is noteworthy that in both informal and non-standard employment, the challenge of labor inspection is the same; the inspectorate must define the relationship in both cases correctly. However, detecting these forms are inherently unique and have their own set of difficulties.

Labor Inspection Mandate

First of all, it should be noted that only the precise regulation of norms and clearly defined powers at the legislative level can create conditions for the proper functioning of the Labor Inspectorate. The inspectorate must know precisely about its rights and obligations. Among them, the possibility of identifying the informal sector or non-standard labor relations and identifying them as labor relations should be defined by law. In other cases, any attempt by the inspection to formalize the work may be not only ineffective but even illegal. Accordingly, the Labor Inspectorate should be given the mandate to determine an employment relationship by law. Recommendation No. 204 of the International Labor Organization of 2015 relates to the possibilities of intervention in the non-formal sector employment places by the Labor Inspection.⁵⁴

Identification of the labor relationship

There may be different criteria and definitions for inspecting a labor relationship. As of today, given the many forms and types of employment relationships, only subordination-based assessment criteria can no longer produce adequate results.⁵⁵ Therefore, in order to establish a labor relationship, it is necessary to define additional criteria and adapt labor inspectors to the new criteria. An internationally recognized principle and approach is the ability to establish a labor relationship with a “principle of preference of facts.”⁵⁶ This principle implies that employment is affected not by the nature of the legal contract but by the nature of the relationship in practice. When the appraisal of the practical relationship identifies labor relations, the form of the contract concluded between the parties is no longer relevant, and the relationship is considered as employ-

54 ILO Recommendation N204 - https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R204

55 Informal Sector Entrepreneurship - Colin C Williams 2014 - <https://www.oecd.org/employment/leed/Background-Paper-PB-Informal-Entrepreneurship-final.pdf>

56 The principle of preference of facts, which implies that the evaluation of the employment relationship should be carried out by assessing the nature of the actual activity - Regulating the employment relationship in Europe: A guide to Recommendation No. 198 - https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_209280.pdf – Primacy of facts- pg: 33.

ment. This significantly contributes to the smooth running of inspection activities and also to raising employee awareness, which is ultimately reflected in the formalization of more and more jobs.

One example of such a principle is the list of criteria published in Ireland in 2007, which aimed to increase the level of awareness of people about their employment status, and on the other hand, to promote inspection activities. In particular, any of the following people will be considered as employed who:⁵⁷

- is under the supervision of another person who determines his working conditions.
- Receives a fixed, hourly, weekly, or monthly salary in exchange for their own work.
- Performs the work in person and does not have the opportunity to subcontract his own work.
- its activities are not related to its own financial risks.
- Does not take responsibility for investing in activities.
- Works weekly or on a monthly basis with a determined working regime.
- Is employed with one person or at one enterprise.
- Receives extra pay and/or an extra day off for overtime work.

A similar regulation exists in Spain, where the criteria for labor inspection are clearly defined, in the presence of which the facts of labor relations in the workplace must be established, and labor contracts must be concluded with employees.⁵⁸

The definition of these criteria, on the one hand, makes it easier for employees to identify themselves as employees. On the other hand, the Labor Inspectorate is given a specific area of action, within which if there is an inspection, the inspection is authorized to determine the existence of labor relations and, consequently, to ask for compliance with labor code provisions.

Challenges of non-standard labor inspections

The scale of employment with non-standard labor relations is quite significant in Georgia. This is especially the “merit” of the platform employment forms, which have been developed recently. From January 1, 2021, the Labor Inspectorate has the authority to

57 Labour Inspection and and employment relationships https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication/wcms_217603.pdf - pg: 49

58 Labour Inspection and and employment relationships https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication/wcms_217603.pdf - pg: 53

monitor labor rights in the country entirely. However, given the specifics of non-standard employment, the inspectorate can still identify people involved in such work and find appropriate assistance for them. The limited capacity of the inspection is due to the existence of several circumstances cumulatively. One of the most important is the atypical nature of non-standard labor. The Labor Inspectorate usually inspects employment places within the framework established by the Labor Code. Non-standard labor usually refers to a non-standard working environment, non-standard working hours, difficulty accounting for it, different periods of carrying out activities, etc. Consequently, the work to be done by the inspection becomes significantly more complicated and, in many cases, impossible.

Added to this is often when both parties to the employment express their prior consent and satisfaction to such settlement of the relationship, under such conditions. Consequently, any deviation from the standard employment relationship often does not motivate the employee to apply to the Labor Inspectorate and inspect the place of employment. This circumstance makes various types of non-standard labor largely untouchable sectors for inspection.

It should be noted that the Labor Inspectorate has the authority from 2019 to verify the safety of workplaces and apply relevant legal mechanisms. Within the framework of such a mandate, the Labor Inspectorate checked the working conditions of one of the platform employment companies, “Glovo,” recognized it as an administrative offender and even fined it.⁵⁹ The basis for the inspection and application of the sanction was an accident at work and failure to report it to the labor inspectorate. The Labor Inspectorate acknowledged the relationship, which employers recognize as a civil legal form of service, as an employment relationship by the inspection act, and imposed obligations under the labor legislation.⁶⁰ However, unfortunately, the mentioned case remained only an example of proper response to a specific offense and failed to set a precedent. However, this action was not followed up or responded to by either the employers or the inspection. Ensuring labor safety remains a significant challenge in these and other courier services and other places of employment, while other labor rights, such as working hours, pay, and social guarantees, remain unattainable for those employed under non-standard contracts.

59 Inspection report https://shroma.ge/monitor/files/000808_2020-03-04.pdf

60 Law of Georgia on Labor Safety, Article 23, Paragraph 4

Challenges of Informal Sector Inspection

The informal sector is highly unattainable for state oversight bodies given non-existent written contracts, agreements, unidentified workspace, time, environment, and other factors. Consequently, in many cases, labor rights violations remain completely unnoticed. Fragmented and segregated labor, which is a constant feature of the informal sector, almost eliminates the ability to bring employee challenges together and make them public. The labor inspectorate needs a legal basis to inspect places of employment, but, on the other hand, when the size of the informal sector in the country is growing day by day, the state must reveal such relations itself, without any additional grounds. It may imply a mandate to inspect the place of employment without any additional grounds.

It can be said that the Labor Inspectorate of Georgia does not yet have practical experience in monitoring the informal sector. The reason for this is, on the one hand, the limited mandate of the Labor Inspectorate of Georgia and, on the other hand, the highly hidden nature of the informal sector. However, on the other hand, the inspections carried out by the Labor Inspectorate of Georgia in the field of labor safety in 2019-2021, in some cases, can be considered as an inspection of the informal sector. An example of this is the inspection of economic activities carried out by individuals. Despite identifying any employment relationship in the workplace, the inspection found a violation of safety principles and even fined the individual as an employer. This implies that adherence to the labor safety standard is mandatory in any identifiable workplace and that the issue of formal employment is not crucial in this case. However, even in the conditions of such regulation, unidentifiable workplaces are widespread in the country today, where it is difficult and impossible to determine the area of work directly. Consequently, adherence to safe labor standards in this type of informal employment is only directly proportional to recognizing a labor relationship. At the same time, beyond the principles of safety, there are rights defined by the Labor Code of Georgia, the obligation to protect and fulfill, which arises only in recognized and formal labor relations.

The needs and challenges of the informal sector still do not appear in the framework and goals of state policy. Therefore, the labor rights of informally employed persons are practically monitored.

However, beyond the legal basis, the problem of access to inspections remains an additional problematic issue when monitoring the informal sector. One prominent example of such a problem is domestic employment. The source of this problem is primarily the workplace. Domestic work itself implies working at someone else's private property, which can be reflected in the care of children, household, or home care. In all cases,

the employee's workplace is another person's personal property. The activities of labor rights oversight bodies are usually characterized by workplace inspections, supervision, and identification of violations. The question of whether the labor inspectorate should have the right to enter and monitor someone else's private property, more specifically a dwelling house, is the question that is the source of the above problem. On the example of different countries, we can single out several legislative or practical arrangements that allow the state to balance the protection of labor rights and the principles of non-interference in private property.

To identify domestic labor, Chilean legislation stipulates an obligation to enter into an employment contract with a domestic worker. An employer must submit a copy to the Ministry of Labor and the Inspectorate. Online survey modes were also defined, where the employer provided specific and exciting information to the inspection. Nevertheless, in the inspection part, a reservation was made. The labor inspection has the right to enter and check the nature of the implementation of labor rights only with the owner's consent. In the absence of such consent, the employer must report himself to the labor inspectorate, along with the relevant documentation. It was also determined that failure to appear would result in a fine for the employer.⁶¹

The problem of non-interference with private property is also in Finland. The Safe Labor Act defines the inspection mandate, which grants authority to monitor privately owned property if there is a reasonable suspicion of a significant violation of labor rights. This significant violation may be unregulated working hours, restrictions on the right to break and leave.⁶² In contrast, in Brazil, the labor inspectorate has the authority to oversee domestic labor relations, regardless of their informal nature.⁶³

61 The influence of the ILO Domestic Workers Convention in Argentina, Chile and Paraguay - https://www.researchgate.net/profile/Lorena_Poblete/publication/326029446_The_influence_of_the_ILO_Domestic_Workers_Convention_in_Argentina_Chile_and_Paraguay/links/5e0d0e2d4585159aa4ab5c11/The-influence-of-the-ILO-Domestic-Workers-Convention-in-Argentina-Chile-and-Paraguay.pdf - pg: 25

62 Labour inspection and other compliance mechanisms in the domestic work sector - https://www.ilo.org/labadmin/info/pubs/WCMS_429836/lang--en/index.htm - pg: 32

63 Workplace solutions for childcare - https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcom-m/---publ/documents/publication/wcms_110397.pdf

Informality Before and After the Pandemic

Who has (and who has not) been covered by the Georgia State Anti-Crisis Plan?

Challenge, failure, and the opportunities for policy Change

Author: Tamar Qeburia

Introduction

Globally, informal employment accounts for 60% of total employment, equivalent to around 2 billion informal workers. Most of them (90%) are concentrated in developing countries (ILO 2018). According to the latest data, 8 out of 10 businesses in the world are informal, while 6 out of 10 employees are informal workers (OECD 2021). In the early period of the pandemic crisis, the ILO predicted that the COVID 19 pandemic would hit the informal sector the most - with up to 1.6 billion people losing more than 60% of their income, resulting in poverty levels increased from 26% to 59% among the informally employed (ILO 2020). The current escalation of poverty is equal to a 30-year lag, which in the case of Georgia equals the its entire period of being independent republic.

There are many reasons why the sector of informal employment is the most vulnerable to the pandemic. Among these reasons are the level of country's economic development, the sustainability of economic production, the country's social protection policy, the specifics of economic sector, the measures of COVID restriction, and the socio-economic profile of the informally employed. Like as the COVID 19 virus attacked the most exposed sides of human's health and exacerbated chronic diseases, the identical effect had COVID pandemic on the socio-economic fabric of society - causing enormous damage to the most frail and vulnerable groups and sentencing them to chronic poverty.

Today, Georgia is fighting against another wave of the pandemic. Consequently, it is too early to discuss the final damage that COVID 19 has done to informal employees. However, based on various data, including the Revenue Service representatives, more than half a million self-employed people lost their income by 2020.⁶⁴ The exact damage in long-term is still unknown. There have been organized number of protests by informal workers since the restrictions were imposed. Among the protesters were extraterritori-

64 Interview with the Director of the Customer Service Department at the Revenue Service, September, 2021.

al petty-traders who were crossing the Sarpi border on daily basis,⁶⁵ travel guides employed by tour-operators,⁶⁶ agricultural market traders,⁶⁷ drivers of intercity minibuses,⁶⁸ and, petty-retailers of clothing and household items in the vicinity of the Station Square. They demanded the state-provided benefits, social support for the alleviation of acute social and work-related challenges, and help for handling the everyday challenges. The way in which state apparatus responded to their demands was largely due to what policy instruments the state had in place to identify these challenges and assess their needs.⁶⁹

The aim of this study is to study the Anti-Crisis measures and social policies that the state has developed in 2020 to support ones who were most affected by the pandemic, in particular, informal workers. The paper seeks to analyze how state apparatus conceived and responded to informal employment before the pandemic, and how did the pandemic affect this outlook. In addition, what opportunities are there for policy transformation towards the informal employment? As history teaches us, the crisis of given magnitude has been provoking the paradigm shifts in the understanding of community and commonwealth. And, perhaps, now is the most proper time to initiate a political discussion on the questions of informality, related social policies and the ways to ensure the informal workers' engagement in the decision-making process.

