

MINIMUM WAGE As A HUMAN RIGHT

International Standards and Prospects for Georgia



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**Minimum Wage as a Human Right –
International Standards and Prospects for Georgia**

Social Justice Center

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Introduction

As of today, the labour remuneration for many people in Georgia is so low that it does not even meet their basic physical needs. This situation is contrary to international human rights law, according to which all employed persons should receive decent remuneration for their work. Decent remuneration implies a remuneration sufficient for ensuring the needs of decent living for the employed persons and their families. The minimum wage is a substantial means for guaranteeing decent remuneration for all workers in practice. It represents a minimum threshold of labour remuneration controlled by the state, which must be established according to the needs of decent living. The existing minimum wage in Georgia is extremely low and inadequate to meet the requirements of decent living.

The concept of fair labour remuneration related to decent living existed only as a declaratory statement in international human rights law for a long time, and it was not expressed in the concrete international mechanisms of human rights protection. This concept first appeared in the Universal Declaration of Human Rights (UDHR) adopted in 1948. The UDHR affirmed the right of all employed persons to receive a just remuneration, ensuring an existence worthy of human dignity for them and their families. It took several decades after this moment for the concept of decent remuneration to appear in the legally binding international human rights agreements¹, and the guiding standards were developed for its practical realization.

The present research aims to ascertain the content of the minimum wage as a human right and facilitate the formation of a vision for developing the definition of minimum wage and its protection system. For these purposes, the research envisages the following objectives:

1. Ascertaining the content of the minimum wage as a human right by analysing the standards of the main international human rights mechanisms, including identifying the common characteristics, similarities and differences;
2. Analysing the main theoretical foundations, based on which the right to minimum wage can be justiciable by the international human rights mechanisms;
3. Analysing the policy, legislation and practical situation regarding the issues of minimum wage in Georgia in the light of international human rights standards;
4. Envisioning ways for elaborating the definition of minimum wage and its protection system;

According to the above aim and objectives, within the framework of the desk research, the following sources and information were analysed by using three main methods of legal research – systemic analysis, comparative legal analysis and applying legal norms to a concrete case in question:

- The hard and soft norms of international human rights law, including the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the European Social Charter

¹ The International Covenant on Economic, Social and Cultural Rights, Article 7, paragraph A, subparagraph II: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

The Initial Version of European Social Charter, Article 4, Paragraph 1: <https://www.refworld.org/docid/3ae6b3784.html>.

The Revised Version of European Social Charter, Article 4, Paragraph 1: <https://rm.coe.int/168007cf93>.

(ESC), the explanations provided by their respective supervisory bodies regarding the right to decent remuneration and minimum wage and the assessments of the situation in various countries in this regard;

- The conventions and recommendations of the International Labour Organization (ILO);
- The explanations of the international human rights mechanisms regarding the issues of justiciability of social and economic rights;
- Academic literature regarding the theoretical foundations of justiciability of social and economic rights;
- The National Strategy for Labour and Employment Policy of Georgia and its Action Plan, and the relevant legislation regarding the issues of labour remuneration and minimum wage;
- The assessments of international human rights mechanisms regarding the issues of decent remuneration and minimum wage in Georgia.

The Right to Minimum Wage According to Main International Human Rights Mechanisms

International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) enshrines the right to **fair, equal and decent remuneration**. The rights related to labour remuneration are presented under the umbrella of the right to just and favourable conditions of work, stipulated by Article 7 of the Covenant. The state parties to the ICESCR recognize the right of all employed persons to the enjoyment of just and favourable conditions of work, which include, *inter alia*: fair wages, equal pay for equal work, equal remuneration for work of equal value and the remuneration which ensures a decent living for workers and their families².

The General Comment No. 23 of the UN Committee on Economic, Social and Cultural Rights (CESCR) refers to various factors, which should be taken into account for determining a **fair wage**. Among them are both the output of the work and the factors related to the responsibilities of the worker, including the level of skill and education required to perform the work, the impact of the work on the health and safety of the worker, specific hardships related to the work and the effect on the worker's personal and family life. The assessment of fairness should give particular attention to the situation of female workers, including the areas of employment where their work and pay have traditionally been undervalued. The CESCR underlines that ***“for the clear majority of workers, fair wages are above the minimum wage”***³.

The right to equal remuneration encompasses equal pay for equal work and equal remuneration for work of equal value, according to the standards of CESCR. Not only should workers receive equal remuneration when they perform the same or similar jobs, but their remuneration should also be

² The International Covenant on Economic, Social and Cultural Rights, Article 7:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

³ United Nations, Economic and Social Council, Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work, Paragraph 10:

<https://digitallibrary.un.org/record/1312521?ln=en>.

equal even when their work is different but has equal value. The assessment of work of equal value should be based on objective criteria and cover a broad selection of functions, such as skills, responsibilities and effort required by the worker, as well as working conditions. It could be based on a comparison of rates of remuneration across organizations, enterprises and professions. The right to **equal remuneration** applies to all sectors of employment and all workers, without distinction of any kind, such as race, ethnicity, nationality, migration or health status, disability, age, sexual orientation, gender identity or any other ground. **Equality between men and women is particularly important in this context and merits a specific reference in Article 7 of the ICESCR⁴.**