Ambiguity related to measuring informality

Informal employment, as a sub category of labor employment was officially introduced in Georgian social and labor market analysis in 2017. It was when the Georgian National Statistics Office (Geostat) replaced the Integrated Household Survey with a Labour Force Survey. Through this change the Labor Force module was separated from the Integrated Household Survey, and became the distinct labor survey report, where a separate subcategory emerged in terms of informal employment in the non-agricultural sector. This category of employees is defined by Geostat as follows: "Informal employment – Persons employed in the non-agricultural sector who were not at all protected or partially protected by formal agreements (e.g. did not pay income tax from their wages; were

65 A protest rally in Sarpi, 01.07.2020, <https://batumelebi.netgazeti.ge/news/286943/>

66 Why are the travel guides left without a compensation? 25.05.2020, <https://bm.ge/ka/article/57088>

67 EMC responds to the protests of the traders of the open markets and calls upon the state to support them, 24/12/2020, <https://socialjustice.org.ge/ka/products/emc-ghia-bazrobabis-movachreta-protests-ekhmiane-ba-da-sakhelmtsifos-mati-mkhardacherisken-moutsodebs>

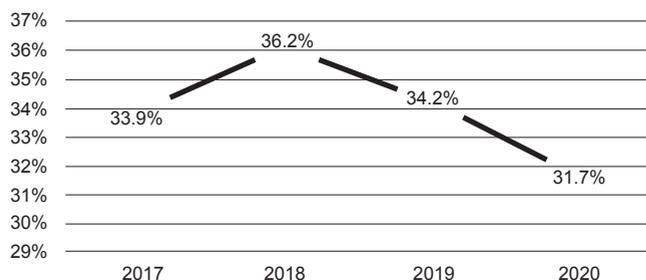
68 The minibus drivers went on strike in Batumi, 12.07.2021 <https://ipress.ge/new/bathumshi-mikroavtobus-mdzgholebi-gaiphitsnen/>

69 Traders are holding a rally and demanding the halving of the commercial rent,03/09/2021, <https://formulanews.ge/News/56048>

not ineligible for paid annual vacation; could not use the pay slip in case of sick leave; and / or the employer did not pay any pension contribution), or who determine their own employment status as helping in a family or household business/farm, or working in an unregistered enterprise or business.

According to the Geostat measurement, the share of informal employment in non-agricultural employment has been fluctuating over the years. In 2017 it was 33.9%; in 2018, it increased to 36.2%; by 2019, it dropped to 34.2%, and by 2020 it stabilized at 31.7%. How is informal employment measured, what methodology Geostat uses, or what employment sectors are encompassed by this category remains ambiguous, and the questions it provokes are more than the ones it answers. It is evident when looking at the fluctuating percentage of informality share over the years. These changes do not reflect the changing trends in the country's labor market (see Chart 1):

Chart 1 - Number of informal employees in the non-agricultural sector, by years



A much broader definition of **informality (both in the form of economics and employment)** is provided by the International Labor Organization – “Informality is defined as all those economic activities by workers and / or economic units, which whether legally or practically are fully or partially beyond formal agreement” (ILO, 2018).⁷⁰ Whereas the **informal employment** is directly defined as an activity that is not covered by labor law, is not taxed in relation to the income, is not protected by social security policies or labor protection laws, etc. If we insert this definition in case of Georgian labor market, it will become even more difficult for us to really measure the informal employment since the practice of employment contracts and social protection benefits are hardly accessible for a large proportion of formally employed workers, not to mention the informally employers,

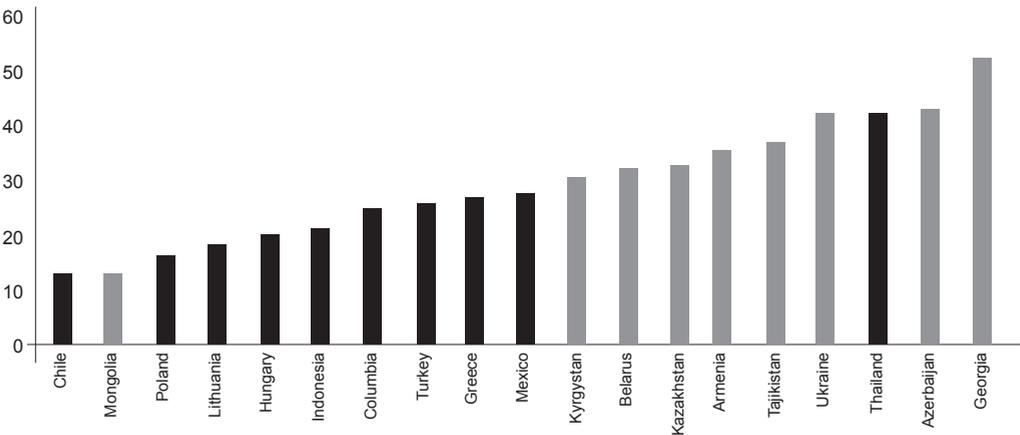
As Ana Diakonidze explains, the ILO distinguishes between the employment in the informal sector and informal employment, where the former determines the place of

⁷⁰ See part by Ana Diakonidze.

employment and the latter the type of employment agreement, and the combination of these two constitutes the scale of the informal economy within the country.⁷¹ The existing conceptual ambiguity about the informal employment and informal economy as well as the statistical manipulation related to measurements, render it exceedingly difficult to define.

The size of the informality in the national economy as estimated by Georgian State Institutions does not match the scale of informality investigated by international organizations. According to the IMF methodology, the share of the informal economy in the country's GDP was 53.1% (2015 data)⁷² while according to Geostat, it was only 27% (according to 2018 data).⁷³ However, according to the IMF methodological approach, Georgia presents the world leader when it comes to the share of the informal economy in the GDP (see Chart 2). In addition, it should be noted that when it comes measuring the informal employment, most of the international organizations, including ILO, do not apply alternative calculations or methodologies, and rely on data from the Georgian National Statistics Office. On the other hand, the Georgian National Statistics Office uses a methodology guide defined by the ILO to identify or record the number of formal and informal workers.

Chart 2 - The size of the informal economy as a percentage of GDP before Covid 19 in 2015



Source: IMF

71 Ana Diakonidze, *Non-standard and Informal Employment - Concepts and their Relevance for Georgia*, The Social Justice Center, 2021.

72 It should be noted that these data have not been updated by the IMF and the World Bank since 2015 and the data for 2015 are cited even in their latest reports to the present day.

73 National Statistics Office of Georgia, 2020.

The way the State Institutions are measuring and seeing the informality determines the way they approach the informal workers. Conversely, as Joseph Stiglitz writes, “What we measure affects what we do. If we measure the wrong thing, we will do the wrong thing. If we don’t measure something, it becomes neglected, as if the problem didn’t exist.”⁷⁴

In what follows, I explore the challenges and failures that government institutions faced when registering the informal employees, identifying their status, and determining whether they were eligible for the one-time GEL 300 compensation within the frames of state-initiated Anti-Crisis Plan. Observing the difficulties that have been actualized between May and August 2020 reveals the extent to which informal employment happens to be a hidden and ungraspable sphere. Following my findings, I argue that in the context of the Anti-Crisis Plan, the state bodies themselves had to search for loopholes or grey areas in their policies. Only that would allow them to administer and direct the Anti-Crisis Plan in the manner that it covers the full range of the target group. The given explorations and analysis is based on interviews conducted with members of the Anti-Crisis Plan team (see Appendix 1). In addition, I heavily rely on the statistical data and other secondary reports requested from the Agency for Employment Promotion. In the concluding part of the paper, I discuss the possibilities how to engaging informal employees in the formal structures and the main recommendations that are necessary for policy change and recovery.

The structure of State Anti-Crisis Plan and its limitations - the case of the self-employed and the informally employed

On May 4, 2020, the Government of Georgia adopted Resolution №286, which regulated the plan for mitigating the damage of infection (COVID-19) caused by the new coronavirus (SARS-COV-2).⁷⁵ The plan was to assist hired and self-employed workers who, due to pandemic constraints, could no longer continue their economic activities and lost their income. In terms of the State Anti-Crisis Plan, GEL 1,200 was allocated for officially hired employees who were left without an income (GEL 200 per month for a maximum of 6 months), and a one-time payment of GEL 300 for the those self-employed, who remained without income and filled up the online application form. Both officially registered self-employed workers, as well as unregistered (informally employed) persons, were eligible to apply for the State Anti-Crisis compensation.

74 Joseph E. Stiglitz, Jean-Paul Fitoussi, and Martine Durand, *Measuring What Counts: The Global Movement for Well-Being*, Illustrated Edition (New York: The New Press, 2019).

75 Regarding the approval of the Targeted State Program for Mitigation of the damages caused by the New Coronavirus (SARS-COV-2) Infection (COVID-19) <https://matsne.gov.ge/ka/document/view/4864421?publication=17>

The social compensation program consisted of several phases. The last phase was completed in August of this year. Initially, the social compensation program was introduced in May-July⁷⁶ during the so-called first wave of the Covid pandemic when the largest number of self-employed persons, a total of 248,875 persons, received 300 GEL compensation (the total amount of compensation 74,662,400 GEL).⁷⁷ The program was also renewed in November-December during the so-called second wave, when the one-time compensations of 300 GEL were issued for both hired and self-employed people (total number of beneficiaries - 121,634 persons). According to the State Employment Promotion Agency, the recipients of compensation during the second wave were identified by the following methodology:

“In December 2020 the persons who were taking up their duties on November 27, 2020 and did not get paid from December 5 to December 24 were identified as employed. Whereas the persons whose job activities were suspended due to the pandemic restrictions applied from November 28, 2020 were identified as self-employed or informally employed. Compensation for the abovementioned persons was subsidized at one time in the amount of GEL 300 (three hundred).”

As for the third phase of the program, namely, the State funded re-compensation of various types of workers who got affected by the restrictions imposed during the so-called third wave of Coronavirus in the period of January-August, 2021 - we could not find any reliable data for the self-employed recipients of one-time compensation of 300 GEL (despite requests from the State Employment Promotion Agency). However, the number of recipients of GEL 200 compensation in the period of January-August in 2021 amounted to 158,255 persons.⁷⁸

Based on the available data, provided in part by the State Agency for Employment Promotion and in part by the website of the same agency, the number of recipients during three different waves since the onset of the pandemic was distributed as follows:

76 Ana Diakonidze's article offers a detailed analysis on the administration of compensation for the informal sector within the framework of the state anti-crisis program developed during the pandemic. See Ana Diakonidze, “The pandemic as a litmus test for social security systems in transition economies – the case of Georgia” in *Social Policy Review 33: Analysis and Debate in Social Policy, 2021*, 1st ed. (Bristol University Press, 2021) (pp. 181-200).

77 Data provided by the LEPL - State Employment Promotion Agency, 08.10.2021.

78 The Employment Promotion Agency releases information on the payment of GEL 200 compensation to casually hired employees. 30.08.2021, <https://accentnews.ge/ka/article/45243-dasakmebis-xelshecqobis-saagento-dakiravebit-dasakm?fbclid=IwAR0Y-Nd11baj4qE5TsWiwY-mzL1HkvVc9eRRgqFq6M->

Table 1 – Number of recipients of anti-crisis support issued from the beginning of the pandemic to September 2021

Type of Anti-Crisis compensation	1 st wave May-July 2020	2 nd wave November-December 2020	3 rd wave January-September 2021
One-time in amount of GEL 300 for the self-employed	248 875	–	–
200 GEL p/m compensation across six months for the employed	162400	–	158 255
One-time compensation of GEL 300 for both self-employed and employed persons	-	121 634	–

(Source: Data of the LEPL - State Agency for Employment Promotion)

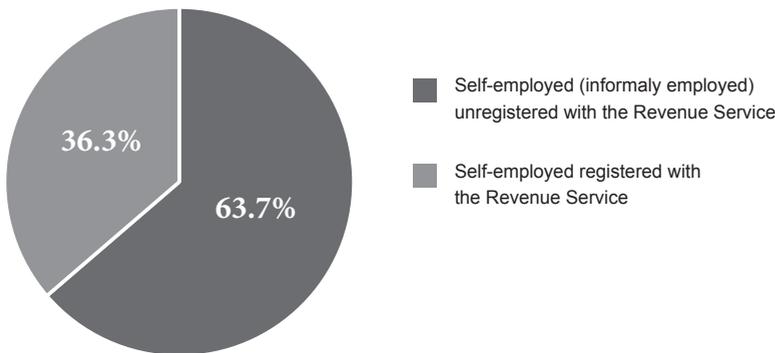
The **working group** administering the Anti-Crisis Plan consisted of representatives of the Employment Promotion Agency and the Revenue Service. Their roles and functions were distributed as follows: The employment agency checked the applications and documents of all self-employed persons who applied for the 300 GEL compensation and who were not traceable as officially registered self-employed workers in the Revenue Service database (be they sole traders, landlords, micro or small business entrepreneurs, etc.). The finalized list of officially registered self-employed workers from the Revenue Service, as well as the list of documentation of persons qualified as eligible informal employees (prepared by the representatives of the Employment Promotion Agency), were sent to the Ministry of Health for final check-up and compensation instalment. In the given situation, the main requirement for the self-employed applicants was to provide the proof of employment from the employer specifically related to his or her competence. However, there were many cases when the applicants were unable to submit such a document.

A large proportion of the self-employed workers **were left without compensation due to the informality of their employment**. In interviews with the Anti-Crisis working group, those responsible for administering the program often stressed the challenges to recognize the group of informal self-employed applicants. Precisely, it turned out to be highly problematic and challenging for the Revenue Service representatives to determine whether the self-employed applicants met the criteria for a one-time 300-GEL compensation or not because of incomplete nature of submitted documentation. The most common practice was that the documents proving their professional competence failed to meet the requirements. There were certain cases, for example, when tailors em-

ployed in ateliers sent photos of their products to fulfill the document requirements; street vendors and petty-traders obtained their letters of references from the same type of informally employed people working side by side with them, confirming that they were indeed engaged in the same kind of work. There have also been cases where local municipalities have issued registration notices confirming that a person (for example, a petty-trader selling the souvenir or small outdoor shopkeeper) was engaged in economic activity within their municipality, although the municipality did not have such competence, and therefore, this kind of documentation was also turned down as unreliable.

The members of the Anti-Crisis group were aware of these difficulties even before the launch of the Plan and discussed the possibilities of inclusion of informally employed people within the frames of Anti-Crisis Plan - “The discussion was about how to identify the segment of informal employees. Various options have been examined, including the idea of reaching informally employed people by using the deduction method, that is, the excluding of all other social and economic groups, which would somehow lead us to identify the people whom the state failed to see”.⁷⁹ Besides, the group members expected that far more officially registered self-employed would apply for 300 GEL compensation than it was the case during the program’s implementation period. As the result, during the first wave period (May-July 2020), 36.3% of those receiving the one-time 300 GEL compensation were officially registered self-employed (90,748 persons), while the remaining 63.7% were unregistered self-employed. (The same applies to unregistered informal workers among the self-employed and hired workers, for a total of 158,127 persons) (see Chart 3).⁸⁰

Chart 3 – Distribution of the recipients of one-time 300 GEL assistance during the first wave, according to the registration



79 Interview with the director of the State Employment Promotion Agency, August, 2021.

80 Data provided by LEPL - the State Employment Promotion Agency, 07.09.2021.

At the initial stage of social compensation program, the informally employed workers, the ones who were not registered as self-employed in the Revenue Service databases, would be recognized as eligible for 300 GEL compensation if they provide a certificate of employment or the legal proof of permanent economic activity from their employer (the employer being either a legal entity or an individual person). For unregistered workers this could have been a legal reference letter issued by the market administration, in the case of traders; a certificate issued by the owners of the car park, in the case of drivers; certificates issued by small entrepreneurs (owners of confectioneries, bakeries, beauty salons, ateliers and other micro-enterprises). The idea was that the informally employed person applying for the 300 GEL compensation should certify his / her activities with a certificate issued by a person related to the economic sector they were working for. For example, if a different entrepreneur (for example, a baker) issued a certificate for a babysitter claiming that the person was employed by him or her, such a certificate would not be valid and credible because the certificate would have to be issued by a babysitting agency or babysitter association.

Despite this apparently obvious principle, there has been still many difficulties and most of these difficulties were related to **the identification of non-standard workers**. For example, the agriculture market administrations did not issue references for street vendors who moved around in the market territory (due to not having the fixed counters and trading places). Travel guides also faced problems - due to the seasonality of the work, a large number of travel guides were not paid in the wintertime, so they could not confirm their status as employees in the period of May-July 2020, and faced being left without any State allocated compensation. Another group of non-standard employees who faced problems with eligibility for compensations were taxi drivers - in some cases expired licenses were revoked, and some platform companies (Yandex, Bolt, Maxim, etc.) did not renew their certificates, or sometimes the certificates issued by Taxi companies were defective. Another most active group of non-standard workers, for whom compensation was also bound to be problematic, were seasonal workers who were engaged in the extraterritorial seasonal work (most of the time in Turkey) in the fields of agriculture, services or trade.

In parallel with the denial of documents and the refusal of compensation, there was growing dissatisfaction and grievances among the informally employed groups, which was followed by numerous protests or demonstration on their part. During the same period, several meetings were held between representatives of the ministry and associations of various professional groups, among them market administrations, guides' associations, representatives of taxi companies, babysitting agencies or a group of women, who were crossing the Sarpi border on daily basis, demanding the eligibility for State Anti-Crisis compensation.

Amendments in the State Anti-Crisis Social Compensation Program

On August 14, 2020, the Government of Georgia Resolution № 5505⁸¹ entered into force, amending the Resolution No. 286 of 2020 of Georgian Government on Targeted State Program to Mitigate Damage from Infection (COVID-19) caused by Novel Coronavirus SARS-COV-2. This amendment has created new opportunities for Anti-Crisis working group members. In particular, due to the changes, compensation of GEL 300 could be assigned to any individual who would “submits a document from a person registered as a taxpayer in Georgia (excluding non-entrepreneurial individuals) proving the information that he/she was engaged in economic activity in the first quarter of 2020 and/or had income and/or for the purposes of this subsection, had registered as an applicant on the registration portal and completed the electronic application form by 1 August 2020, regardless of the submission of an economic activity and/or income document in the first quarter of 2020”.⁸²

Consequently, even if an informal worker, who registered for 300 GEL compensation, could not submit the proof of his/her employment certificate, this would not be considered a precondition for disaffirming the compensation. In this case, the program administrators required from him/her to submit any other documents proving their income, including a bank transfer statement or a loan statement issued by a bank or microfinance organization, which in turn was approved based on the existence of income. As Anti-Crisis group member declared “certain credit institutions issue loans to informal employees based on their informal income. In the end, this became one of the reasons for us to issue the compensations - if the beneficiary had a certificate proving that he/she took a loan based on his/her activities, then we considered that it was a confirmation of his/her informal economic activity, and consequently he or she qualified for a one-time 300 GEL compensation”.⁸³

Representatives of both the Revenue Service and the Employment Agency noted in interviews that the process of issuing a one-time compensation of GEL 300 was made much easier by an amendment passed by the Government of Georgia in August 2020⁸⁴ - under the amendment, a one-time compensation of GEL 300 would be issued to majority of persons who applied for compensation from the Employment Agency (despite the incomplete nature of the documents submitted by them). A spokesman for the Revenue

81 On Amendments to the Resolution №286 of the Government of Georgia of May 4, 2020, Resolution №505, <https://matsne.gov.ge/ka/document/view/4964576?publication=0>

82 Resolution №505, Article 2, F.A. subsection <https://matsne.gov.ge/ka/document/view/4964576?publication=0>

83 Interview with the Director of the Employment Promotion Agency, August 2021.

84 Resolution of the Government of Georgia №505, August 14, 2020.

Service explained: “Ultimately, the Prime Minister’s decision to grant compensation to anyone who applied for compensation was timely and significant, otherwise too many informal workers would not be compensated.”⁸⁵

Follow-up limitations

Despite the amendments in the State Anti-Crisis Compensation Program, there were still exceptions for groups who were denied compensation regardless of their registration. In addition, there were some of informal workers who for various reasons were unable to apply for the Anti-Crisis compensation.⁸⁶

The largest group that could not receive compensation, despite the modifications in Resolution No. 286, were babysitters and private tutors – “The new amendments in the Resolution could not and would not cover this group. Because it would mean that the compensation should have been paid to everyone - everyone could have said that this and that person teaches or babysits my child. This meant that this compensation was going to be paid to the whole of Georgian population, which was literally impossible.”⁸⁷

Another structural challenge that the State-initiated Anti-Crisis program has drastically put on the agenda has been the unreachability of those employed in the formal employment sector or those employed under a service contract. Their unregistered labor activity or service contracted activities prevented them from being identified by state institutions as hired employees. Consequently, such individuals could not qualify for the 1200 GEL compensation, nor did they have access to the 300 GEL compensation. Often the reason for this was that their employer refused to issue an employment certificate in order to hide informal accounting. Such cases were frequent in hairdressing salons, beauty salons, and ateliers – “Because we asked for a certificate of employment, the applicant would go to the employer in the salon and ask her to issue this certificate, which was often refused. It can be said that the persons employed in salons who managed to

85 Interview with the Director of the Customer Service Department of the Revenue Service, September 2021.

86 For example, traders had problems with online registration, groups of people employed in the agricultural sector (farmers, haulers, produce vendors, etc.) could not qualify as self-employed when Geostat data attributed them to the self-employed group. For an analysis of the reasons that prevented informal workers from applying for 300 GEL compensation, see. Keburia Tamar, “Labor Market Segmentation and Informal Labor in Crisis” (United Nations Development Program (UNDP); Human Rights Education and Monitoring Center (EMC), 2020), https://socialjustice.org.ge/uploads/products/pdf/მრომის_დაზროს_სეგმენტაცია_1606217461.pdf

87 Interview with the Director of the Customer Service Department of the Revenue Service, September 2021.

received 300 GEL compensation, forced their bosses and owners of their salons to issue such kind of certificates”⁸⁸

What does the Quantitative Data of State Anti-Crisis Compensation Program tell us about informally employed?

A total of \$ 1.13 billion has been spent on social assistance to the population in the year since the pandemic began. Most of these funds were directed to subsidies for utility bills (GEL 469.6 million). 317.7 million was spent on financial compensation for the unemployed, of which GEL 206.5 million was spent on employment assistance, while the expenditure on compensation for the self-employed amounted to 111.2 million.⁸⁹ According to the data requested from the Employment Promotion Agency, the largest group receiving 300 GEL compensation was the self-employed crossing the border. They are followed by the group of informal employees at markets, taxi drivers, and so on (See Table 3).

Table 2 – Distribution of self-employed recipients of the one-time 300 GEL assistance according to areas of economic activity

Areas of economic activity identified by registered self-employed	
Areas of economic activity	Number of recipients of 300 GEL compensation
Border crossing	61625
Agrarian markets and all types of open markets	19619
Taxi operation	14112
Different types of trade - *Different groups of trade are combined	12200
Other economic activities	11800
Other types of service	10738
All types of construction	5515
Travel by small vehicle	3406
Restaurants / Food facilities	1717
Beauty salons and centers of aesthetic medicine	1033

(Source: Data provided by LEPL – the State Employment Promotion Agency)

88 Interview with the Acting Director of the Employment Promotion Agency, August 2021.

89 *Monitoring of Covid-19 Expenses During and After the State of Emergency*, Final Report, IDFI, July 2021.

For additional explanations of the data shown in the table, it is necessary to note that the given numbers of informally employed persons receiving GEL 300 compensation neither illustrate the size of the groups engaged in the listed economic activity or the number of certain employees in the labor market, nor it gives us additional information about the structure of informal employment in general. But in contrast, the data from the table and newly reinvented economic activities, which do not correspond to any of the official economic activities acknowledged by the National Statistics Office of Georgia, demonstrate how unsystematic and eventual it was to be included among the recipients of Anti-Crisis compensation. For example, at the initial stage of the Anti-Crisis Plan, those from the economic group of “Border crossing” were not considered to be the target of a one-time compensation of 300 GEL. However, after several protest events and radically articulated demands, they managed to gain access to the State Anti-Crisis compensation. Similarly, the low number of beneficiaries from the economic categories of “Beauty salons and aesthetic medical centers” does not necessarily mean that the number of informal workers in those employment sectors is small, but rather that workers in these fields have less access to Anti-Crisis compensation.

After monitoring the State’s one-year Anti-Crisis Plan, IDFI reckons that Anti-Crisis compensation designed to mitigate the damage caused by the pandemic crisis has provided significant financial support to the most vulnerable and defenseless informal employment groups, especially in the context of expanding the scope of targeted social assistance, subsidizing utility bills, the deferral of bank loans, regulating prices for basic food products and other social programs of a universal type.⁹⁰ However, the same report states that “effective planning and implementation of individual programs and measures, it would be possible to allocate significant resources that would make it possible to increase the target segment and the volume of assistance.”⁹¹ In addition, this and numerous other reports confirm that numerous groups of informal workers were left out from the access to this one-time 300-GEL compensation scheme.⁹²

Against the background of the experience gained during the management of the pandemic crisis, as well as the accumulation of additional knowledge about the structure of the labor market, there is a desperate need for the state to develop long-term, sustainable and universal policies, which will not only help the system to identify the target groups

90 The report was prepared by the Institute for Development of Freedom of Information (IDFI) with the support of the European Union (EU), where the main methodology was to monitor Covid-19-related public finances, public procurement, government anti-crisis plan, StopCov fund spending and donor distribution.

91 Monitoring Covid-19 related Public spending During the State of Emergency and After, Final Report, IDFI, July 2021, pp.60.

92 Labor Relations and Social Protection during the Pandemic - Georgia Report, 12/2020, Human Rights Education and Monitoring Center (EMC).

in time of crisis but will also be a precondition for rethinking the employment status of workers and defining both rights and obligations as well as social benefits. This, in turn, ensures universal access to social protection policies, even beyond the realm of specific crises.

Future steps and summary

Despite the numerous damages and negative consequences caused by the pandemic crisis, which will once again become the subject of research, it has also generated a new understanding of collectivity and social well-being that has the potential to become an organic part of real politics. Access to universal healthcare, the importance of civic responsibility, caring for the elderly or the homeless, the role of solidarity and collective self-awareness, the importance of social welfare are the areas on which world politicians and international organizations have begun to speak openly. To this day, there is an expectation among the critical thinking groups of population that more caring and social welfare-oriented political decisions will emerge from within the fissures exposed by the tectonic movements created by the pandemic. Clearly, this is a matter for future reasoning, but on a more practical level, one particular positive outcome of the pandemic that has occurred in the case of informally employed is that state institutions have for the first time acquired a tangible amount of information and knowledge about the group. The Ministry of Health now have access to huge databases of people whose activities and existence were not graspable before the pandemic. As discussed above, collecting this data was a complex and challenging process, but today the Ministry of Health has a database where the personal data of approximately 250,000 informal employees – including contact information, bank account details, and employment profile - are allocated.

During the interview with the representatives of the National Employment Agency and the Revenue Service, there were asked questions about how social policy institutions will take advantage of and translate their experience into political steps to reduce the share of informality in the country's economy, increase the level of protection for informal employees and provide them with equal opportunities. Representatives of the Employment Promotion Agency perceive their role in this as an opportunity to increase the competence of their agency, where they proactively offer to informal employees a transition to the formal employment sector when the relevant vacancies show up in the employment market. They also talk about the possibility of increasing the effectiveness of advanced training programs and the need to increase awareness among informal employees about transfers into the formal sector and about the advantages of formal employment.

As for the Revenue Service, according to them, a concrete step has already been taken in this regard and a register of employees has been initiated, the creation of which was adopted as a law in August 2020, and came into force in January 2021.⁹³ According to the representative of the Revenue Service “the registration of employees is based on the experience of Austria, Estonia and other countries and implies that the employer is obliged to electronically register their employees in the hired database prior to the actual date of commencement of the employment”. Registration is mandatory at the time of hiring, when minimum information is required. “In this database, employees are given three statuses - active, suspended and terminated. Active status belongs to all employees who perform labor relations; suspended status is granted to an employee with whom the employment relationship is not terminated but is temporarily suspended (for reasons such as holidays, sick leave, lockout, strike, military leave, etc.); Terminated status means that the employment relationship with the person has been terminated”⁹⁴ According to a representative of the Revenue Agency, this initiative will improve employees registration process and functional databases will be maintained. However, it should be noted that the new initiative does not cover the registration of self-employed and informally employed persons. Moreover, the registry does not accommodate the employees with service contract. Moreover, since the registration does not require obtaining data about the educational level, professional experience and its length, etc., the existing program will lack the analytical function and not stimulate the improvement of policies. While, on the other hand, in the courtiers of Austria, Estonia and others, similar labor registration projects aim to collect as much information about the employees as possible to better assess the necessity of new policies.

A report prepared by the OECD in 2021, which examines the problems posed by the high proportion of the informal economy in Eurasia before and after the pandemic, stress the necessity of formalization of informal micro, small and medium-sized businesses.⁹⁵ The report cites examples from Ukraine, Azerbaijan, Kyrgyzstan and other countries that have developed and approved specific work plans for formalization. Amendments to the Labor Code, the greater transparency of tax systems and the development of the financial sector are the main issues highlighted in this report. It should be noted that while the international organizations fostered the politics of simplified business registration, tax regime liberalization and the deregulation of labor legislation when talking about formalization, this approach has been reconsidered after the pandemic – “The international evidence suggests that simplifying business registration alone has not made a significant

93 Order №331 of the Minister of Finance of Georgia of December 31, 2020, Article 1, <https://matsne.gov.ge/ka/document/view/5076161?publication=2#DOCUMENT:1>;

94 Interview with Revenue Service Coordinator, September 2021.

95 OECD, ‘Informality and COVID-19 in Eurasia: The Sudden Loss of a Social Buffer’, Policy Insights, 2021.

impact on business formalisation, underlining the need for a more comprehensive plan and set of measures. All Eurasia countries still lack comprehensive strategies and plans to address informality and help the transition to the formal sector”.⁹⁶

To summarize the main findings, it is necessary to highlight, once again, the challenges and failures (as well as the ways and means of responding to them) that government agencies faced when operating the State Anti-Crisis Plan.

First of all, because the State Agencies had neither specific mechanism for measuring and identifying the informal sector, nor an informal employee registration methodology was functional, verifying the persons registered as beneficiaries of Anti-Crisis compensation was problematic at the initial stage. Due to this systemic failure, the people responsible for the implementation of the program had to manage the input data and check it manually, which delayed the process and made it inflexible.

That was the reason that people who were in charge of administering the Anti-Crisis Plan became extremely creative in their approaches and methods along the way to make the State compensation distribution as easily manageable as possible. A special contribution to ease the registration process was made by the amendment initiated by the state in August 2020, on the basis of which various documents submitted by the majority of registered for a one-time compensation of 300 GEL as proof of employment were in fact considered valid. Following this change, the basis for obtaining the compensation was: bank payrolls, photos of products uploaded by entrepreneurs, loans based on the frequency of income issued by small credit institutions, etc.

Despite the changes initiated by the state and the use of various workarounds by the very people working for the administration of the Anti-Crisis program, in order to let most of the registered employees use the 300 GEL compensation during the first wave (May-July, 2020) of the pandemic, it was still the case that large groups of non-professionals - private tutors, babysitters and other professionals - found themselves outside the Anti-Crisis compensation system.

Finally, three phases of Anti-Crisis compensation system were initiated within a year of the onset of the pandemic. The compensation system depended on the intensity of the pandemic measures imposed by the State. During this so-called three waves of pandemic, the compensation was provided to different occupational groups or persons with different employment status under the different conditions. The largest number of informal workers was covered during the first wave of the pandemic, when 248,875 people were

⁹⁶ OECD, 41

given a one-time 300-GEL allowance. It is unknown to what extent informally employed people were included in the program of the 3rd wave of 2021 (when in the period of January-August the 200 GEL compensation was issued per month for a maximum period of 6 months). Nevertheless, according to recent studies, the total amount of compensation provided to self-employed people amounted to 111.2 million GEL in the last one year.

To sum up, the one-year experience of implementing an Anti-Crisis Plan has shown how important the role of professional associations and unions are in protecting the interests of informally employed people outside formal structures and in articulating their needs. Therefore, it is necessary to further strengthen the function and role of professional associations or sectoral Unions, especially for non-standard labor groups and informally employed professional groups. Such associations should be named as legitimate representatives and should have access to communication with all formal or State structures.

Appendix 1 - List of Respondents

- Nino Veltauri – The Head of the LEPL – The State Employment Promotion Agency;
- Nino Agashenashvili – Head of the department of employment seekers and employers registry at LEPL - The State Employment Promotion Agency;
- Levan Dgebuadze – Head of the Department of Customer Service at the Revenue Service;
- Arsen Tevdorashvili – Senior Analyst at the Analytics Department of the Revenue Service.

Reform Vision

The report reveals that ensuring stable and decent pay for those involved in informal and non-standard labor is a significant challenge for the sector. However, temporary and service contracts and informal labor arrangements create a highly vulnerable situation that allows for abrupt and immediate termination of income. Issues of physical safety and the spread of risky practices remain significant problems. At the same time, informal and non-standard employment is associated with a different and unregulated relationship between the employee and the employer, including new and often disguised practices of subordination and supervision.

Informal and non-standard labor occupies a significant share of the labor market in Georgia and the world, while the share of informal and non-standard work in specific sectors and countries is growing sharply. New forms of informal and non-standard labor will likely emerge in the future, which will create new opportunities and new challenges. In this context, it is essential for the state to fully realize its responsibility towards these vulnerable and dynamic workers in the labor market sector.

In the context of economic crisis and the drastic and unpredictable changes of working conditions resulting from the pandemic, the structural problems caused by the long-term neglect of the informal and non-standard sectors became evident, necessitating urgent, socially responsible, and effective intervention today.

Formalization

One of the most effective tools for solving the complex and multifaceted problems in the informal sector is the incentive policy of formalization. Such an approach, on the one hand, recognizes the importance of formalizing informal labor relations (in some cases, the need to replace non-standard labor arrangements with standard ones); on the other hand, it refuses to punish informal workers and instead of repressive measures tries to use tools that impel employees and employers to formalize the labor relationship. The role of the labor inspection is essential in this process and the coordinated work of different state agencies (Revenue Service, Ministry of Health, Employment Promotion Agency, Social Service Agency) and, in parallel, the relevant legislative changes.

It is crucial to make formal employment attractive through other incentives as well. Today, apart from maternity leave and the funded pension system, no additional permanent

social protection or benefit programs are associated with formal employment. During the COVID-19 pandemic, the benefits of formal work were supplemented by anti-crisis assistance (amounting to GEL 1,200). Given the international experience, tools that would make formal employment more attractive may include **unemployment benefits, a decent minimum wage, and a tax-free minimum**. Some of these levers are universal, while others address challenges in the informal and non-standard sectors.

- **State system of unemployment aid:** In the context of the absence of unemployment benefits, instant, often unpredictable, and terminated remuneration for informal and non-standard employees leaves them in a vulnerable position.
- **Tax-free Minimum:** Low pay and the share of income tax are mainly affecting the social status of the most vulnerable groups of informal workers and, at the same time, create a significant barrier to formalization. Establishing a tax-free minimum would help increase formalization support directly among informally employed people. It should be emphasized that imposing a tax-free minimum may be an essential incentive for employers, as it reduces their costs.
- **Decent minimum wage:** To make formal employment more attractive, it is crucial to set a decent minimum wage that considers the subsistence level in line with international standards.

Strengthen labor inspection

As the principal agency responsible for enforcing workers' labor rights in Georgia is the Labor Inspectorate, this agency plays a crucial role in resolving problems related to informal and non-standard labor. The Labor Inspectorate can be strengthened in two ways: on the one hand, it is vital to support better enforcement of existing powers within its current mandate, and on the other hand, to expand the mandate and adapt it to the specifics of informal non-standard labor.

- The Labor Inspectorate should explore and develop **a coherent and socially just approach to formalizing the informal sector**, which may include incentives, support, and sanctions mechanisms aimed at timely, gradual, and sustainable improvement of the working conditions of casual workers.
- The Labor Inspectorate can check the safety of any workplace today, and the existence of a formal employment relationship is not an obstacle to inspection. Ad-

herence to the principle of labor safety is mandatory. However, there is no similar authority to oversee other labor rights. It is possible that by law, the Labor Inspectorate will be given the appropriate legislative mandate to exercise similar powers in inspecting the status of rights established under the Labor Code of Georgia and to ensure the protection of labor rights in places of informal or non-standard identified employment.

- The Labor Inspectorate has, but rarely uses, the power **to determine an employment relationship** and recommend the conclusion of an employment contract in cases where the employee and the employer have another type of contract, such as a service contract.

Employment Agency

As essential and up-to-date information on job seekers, including data collected during the administration of the anti-crisis program, is collected by the State Employment Promotion Agency, this agency's involvement is also essential. It is important to inform job seekers about informal and non-standard work practices and their rights. Non-standard workers who use the services of the Employment Agency can be given priority status, which would provide them with services such as retraining, internships, subsidized employment, etc.

Social Protection

Even if the informal sector is partially formalized and problematic and hazardous practices related to non-standard employment are transformed, state efforts will likely not cover a large proportion of workers without firm and fair universal social protection tools.

- Along with the formalization, it is possible to introduce mechanisms that would ensure informal and non-standard employee access to various social protection tools. For example, it is possible to create a **socialized health insurance package**. One of the proposed methods to ensure this would be to create a health package accessible to informally and non-standard employees and tailored to their needs. Alternatively, in a universal health insurance system, packages can be differentiated so that in the case of formal employment, additional protection guarantees are offered to workers, which would make formalization more attractive.

- Based on existing and future data collection, it is possible to change the criteria for entering **the maternity leave payment system to cover** informal employees (for example, based on an employer letter).
- It is also essential to have a mechanism for involving informally employed people in the **funded pension system**, ensuring that they would enjoy the same conditions as formally employed people. Self-employed people registered today apply four percent of their income to the pension system, making self-employment registration less attractive. In response, the state may increase its contribution to the self-employed to 4 percent or reduce the contribution made by the self-employed to two percent.

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PART II

Assessment of Delivery Service Providing Contracts in Georgia

Author: Salome Shubladze

Introduction

Along with the increasing urgency of business operations¹ conducted through the GIG economy, including through electronic platforms (applications), throughout the world, the issue of protection and recognition of the status of workers involved in the GIG economy becomes problematic. For example, couriers working in the delivery service do not have formal employment status and are considered by companies to be “independent contractors”, thus not enjoying the guarantees provided by the labor law.

Recent growth in e-commerce and application-based businesses has been linked to the COVID-19 pandemic and respective restrictions;² In this regard, Georgia was no exception, where the market size of e-commerce increased by 3.2 in 2020. At the same time, according to Galt & Taggart, the turnover of the direct food delivery service sector last year amounted to 167 million GEL, which is three times more than in 2019.³ According to the same report, in 2015, about 95% of the market in the food delivery sector was owned by two companies - Glovo and Wolt.

The growth of the food delivery industry in Georgia is accompanied by the practice of violating the labor rights of couriers and breaching labor safety standards. Unfortunately, the Covid-19 pandemic made the already hard working conditions of the couriers even more difficult and dangerous; moreover, it was impossible to include couriers in the state social security system as they are non-standard workers.⁴

Due to the difficult working conditions, the couriers of Glovo and Bolt Food went on separate strikes in Georgia, while the courier of another company - Wolt, is trying to recognize the status of an employee and protect his labor rights. Following the protest of

1 Begadze, Mariam. Regulation of the platform (GIG) economy Review of international experience. Open Society Foundation and Platform of Honorable Work. 2021, 1, <https://bit.ly/3kq1Qv9>; (afterwards – Begadze, 2021).

2 Galt & Taggart, „e-commerce in Georgia“, June, 20, 2021, <https://bit.ly/3iwmQ1H>.

3 Ibid, 3.

4 Economic Policy in Crisis: Interviews with Economic Researchers “; How is the labor market transformed as a result of the Coronavirus crisis? “ - Ana Diakonidze, Center for Social Justice, April 30, 2020, <https://bit.ly/3yWN7vD>.

Bolt Food couriers the company “blocking” the application for them. Punishing couriers for protesting and expressing critical opinion seems to be a common practice for the delivery service companies. According to the agreement signed by one of the delivery service companies with the couriers, the courier has no right to comment on the company’s activities through the social network and through other means damage its reputation. It is true that the Bolt contract does not contain such a condition, but as it turned out, in practice, the company also applies sanctions against those couriers who express a different opinion and protest against harsh working conditions. The Public Defender of Georgia, on June 14, 2021, issued a recommendation, which established a direct discrimination against Bolt couriers on the grounds of differing opinions. That said, the recommendation followed a couriers’ protest over the company’s unilateral reduction of tariffs. In response to the protest, the company restricted an access to the application for “those couriers who were involved with group of couriers interfering with the company’s service and work process of couriers.”⁵ The Public Defender of Georgia, who defined a direct discriminated on the ground of different opinion, indicated in the Recommendation⁶ that “... The applicants demanded an improvement in their working conditions, protesting against low tariffs and a reduced bonus system. According to the Public Defender, applicants have the right to protest against the employer’s decisions, which affect their legal status. Restricting an access to the service delivery platform due to a demand for a decent working conditions is alarming and unacceptable.”⁷

Violations detected by the Labor Inspection Service also indicate a dangerous work environment for the couriers. In March 2020, the Labor Inspectorate fined Glovo for failing to report an accident that occurred while on the job;⁸ In particular, in February 2020, a courier was injured while traveling by a moped, about which Glovo did not report to the Inspection. In addition, the Labor Inspectorate found 9 various types of violations of labor safety norms during the inspection of the company.⁹

It is noteworthy that in parallel with the non-recognition of the labor relations with the couriers by the delivery service companies (they are considered as “independent contractors”), the Labor Inspectorate has considered the couriers as employees.

5 For more see: “Public Defender Of Georgia Has Established Discrimination On The Basis Of Other Opinion Against Bolt Food Couriers”, Young Lawyers Association of Georgia, June 15, 2021, <https://bit.ly/2UGteKk>.

6 Recommendation of the Public Defender of Georgia “On establishing direct discrimination on the grounds of different opinion in labor relations” “On establishing a direct discrimination on the grounds of discrimination on the ground of different opinion”, June 14, 2021, <https://bit.ly/3xCjciU>.

7 *ibid* 17.

8 Respective inspection report is available at: <https://bit.ly/2VJh9o2>.

9 Inspection report is available at <https://bit.ly/3CEoE0w>.

In addition to the determination of the Public Defender that Bolt Food conducted direct discriminating on the ground of different opinion, it also recognized the couriers as employees. More precisely, according to the Public Defender, “it is incorrect to consider Bolt couriers as independent contractors and/or self-employed in the conditions of subordination, sanctioning, control, and liability”. Moreover, as there is a labor-legal relationship between the company and the couriers.

Thus the purpose of this document is to assess the legal status of those employed in the delivery services; This document aims to assess the legal status of persons employed in the delivery service; The submitted document legally reviews the contracts¹⁰ of several companies operating in the field of delivery services in Georgia in order to evaluate the legal relationship, mechanism and practice between the parties.

While considering this document it is important to clarify that for defining the legal qualification of the relationship between the parties the position of the parties to the contract is not central¹¹, as well as the content and clauses of the contract. In determining the legal nature of the existing relationship, the facts related to the performance of the work and the actual content of the agreement of the parties, regardless of the name or characteristics of the contract concluded between them, are crucial.¹² In other words, even if a service contract or contract for work is concluded between the parties, according to the International Labor Organization, in accordance with the principle of “Primacy of Facts”¹³, if there is in fact employment relationship, the worker is considered employed and not an “independent contractor”. Thus, reviewing and evaluating the terms of contracts is important not so much to determine the nature of the legal relationship, but to identify the mechanisms / legal techniques or practices used by the companies of application economy in Georgia to “cover up”¹⁴ labor relations and avoid liabilities.¹⁵

10 The Center for Social Justice is not responsible for the accuracy of the content of the contract, the completeness and conclusiveness of the texts of the contract.

11 The legal nature of the contract, as well as the issue of belonging to any of its categories, is ultimately to be assessed by the court and not by the parties to the contract; please see: *Street (Respondent) v. Mountford (A.P.) (Appellant)*, [1985] UKHL 4, [1985] AC 809, [1985] 2 WLR 877, <https://bit.ly/3i2FzZC>.

12 *Employment Relationship Recommendation*, 2006 (No. 198), International Labour Organization (ILO), Geneva, International Labour Conference 95th session, 2006, 9, <https://bit.ly/3AWSFb0>.

13 *Promoting employment and decent work in a changing landscape*, International Labour Organization (ILO), International Labour Conference 109th Session, 2020, 230, <https://bit.ly/3ec09gR>.

14 Salome Kajaia, “Mechanisms for the Protection of Dependent Self-Employed Persons in EU Countries and Perspectives for Georgia, 2020

15 The literature states that the principle of “superiority of facts” is especially useful when labor relations are deliberately disguised; See B. Waas and G. van Voss (eds): *Restatement of labor law in Europe*, Vol. I: The concept of employee, Hart Publishing, UK, 2017. Also, relying solely on the contract to determine the nature of the relationship is incorrect because the terms of the contract may be another condition imposed by the employer; See, *The National Labor Court of Appeal*, 7th Chamber, 18 November 2002, *Zelasco, José F. v. Ejército Social Work Institute*.

How various contracts are used to disguise labor relations?

The studied agreements are characterized by one common feature: all of them are composed in-line with international standards on qualifying criteria and indicators of labor relations and contains a number of aspects aimed at circumventing these criteria or indicators. In addition to the above-mentioned “sophisticated” legal mechanisms, the agreements under consideration also contains a direct denial of the existence of an employment relationship between the parties.¹⁶ Namely, one of the contracts states that the courier is not an employee of the company and does not act as its subcontractor. It provides customer with a delivery service as an independent contractor.¹⁷ Another agreement states that the courier should not have an employment relationship with the company and that both parties are autonomous and independent from one another.

It should be noted that, given the complexity of employment and the non-standard nature of employment in the GIG economy, the traditional model of labor relations may be useless for consideration; The new forms of employment create new forms of subordination and dependence that can hardly fit into the dichotomous framework of the employee-employer. At the same time, it should be taken into account that various legal mechanisms are used to disguise the labor relationships. That is why, in order to draw a conclusion about the nature of the relationship, along with a scrupulous study of the factual circumstances, it is important to use and reconcile several legal criteria¹⁸ and mechanisms at the same time.¹⁹ And in case of at least one indicator characteristic

16 There is an opinion that the provisions of the contract, which aim to exclude the validity / dissemination of the legislation, have no legal force from the very beginning. In the opinion of the Supreme Court of the United Kingdom, an attempt to exclude the extension of the guarantees provided by law under the contract to protected groups should be considered hostile to the objectives of the legislation; See, *Uber BV & Ors v Aslam & Ors* [2021] UKSC 5 (19 February 2021), 81, <https://bit.ly/36zEgnu>.

17 While making a differentiation between a contract for work and employment contract it is important to cite a definition of the Supreme Court of Georgia according to which the employment process is crucial in the employment relationship, which is organized in accordance with the rules and conditions established by the employer (via employment contract, internal regulations, legislation, etc.). And the main characteristic of a “contract for work” is that it is mutually binding, and is of a consensual nature, that is, it is considered by the parties from the moment of agreeing on the essential terms of the contract and the equality of its subjects is maintained throughout the period; which is oriented on achieving the goals of the contract, not on creating an organizational subordination. See the recommendation of the Public Defender of Georgia “On establishing direct discrimination on the grounds of dissent in labor relations” “On establishing a direct discrimination on the grounds of discrimination on the ground of different opinion”, June 14, 2021, <https://bit.ly/3xCjclU>

18 Federal Court of Australia, *ACE Insurance Limited v. Trifunovski*, 2013, FCAFC 3.

19 Promoting employment and decent work in a changing landscape, International Labour Organization (ILO), International Labour Conference 109th Session, 2020, 104, <https://bit.ly/3ec09gR>.

of a previous employment relationship, a legal presumption²⁰ must apply in favor of the existence of an employment relationship.²¹

A) Legal subordination

According to the International Labor Organization, the criteria used to determine the existence of an employment relationship are legal subordination and economic affiliation.²² A person is considered to be in an employment relationship with a company if he or she provides services to a third party on the latter's behalf and this process is overseen by the company.²³

The agreements examined contain a number of provisions that, despite attempts to disguise, make it clear that legal subordination exists and that couriers are required to serve in accordance with the terms, conditions, and instructions established by the companies.

Scope and area of the contract

The agreement under consideration applies to all relationships between the company and the courier in the process of using the company's platform. According to the "Terms of Service" of another company, these terms regulate the access of couriers to the platform, the rules of its use, and have a limiting power. Determining the terms of service in this way and their unequivocally binding nature is an obvious manifestation of "Directional Power"²⁴ and reveals subordination. In the recommendation made on the basis of the application of the employees of Bolt Food, the Public Defender of Georgia, among other criteria, indicates the following signs confirming the subordination: the courier fee and the method of its calculation is determined by the company; The customer can

20 The case law indicates that there is a general, void presumption in favor of employee status whenever one person provides services. See: United States: Supreme Court of California, *Dynamex Operations West, Inc. v. Superior Court of Los Angeles County*, 2018, 27, <https://bit.ly/36wncyv>.

21 *The Employment Relationship: An annotated guide to ILO Recommendation No. 198*, International Labour Organization (ILO), 2007, 33, <https://bit.ly/3yLbrQS>.

22 *The Employment Relationship: An annotated guide to ILO Recommendation No. 198*, International Labour Organization (ILO), 2007, 27, <https://bit.ly/3yLbrQS>.

23 Begadze 2021, 15, see the reference 1.

24 G. Casale: „The employment relationship: A general introduction“, in Casale: *The employment relationship: A comparative overview*, 2011, cited in: *Promoting employment and decent work in a changing landscape*, International Labour Organization (ILO), International Labour Conference 109th Session, 2020, 107, <https://bit.ly/3ec09gR>.

leave a review and file a complaint regarding the delivery service; The Company reviews the grievances at its own discretion, investigates it (if necessary) and decides on a further action plan; If the courier has materially breached its obligations or received several complaints, the company has the right to temporarily or permanently suspend its use of the Bolt Food application; Bolt can see the geographical location of the courier, as well as information about the delivery and the time of use of the service.²⁵

Binding “Recommendations” about the rules of direct activity, according to one of the articles of the contract, are given in Annex 2 of the contract, which “is only a guide and has no binding power.” For their part, as stated in Annex 2, although the relationship between the parties is a relationship between independent parties, they will cooperate to ensure that the service is provided properly.²⁶ The annex uses formulations such as “company reminds the courier ...”, “courier says ...”. It is obvious that the contract is designed to create the false impression that the terms of delivery of the service directly are of a recommendatory nature and thus, the delivery service company does not set them unilaterally. This is because the definition of service conditions by a company is one of the important criteria for qualifying for legal subordination and, consequently, labor relations.²⁷

However, despite the attempted disguise, the terms of service that the company sets unilaterally are evident from the consideration of various provisions of the contract. First of all, it should be noted that Annex 2, presented as a “recommendation” by the company, is not at all a non-binding. According to the general terms of the contract, the “independent contractor” is responsible for carrying out the activity properly, and the standard for the proper performance of the service is given in Annex 2. The Section 7, in turn, stipulates that the “independent contractor” agrees to provide the courier service to the customer in compliance with the quality required by these terms. The quality of service, as mentioned, is defined in Annex 2 of the contract. However, the legal nature of this annex is best reflected in the legal consequences of its violation. If it is really only a recommendation, its violation should not entitle the company to terminate the contract as provided for in Article 10.²⁸

25 The recommendation of the Public Defender of Georgia “On establishing direct discrimination on the grounds of dissent in labor relations” “On establishing a direct discrimination on the grounds of discrimination on the ground of different opinion”, June 14, 2021, <https://bit.ly/3xCjclU>

26 The appendix is titled: “Standard of Proper Service Performance”.

27 Begadze 2021, 18, see the reference 1.

28 According to Article 10 of the contract, the grounds for termination of the contract by the company may be the violation of the “conditions” by the courier. Under the contract, the courier, upon signing the contract, agrees to the terms of the contract and its annexes and agrees to abide by the terms of service. It is obvious that the terms of service include both the body text of the contract and its annexes. Moreover, annexes are generally considered to be an integral part of the contract.

It should also be noted that the terms of service delivery are not given only in Annex 2 of the contract. The rules governing the service are also contained in the main text of the contract and Annex 3. It is noteworthy that, like the 2nd, Annex 3 (“Food Treatment”) contains non-binding wording (eg, “We recommend ..”), while its binding nature is not in a doubt either: According to Article 11, violation of the terms of Annex 3 is a ground for termination of the contract.

Courier Responsibility

In addition to setting conditions for the performance of work and the provision of services (“Directional Power”), the companies in question also have “Disciplinary Power” over couriers as employees: In case of violation of the above conditions and relevant instructions, companies have the right to terminate the contract, and in practice this means that the couriers are restricted an access (temporarily or permanently) to the digital platform. According to one of the agreements under consideration, in the event that the courier breaches any of its obligations under the agreement, the company has a right to restrict its use of the platform without any obligation to reimburse losses. In other occasions it is important to notice that “any condition” is not only the norm refereeing to the legal relationship between the two parties - the independent contractor and the client, but also refers to the terms of the service contract stipulated in the service contract with a third party that is set by the company unilaterally and the deviation from which causes the employee to be sanctioned.²⁹ In the case of another company, as it was mentioned above, if a courier violates the terms of service set by the company, the company is entitled to terminate the contract without any notice, meaning restrict courier’s access to the application.

Possibility of unilateral change of the terms of the contract

Under one of the agreements, the company reserves the right to update the basic terms at any time, of which it shall notify the courier at least 15 days in advance.³⁰ Similarly, another agreement gives the company the power to change the terms of service at its own discretion.³¹

Although the contract is a bilateral transaction, the conclusion and amendment of which requires the expression of will of both parties, the contracts in question allow companies

29 Begadze 2021, 18, see the reference 1.

30 Bolt Contract, Article 14.4.

31 Bolt Contract, Article 19.

to unilaterally change the content of the contract, including the substantive terms of the contract, without gaining consent from an employee.³² It should be noted that according to Article 20, Part 2 of the Labor Code of Georgia, change of the substantive terms of the employment contract is possible only with the consent of the parties. Even though the contracts with the couriers are not qualified as labor contracts by the companies, the law still does not allow unilateral changes in the terms. In particular, according to Article 347 of the Civil Code of Georgia, the provision in the standard terms of the contract is considered invalid, if it allows the offeror (in this case delivery service companies) to change the work defined by the contract or deviate from it if the change is unacceptable for the other party (in this case couriers).³³

In addition, international case law indicates that the lack of influence of the courier on the terms of the contract may be grounds for invalidity of the contract.³⁴

B) Integration in business organization: primary and secondary activities

According to the International Labor Organization, with the emergence of new forms of employment, it is important to pay due attention to such indicators of labor relations as the integration of the employee in the organization of the company's business.³⁵ According to this criteria, if the "contractor" performs such work, which is the main activity of the company, most likely, it is the employment relationship. In such a case, the employee's work is integrated into the company's core business and the company conducts its "core" business through that employee. This criterion is especially important in a scenario where there is a relationship between several different subjects (in this case, the "platform" company, courier, food facility, and customer).³⁶ Due to the diversification of labor relations, it is necessary to distinguish what is the main goal of a particular business operation and what contribution the "contractor" makes to achieve this goal.

32 The unilateral change of the essential terms of the contract regarding the amount of remuneration, became one of the reasons for the protest of Glovo and Bolt Food couriers in Tbilisi; See: "What are the working conditions and what are the demands of Glovo couriers", Netgazeri, January 29, 2021, <https://bit.ly/3yUx9lu>. „The inspection should start monitoring the working conditions of the couriers, says shroma.ge", Netgazeti, March 26, 2021, <https://bit.ly/3xGB5pK>.

33 Law of Georgia "Civil Code of Georgia", Article 347(d), <https://bit.ly/3wAX5kD>.

34 Begadze 2021, 15, see the reference 1.

35 Promoting employment and decent work in a changing landscape, International Labour Organization (ILO), International Labour Conference 109th Session, 2020, 113, <https://bit.ly/3ec09gR>.

36 N. Contouris and V. De Stefano: New trade union strategies for new forms of employment, ETUC, Brussels, 2019, 62, <https://bit.ly/36wLHeX>.

In the given case, the contracts of the delivery service companies operating in Georgia contain a number of provisions that present the main activity of the company as creating and developing a “platform” application (thus, the company considers those who are specifically involved in this activity as employees)³⁷. And food / product delivery service is a subsequent event caused by this core business. According to this logic, platform companies, as software, application providers, enable couriers, caterers, and customers to connect with each other.

The emphasis on the “platform” as an electronic information service can be seen throughout the text of the agreements under consideration. It is clear from the definition of “platform” as defined in one of the agreements that the company sees its role in providing intermediary services through the platform between partners (food and trade facilities) and consumers and couriers. However, under Section 2.3 of the Agreement, through the platform, the company acts as the sole provider of electronic information services and is not a party to the delivery agreement. According to the first article of another agreement, the main activity of the company is the creation and development of an application, and the role of an intermediary in the delivery chain is only an adjacent activity. At first glance, these provisions are irrelevant to the legal relationship between the courier and the company, and the purpose of inclusion in the contract is vague.³⁸ However, as previously mentioned, the contracts made by the stated companies are based on the knowledge of the international standards that define the existence of labor relations. In this case, as mentioned above, the criterion is relevant, according to which a person is considered employed if he / she performs a job that is part of the “usual” activities of the company.³⁹ Accordingly, the above-mentioned provisions in the agreements and the focus on the development of the “platform” as the main activity are aimed at “bypassing” this criterion. However the compliance of this record of the contract with the reality is extremely doubtful. The fact is that the purpose of the electronic platform is to provide delivery service, therefore, the development of the platform is not something separate and, moreover, cannot be considered as a “core” activity of the company; Moreover, some argue that such a statement is far from the economic reality and even a common sense.⁴⁰

37 This is the why the Glovo agreement states that an “independent contractor” will operate in a different way from a Glovo employee.

38 A similar text, with almost identical wording, is given in Article 5 of the contract.

39 See for example, California Labor Code, Section 1750.5(c), <https://bit.ly/3k95DMX>.

40 United States: Supreme Court of State of California, No. CGC-20-584402, Order on Peoples Motion for Preliminary Injunction and Related Motions, August 10, 2020, 5.15, <https://bit.ly/3r9B1N4>.

C) Platform-based companies: Intermediary or an employer?

In modern labor relations, a persons and a legal entity can act as an intermediary between the employer and the employee⁴¹, for instance, as an employment agency does. Standard “intermediary” services are a different legal category and have little to do with the “mediation” of delivery service companies. Also, the mediator usually does not become a party to the employment contract.⁴²

In this case, the platform companies try to present themselves as “intermediaries”, but unlike the standard “mediation” activities in labor relations, when the agency connects the employer and the employee, the delivery service companies act as intermediaries between the food, the courier and the customer. At the same time, none of the named entities is formally an employer of the courier and the latter is given a status of an “independent contractor”.

The agreements under consideration contains number of provisions that serve to strengthen the intermediary status of the platform provider companies. According, to the “Courier Confirmation Letter” of an agreements, an courier “appoints the delivery service company” as [its] agent⁴³. Under the agreement, through the platform, the company acts as a courier agent in mediating delivery agreements between them and clients.

A “delivery agreement”, in turn, is defined as an order delivery agreement between a client and a courier entered into force through the company’s platform and deemed to have been initiated from the moment the courier confirms receipt of the request on the application.⁴⁴ It should be noted that the mentioned supply agreement and, in general, the legal relationship between a courier and a customer is artificial from the beginning to the end and in practice, it is clear that by receiving an order and clicking the button, the courier does not enter into any legal relationship with a client, and, on the other hand, neither the customer perceives him/herself as a party to the delivery agreement: it uses a particular company platform and thus it perceives this company as its counterpart.

41 For example: Home Work Convention, 1996 (No. 177), International Labour Organization (ILO), article 1, <https://bit.ly/3AXBd6t>

42 Private Employment Agencies Convention, 1997 (No. 181), International Labour Organization (ILO), Article 1, <https://bit.ly/2U42xiN>.

43 Bolt’s “Courier Confirmation Letter” also states: “You acknowledge and accept that you provide delivery service to customers as an independent entity and Bolt is not your employer and does not have any agreement with you to regarding providing delivery service. Each time you receive a delivery order from a client on the Bolt Food platform, a delivery agreement is made between you and the client, in which Bolt participates as an intermediary through the Bolt Food platform.”

44 Ibid. Article 2.2.

According to the agreement, the company is an intermediary between the courier and the customer and does not participate in the provision of services.⁴⁵

It should be noted that such an approach by platform-based delivery service companies and their representation as intermediaries has been severely criticized as these companies actually have “unprecedented control” over employees, including through a use of an algorithm-based system.⁴⁶ In addition, the California District Court found it “fatally incorrect” to consider these types of companies as mere “technology intermediaries.” The Court noted that Uber, a taxi-ordering-app, uses technology as a tool in a broader context, and that it “does not just sell solemnly a software, but a travel.”⁴⁷ Therefore, in order to determine the essence of the company’s activity, first of all, the essential aspect of this activity must be considered (and not how, in what way the service is delivered), which shows that in the given case the platform-based delivery service companies are “technologically sophisticated” delivery companies⁴⁸ and not technology companies.⁴⁹

Thus, it is clear that the provisions of the contracts regarding the “intermediary” function of the delivery service companies, again serve as a legal disguise for the main activities of the company and, consequently, the employment relationship, although the analysis of the factual circumstances shows that the activity of these companies is the delivery of a customer service, which is carried out through the couriers.

45 General clause of Glovo Contracts and, also, Article 1.2.

46 See for example Kenney, Martin, and John Zysman, „The Rise of the Platform Economy“, *Issues in Science and Technology*, 2016, 32(3) (Spring), <https://bit.ly/3i44Om6>.

47 O’Connor v. Uber, No. 14-16078 (9th Cir. 2018), 10, <https://bit.ly/3i5RNZd>.

48 Ibid.

49 This issue is related to the discussion of the primary and secondary activities discussed above. The fact that Glovo and Bolt are supply companies and not technology companies also means that the couriers who are primarily involved in the company’s core business are employed and not independent contractors whose work is beyond the scope of the company’s core business.

Labor Beyond Employment

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For any country, a qualitative, as well as quantitative, statistical description and analysis of the local structure of the labor market, is an incumbent premise for defining general labor policies. In order for countries to be able to characterise the structure of the labor market, international organizations, primarily the International Labor Organization, have been developing and proposing variables for classifying workers and forms of labor in general over the years. These classifiers are also pertinent for ensuring synergy between countries, and they are shared internationally, with some modifications taking into account local contexts.

In addition, the classification of forms of labor is germane at the legislative level to determine the scope of labor legislation and the actors of labor relations.

Different countries employ different models for classifying employment and forms of labor, although for the most part the classification is based on international variables. Georgia is no exception and the Georgian National Statistics Office relies on the recommendations of the International Labor Organization.

In the classification of forms of employment we find three main dimensions, these are:

- Formal and informal employment
- Standard and non-standard forms of employment
- Employment and self-employment (which overlaps with the above two categories)

Each of these concepts has defined variables according to which this or that form of employment falls into a particular category, although some labor practices are difficult to describe with standard classification variables or barely fall within the classification threshold. This difficulty is primarily due to the fact that sometimes it is formidable not only to determine the specific type of employment but also to ascertain whether the matter concerns employment as such - whether it constitutes an employment relationship between the employer and the employee. There are groups of workers who are not employed, and as they do not qualify as self-employed, they fall in the category of the so-called “gray area” between hired employment and self-employment, their forms of labor may be different and in some cases take the form of entrepreneurial or other types

of relationships. At the same time, it can belong to both formal and informal sectors, and in some cases, it can look like both standard employment and non-standard forms of employment.

In developing countries, such as Georgia, small businesses are particularly inclined to avoid entering into labor relations and assuming employer obligations and responsibilities. As a result, different types of formal or informal relationships are formed in a number of economic sectors. In such cases, we often face non-standard forms of labor, disguised employment / dependent self-employment. Typically, in cases where the employer tries to avoid hiring, there is a disproportionate balance of power between the parties, and as a result, we encounter more vulnerable, unstable forms of employment, a labor force without a labor code and social guarantees. The forms and structure of labor in this system are sporadic and varied, making it difficult to describe them using standard labor relations parameters and classifiers. Often in one enterprise, we encounter labor relations of different types and forms at the same time or entrepreneurial relations similar to labor relations.

Below are some examples of labor practices common in Georgia, the description of which makes it difficult to speak unequivocally whether there is an employment relationship in a particular case (relationship between employer and employee) and if so, what form of employment we are dealing with.

Trade at markets

According to the National Statistics Office of Georgia,⁵⁰ in 2020, 201 economic entities were operating in Georgia, engaged in market trades and the organization of markets, of which 30.3% (61 units) were located in Tbilisi. As for the number of traders, there are 53,900 trade points in the territory of the markets and fairs operating in Georgia, where on average **37,800 persons trade in one day**.

If we look at the organization of labor in the markets, formally we are dealing here with an entrepreneurial relationship between a landlord and a tenant. Traders pay different types of formal fees to the market administration, usually, these are 1. One-time payment for the right to trade 2. The daily or monthly payment for renting a commercial space 3. In some markets, there is a mandatory insurance payment, which provides for fire insurance. In return, the trader has the right to operate in a specific area of the mar-

50 https://www.geostat.ge/media/39643/ბაზრების-და-ბაზრობების-ორგანიზებით-დაკავებული-ევ.სუბიექტები_2020.pdf

ket. It is difficult to talk about the existence of an employment relationship between the market administration and the trader since the variables necessary for the conclusion of the employment relationship are not met, first, the trader does not receive periodic remuneration from the market administration, the trader is not formally required to work every day (although they are required to pay the rental fee every day), etc. On the other hand, market and fair traders somewhat meet the classification of self-account workers. According to the International Labor Organization, self-account workers are those who work independently or with a partner (s), whose pay is directly dependent on income from the production of products or services, and do not have other employees on a regular basis.

The essence of the problem is that the employees of the market have to work in difficult working conditions, and the administration of the market is completely relieved of all obligations. Lease agreements in Georgia are often short-term, and after the expiration date, the market administration can arbitrarily increase the rental payment. In addition, the market administration is not obliged to take care of the market territory, to provide infrastructure for the market traders, which would shelter employees from cold weather, rain, and wind. Traders themselves pay utility bills. Also, they do not have places to store products in the market territory, and, thus, they have to pay a fee for storing products. The administration does not provide lavatories and clean water for traders, for which they have to pay an additional fee.

Traders can not enjoy the minimum benefits that hired employees have - paid leave, maternity leave, and reimbursement of leave from the state budget; Their right to not show up for work during illness is also hindered, as in such a case they still have to pay rent. They cannot participate in the accumulative pension scheme. Market employees are deprived of all types of social guarantees. They are the most vulnerable segment of society, which most needs solid guarantees and job protection, however, contrarily, their job is most vulnerable.

To summarize, market traders are indeed not involved in the labor relations, and in the entrepreneurial relationship between them and the market administration, there is a noticeable imbalance of forces in favor of market administration. We end up with a category of workers who are outside the scope of the Labor Code, the state does not see them as employees, can not offer social benefits, thus making their labor vulnerable.

Employment at beauty salons

Small beauty salons are a good example of such forms of employment, when in one enterprise we can identify several types of entrepreneurial or labor relations. An example of hairdressing practice is cited in the ILO 2018 Statistical Definition and Measurement of Dependent Self-Employment as an evident example of disguised employment or dependent self-employment. According to the document, a common feature of beauty salons is that hairdressers “rent” a chair from the salon owner, also buy the necessary materials (shampoos, dyes, etc.) from them, and are obliged to follow the salon pricing policy, apply corresponding tariffs. They charge a service fee to customers, however, a portion of the fee is paid to the salon owner. In some cases, they pay state taxes and make social contributions. If they do not have clients on a particular day, they are left without pay. The work schedule, the opening time of the salon, and the distribution of new clients among the hairdressers working in the salon can be determined by the salon owner. In these cases, hairdressers are self-employed in the sense that they can retain their clients, they have invested in their skills, and can also employ their own equipment. However, the salon owner controls prices, certain aspects of market access, and work organization (ILO, 2018).⁵¹

According to the common practice in Georgia, the owner of the salon is a private person or persons who can be considered as self-employed / owners of their own business. They usually do not have employees hired in the salon, instead, we can encounter the following forms of labor:

1. **Self-employment.** The owner provides the service him/herself
2. **Disguised employment / informal employment / informal business relationship / dependent self-employment.** The owners have so-called partner specialists, such as hairdressers (so-called stylists) who provide the service. There may be both a formal, written contract between the owner and the stylist, as well as an informal agreement on the rules for redistributing the income received.

There are cases when stylists use the territory of the salon owner to carry out their activities. Arrangements between the stylist and the owner may be different, for example, the stylist pays the monthly rent and the customer pays the stylist the service fee or the customer pays the salon, while the stylist receives a certain share of the total profit. In either case, the salon owner does not appear to be an employer who would hire a stylist in exchange for a monthly remuneration. In such a case, they

51 https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/meetingdocument/wcms_636042.pdf

would have to maintain and increase the number of salon users, also, the accounting processes would be more complex, they would have to provide the stylist the sick leave, the 24-day paid leave, maternity leave, and other benefits envisaged in the Labor Code. It is much more profitable for a small entrepreneur to avoid hiring and maximize the distribution of production risks to other workers.

3. **Informal employment.** The salon may also employ, for example, a janitor who is in an employment relationship with the salon owner, in terms of the content, but this relationship may take the form of informal employment, without an employment contract. In many cases, such a position may be held by family members or relatives of the owners.

In the third case, it is easy to identify informal employment, as it usually meets most of the parameters offered by the International Labor Organization Recommendation 198 to member countries in determining the existence of the employment relationship:

- Existence of subordination and dependence on the employer;
- Working conditions are defined by the employer;
- The degree of employee integration in the company;
- The work is conducted only or mainly for one party;
- The work is performed by the employee him/herself (they have not hired another person);
- Work is completed at specific times or in a pre-arranged location;
- The work has a specific duration and is continuous;
- Work performance requires that the employee be available at a specific time;
- The client provides the employee with the necessary equipment to perform the work;
- The employee receives periodic remuneration;
- This remuneration is the sole or main source of income for the employee;
- Rights are recognized (weekly vacation, annual leave);
- Reimbursement of business trip/transportation expenses for the employee;
- The employee has no financial risks related to the performance of the job.

Some of the same parameters are met for the second form of employment presented above, although it is more difficult to determine whether there is an employment relationship between the salon owner and the stylist, as the stylist may have some freedom in organizing their own work (although individual cases may be completely different). Also, the stylist's self-perception is important to consider, in most cases, they will consider themselves self-employed and not as hired employees.

An important aspect of identifying an employment relationship is also the analysis of the employee's economic and personal dependence on the employer. Labor relations give rise to the economic and personal dependence of the employee on one employer. Economic dependence means that the employee assumes production risks, even in part. Since employees have one major employer, a major portion of their income is generated from this employment relationship. Consequently, they are not open to other players on the market. The demand-supply between these two parties is usually not in equilibrium, the volume of the demand depends on the economic situation of the client company at a particular moment, therefore, it is obvious that the employee shares the production risks. In addition, the volume of the employee's work and consequently the income may increase and decrease in the face of increasing or decreasing demand for products, while such fluctuations do not apply to the hired employee, consequently, their degree of stability is high. And if we compare the situation of the self-employed in terms of economic dependence, it is true that the self-employed also share the risks of production, however, they have more opportunities because they do not depend on only one customer. As for personal dependency, ie subordination, naturally, the client company strictly determines the working conditions, time, place, content of the work (Muehlberger 2007b). This is why the term dependent self-employment is often used to describe cases where an employee has hired another person as self-employed, although the economic and personal dependence of the employee on them as an employer is evident.

In the case of salon workers, it is clear that in both types of relationships discussed above, both cleaners and stylists have an economic and personal dependency towards the salon owner, although production risks are largely shifted to their side. Hired employees, in a classical sense, are less likely to share production risks, for example, when the company's orders are periodically reduced, their wages do not change. What happens, for example, in the case of a salon stylist? Their income is directly proportional to the orders received. Should the number of customers reduce, the revenue also decreases. This is one of the main factors that make the job of the stylist vulnerable and unprotected in the business relationship described above.

Similar forms of labor can also be found in sewing salons, beauty salons, beauty centers, car service centers, fast food outlets, bakeries, etc.

In these sectors, the chaotic forms of business or labor relations described above are most often a certain hybrid of the landlord-tenant relationship and the labor relationship, where the balance of power is usually upset in favor of the property owner. Why is this form of activity problematic for the employee-tenant? Below are some key issues:

1. The most problematic similar relationships occur when no contract has been concluded between the parties to the working relationship and there is only a verbal agreement. In this case, neither party is protected, especially the employee, who may fall victim to a unilateral change in the verbal agreement. For example, there are cases when the property owner asks the employee to pay additional fees, increases rent, or reduces the share of profit. Given the high unemployment rate in the country, it is quite likely that the breakdown of the existing relationship will be more damaging to the employee than to the employer/property owner, therefore the bargaining power is unequal between the parties.

2. As noted, the transfer of production risks to the employee side of the relationship falls into the category of vulnerable employment and at the same time, employees are constantly experiencing a lack of financial security. This problem usually also leads to a burnout problem as a chain reaction. Employees are focused on serving the maximum number of customers because their income is directly proportional to the number of clients, therefore, they are focused on devoting as much time as possible to work and less - to rest.

3. There is no organizational regulation of work in the workplace, work and break time - as provided by the Labor Code - is not ensured, employees can not enjoy the same benefits as hired employees - paid leave, overtime pay, sick leave, ma/paternity leave and minimal remuneration for maternity leave by the state, remuneration for working during official holidays, etc. For both the informal workers and the disguised self-employed, there is a high probability that workers will not be able to enjoy the benefits provided by the Labor Code.

4. Employees find themselves beyond the social protection systems. Employees involved in the forms of employment described above are benefiting from the accumulated pension system. It is true that in Georgia, even those involved in formal and standard labor relations do not have access to various social security guarantees, such as, above all, unemployment insurance, but in the case of informal and disguised employment, workers are a priori deprived of these prospects.

5. The types of employment described above virtually preclude the possibility of unionizing employees, which can have two main reasons: Firstly, this is the perception. If a person does not identify themselves as an employee, and the employer - as an employer, it is clear that they will not perceive themselves as carriers of labor rights, that can be demanded and enforced. The second reason is also that informal and non-standard workers are usually disintegrated and scattered, lacking a physical gathering space, which reduces the prospect of organizing.

The role of the state and the review of best practices

For decades, there has been a strong tendency in Georgia to form employment relationships different from hired employment, which has a logical historical explanation. As a result of the collapse of the Soviet Union and the structural transformations carried out through the so-called “shock therapy” (Bernabe, 2005) in Georgia it was not possible to create the necessary environment for the formation of solid institutions and formal economic relations, thus, the economic and labor relations were mainly informal. According to the International Monetary Fund, the share of the shadow economy in the total Georgian economy in 1991-1999 ranged from 62% to 72% (Medina, Schneider, 2018).⁵² Although we observe a downward trend in the shadow economy, according to the same indicators (53.07% - as of 2015), we can still say that the share of the shadow economy in the country is high, which naturally points to informal economic and labor relations. At the same time, as of 2020, 31.7% of employees in the non-agricultural sector in Georgia are informally employed (Georgian National Statistics Department).

Informal economic and labor relations are more prevalent during small business activities. Small entrepreneurs usually try to avoid business relationships that put more responsibilities on the business, try to avoid concluding labor relations or just any kind of formalization. What is the state policy in regards to establishing informal relations on the one hand and frameworks different from labor relations on the other?

Due to the fact that citizens in Georgia are deprived of formal employment opportunities, it is clear that informal or non-hired employment is the only way for them to earn a living. State that fails to offer its citizens alternatives, turns a blind eye not only to the disguise of labor relations or shadow labor relations but even to informal economic activities.

If we evaluate the state approaches and standards in general, **it can be said that state structures make more efforts to prevent informal business activities and ensure their formalization than to identify informal employment.** This is evident in the existence of a registry of payers of fixed taxes. Under Georgian law, the status of a fixed taxpayer can be granted to a natural person who is registered as an individual entrepreneur, is not a value-added taxpayer, and carries out one or more fixed taxable activities, namely owns a bakery, beauty salon, or car maintenance and repair service.⁵³ Persons registered for the mentioned activities pay a monthly fee, which is set at 30-100 GEL per tax object. In

52 <https://www.imf.org/en/Publications/WP/Issues/2018/01/25/Shadow-Economies-Around-the-World-What-Did-We-Learn-Over-the-Last-20-Years-45583>

53 <https://www.rs.ge/PersonsPreferentialTax?cat=3&tab=1>

the case of beauty salons, the fee is set at 50 GEL for one chair/table. The imposition of such a tax by the state indicates that it is interested in formalizing certain activities and receiving state fees in the form of taxes, although it is not interested in detecting labor relations in salons, bakeries, or auto service facilities and formalizing these relations. As of today, 25,274 entities are registered in the Register of Fixed Taxpayers. Roughly speaking, this means as many small organizations where it is expected that there are informal or other forms of labor relations that put the job operator in a vulnerable position.

Why is it important for the state to be interested not only in the collection of taxes from barbers or bakeries but also in the workers behind these entities, their employment forms, and working conditions?

First and foremost, it is important because there may be informal business relationships where the principle of equality in the negotiations between business partners may be violated and citizens may be restricted from going to court in case of breach of contract.

The state should ensure the provision of benefits to citizens, as those available in formal, hired employment. Hired employment is generally considered to be the most protected form of labor and, conversely, high rates of informal employment and non-standard employment are associated with low labor standards, insufficient social protection, indicating a high level of vulnerable employment in the country.

Formal employment growth is doubly beneficial for the state, on the one hand, it no longer has tax deficits, the number of income taxpayers increases, on the other hand, formal employment growth contributes to a more stable social environment in the country, involving more citizens in social protection. In addition, formal employment is a facilitator of an employee organization, and organization is one of the most important conditions for employees to exercise their rights.

According to the European experience, for those who work in the so-called gray area, for a group of workers who are neither self-employed nor hired and are present in the so-called gray zone, different approaches are found in different countries of the world. Transforming all types of employment into hired employment would be an unrealistic goal, although different countries are finding ways to create social guarantees and better working conditions for this group of employees. To this end, we can distinguish four main areas of policy:

1. Recognition of labor relations and solving the problem of employment misclassification

First of all, the state needs to see, recognize, classify and describe the group of workers in the so-called gray area. Recommendation N198 on Labor Relations was adopted at the 2006 International Labor Conference to assist countries in tackling employment classification. This recommendation introduces that the determination of the existence of an employment relationship should be guided primarily by the facts relating to the performance of work notwithstanding how the relationship is characterized by the parties. This principle is employed by many legislators in different countries, for example, Bulgaria, Ireland, Italy, Poland, and the United Kingdom (Williams, Lapeyre, 2017).

In some EU countries, such as Germany, Italy, the Netherlands, and Portugal, there is a hybrid legal category for a group of workers who are neither employed by hiring nor self-employed. In this way, they are more endowed with certain rights and are involved in social protection systems. In some countries (France, Greece, Luxembourg) “dependent self-employed” are considered to be hired employed and the Labor Code is applicable. And in some countries, specific criteria are introduced according to which an employee is classified as either hired worker or self-employed. (ILO, 2016)

In Georgia, in the first stage, for the state to develop employment policies, it is necessary to identify and describe various employment practices at the national level, be it standard or non-standard forms of labor relations, self-employment, or dependent self-employment. In the second stage, it is important to introduce an obligation for the parties to formalize this type of agreement and, in the best case, to make a specific form of employment declaratory. The purpose of the formalization should not initially be to impose an additional tax burden on the parties but to obtain information for the full picture.

2. Incentivizing hired employment

The government can employ various means to facilitate the transformation of different types of entrepreneurial relationships into labor relations. As mentioned above, the main motivation of a business when avoiding an employment relationship is seeking more financial benefits and more flexibility. How should the state persuade business people to enter the labor relations? One of the mechanisms is to introduce specific criteria for defining labor relations and to impose appropriate sanctions for those who try to disguise labor relations. In some countries, the sanction is to impose an obligation to reclassify labor relations, while in others monetary or civil sanctions are imposed. In most EU

countries, the sanction is an obligation to requalify employment relations, while in others it is the imposition of monetary or civil liabilities. In most EU countries, the sanction is an obligation to requalify. An existing business relationship is not abolished but is given the qualification of an employment relationship from the moment the relationship commenced. Such regulations have the effect of “stimulating declaration”. In addition, the employee is given all rights, especially the minimum wage and pension contributions, and the employer is obliged to pay them for the period from the beginning of the business relationship between them and the employee. This is the case in the Czech Republic, Finland, France, Germany, Ireland, Luxembourg, Portugal, Sweden, the United Kingdom, and the Netherlands. In other EU member states, reclassification is limited to a certain extent (Williams, Lapeyre, 2017).

However, given the Georgian context, the high level of unemployment, and the structure of the employment market, rather than imposing sanctions, it may be more relevant to create incentives for businesses to encourage hiring.

3. Adaptation of social protection systems

Although there are mandatory or voluntary social contribution schemes for the self-employed in many EU countries, the amount of benefits received by this group is usually lower than for the employed. There is still a noticeable difference in terms of social protection between the self-employed and the employed. For example, in Germany and Greece, a large proportion of the self-employed do not participate in health and pregnancy insurance schemes, and only a few countries (Czech Republic, Denmark, Estonia, Hungary) have unemployment insurance schemes for the self-employed (OECD, 2015: 181). However, there are positive examples, for example, in Austria and France there are compulsory insurances for farmers according to their needs and specifications; Also, insurance for artists and related workers in Germany (Artists Social Insurance Funds). In France, the status of “auto-entrepreneur” was introduced in 2008, which improved the protection of certain categories of the self-employed (European Parliament, 2013).

Germany and Italy have taken various measures to close the gap between those hired on a regular wage basis and increase access to social security. In Italy, separate social security funds were set up for the dependent self-employed so that this form of employment would no longer be used to avoid social contributions. (European Parliament, 2013).

The World Confederation of Employment (2016) states that social protection should be built around a person’s full career and not just on their employment contracts and status-

es. The social protection systems created in Europe during the domination of standard forms of employment need to be developed while developing countries need to create new systems that will adapt to the existing labor market system and modern forms of labor. In the modern labor market, social benefits must meet at least three criteria:

1. Should be mobile, tied to the work of the individual and not to their employer;
2. Should be universal, apply to all employees (regardless of employment status)
3. The employee's social contributions should be tied to the hours worked, the work done and the income generated. (Kajaia, 2020)

Although there are no strong social schemes in Georgia, even for hired workers, the above recommendations are still to be taken into account, even in terms of the accumulative pension system and paid maternity leave. It is important for all types of workers regardless of their employment status to be encouraged and able to join the accumulative pension system, it is pertinent to reduce contributions from 4% to 2% for the self-employed who voluntarily participate in the pension scheme, as this may be an additional barrier for them to join the pension scheme while increasing the state contribution from 2% to 4%. Consequently, the state needs to cover the share of contributions that the employer pays in case of hired employees.

As for paid maternity leave, it is important that, first of all, the amount of paid leave is adequate for the term of maternity leave and the employee's salary (instead of the existing 1000 GEL), and secondly, it is important to expand this benefit and ensure the participation of all types of employees in the scheme.

4. Formation of employee self-perception

In addition to the state-endorsed and pursues policies, it is important to strengthen the mechanism for collective bargaining in the country, in which the role of labor unions and associations, as well as that of civil sector, is pertinent. It is important to study the labor practices and forms of employees in the "gray area", conduct an in-depth assessment of the specifics of their work, to identify and describe problematic sectors. At a later stage, it is important to carry out informational and educational activities, which will nudge workers to self-identify as employees. Why is it important for workers to identify themselves as employees? This promotes their desire and motivation to form a healthy working environment in the workplace and the working conditions regulated by the Labor Code. In addition, self-identification as an employee can be considered as an important precondition for promoting workers' unionization.

Considering the example of stylists again, imagine a stylist who works in a salon and is temporarily in a business relationship with a salon owner. They agree on specific terms, mainly related to profit distribution. For a stylist in such a case, the salon owner is not the employer, and they consider themselves more in the category of the self-employed than the employee, and the organization of their work and the rate of their labor are to some extent negotiable or derived from specific daily needs. In a situation where most of the production risks are borne by the stylist, their motivation is to provide services to as many customers as possible. It is expected that the amount of working time, vacation, work on weekends is organized not according to the norms of the Labor Code, as it happens in the case of hired employees, but more chaotically. However, in the present case, there is no employer and employee as such who should be the parties as defined by the Labor Code and subject to its regulation. The stylist, in this case, can not identify him/herself as an actor in the Labor Code and, consequently, neither party is motivated to follow the norms provided by the Code, which is a necessary prerequisite for a fair and healthy organization of the work environment.

To conclude, labor beyond employment is an important issue and it requires further, in-depth research for this large group of employees to gradually become part of labor policy. It is important to outline research-based strategies on how the existing forms of labor can be transformed into more secure employment. It is important to explore what types of social schemes need to be initiated to ensure the involvement of all groups of workers in social protection schemes and, ultimately, to achieve a more secure, equitable employment relationship and a protected social environment.

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