Closely linked to the notions of fairness and equality, labour remuneration must also satisfy another essential requirement – provide a possibility of **decent living** for workers and their families. According to CESCR, the minimum wage represents a means for achieving this aim. A minimum wage is the minimum amount of remuneration an employer should pay a wage earner for the work performed during a given period, not to be reduced by a collective agreement or an individual contract. The minimum wage should ensure a sufficient amount of remuneration for meeting the necessities of decent living. These needs include both the adequate conditions of living, such as food, water, sanitation, housing, clothing, commuting costs and the other rights enshrined in the Covenant, such as social security, health care and education⁵. **The minimum wage should be recognized in legislation, defined with reference to the requirements of a decent living⁶.** When setting the level of minimum wage, the requirements of economic and social development and achievement of a high level of employment need to be considered. However, **such factors should not be used to justify a minimum wage that does not ensure a decent living for workers and their families⁷.**

The minimum wage must be applied systematically and protect the fullest range of workers, including workers in vulnerable situations. The minimum wages may differ across sectors, regions, zones and professional categories, so long as they are applied without discrimination of any kind. When setting minimum wages at the sector or industry level, the work performed in sectors predominantly employing women, minorities or foreign workers should not be undervalued compared with the work in sectors predominantly employing men or nationals. In order to ensure effective application of minimum wage regulations in practice, appropriate enforcement measures must be applied, including the **effective labour inspections**. The failure of employers to comply with the minimum wage obligations should be subject to penal or other adequate sanctions. The state bodies should ensure providing relevant information regarding the minimum wages to the public, in accessible means⁸.

According to the CESCR guidelines on the form and content of reports to be submitted by the state parties, following information should be submitted regarding the issues of minimum wage:

- Whether a national minimum wage has been legally established in the country and the categories of workers to which it applies, as well as the number of persons covered by each

⁴ United Nations, Economic and Social Council, Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work, Paragraphs 11-15: <https://digitallibrary.un.org/record/1312521?ln=en>.

⁵ *Ibid*, Paragraph 18.

⁶ *Ibid*, Paragraph 21.

⁷ *Ibid*, Paragraph 22.

⁸ *Ibid*, Paragraphs 22-24.

category. If any category of workers is not covered by the national minimum wage, the state parties should provide relevant explanation;

- Whether a system of indexation and regular adjustment is in place to ensure that the minimum wage is periodically reviewed and set at a level sufficient to provide all workers and their families with an adequate standard of living, including those who are not covered by the collective agreements;
- In the absence of a national minimum wage, any alternative mechanisms in place in order to ensure that all workers receive wages sufficient to provide an adequate standard of living for themselves and their families⁹.

It should be noted that none of the 171 state parties of the ICESCR has made a reservation regarding the provision related to the minimum wage. As of now, the total of 6 state parties have made a reservation regarding the provisions related to the right to just and favourable conditions of work which concern the following issues: remuneration for public holidays, equal remuneration for equal work of men and women and equal opportunity for everyone to be promoted in his/her employment¹⁰.

In the concluding observations issued during 2021-2023, the CESCR has noted about the concrete problem existing in relation to the minimum wage in 17 countries¹¹ (at the time of writing the present report, the Committee has issued concluding observations in relation to 27 countries in total during the aforementioned period). The problems identified by the Committee and the recommendations made to the state authorities are following:

Problems

➤ **The problems related to the lack of information from the side of the state parties**

- The lack of information regarding the criteria for determining the level of minimum wage;
- The lack of information regarding the amount of the minimum wage;
- The lack of information on the issue of whether or not the minimum wage is sufficient for ensuring decent living for workers and their families;

⁹ UN Committee on Economic, Social and Cultural Rights (CESCR) – “Guidelines on treaty-specific documents to be submitted by state parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights”, Paragraph 19, page 31:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=HRI%2FGEN%2F2%2FRev.6&Lang=en.

¹⁰ Status of Declarations and Reservations, 2 July, 2023:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=en#21.

¹¹ The concluding observations of the UN Committee on Economic, Social and Cultural Rights in relation to following countries: Lithuania (2023), Cambodia (2023), China (2023), Italy (2022), Luxembourg (2022), Guatemala (2022), El Salvador (2022), Bahrain (2022), Serbia (2022), Uzbekistan (2022), Czech Republic (2022), Democratic Republic of Congo (2022), Nicaragua (2021), Bosnia and Herzegovina (2021), Kuwait (2021), Azerbaijan (2021) and Latvia (2021):

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=5.

- The lack of information on the measures undertaken by the state authorities for the effective practical implementation of the minimum wage regulations. Such information includes: the rate of compliance of employers with the minimum wage requirements, the penalties imposed on the employers failing to respect the right to minimum wage and the cases in which the rights of workers have been upheld following action taken by the labour inspectors;
- The lack of information regarding the mandate of State Labour Inspectorates in the informal economy.

➤ ***The minimum wage fails to ensure decent standard of living***

- The amount of the minimum wage is lower than the minimum consumer basket (Serbia)¹²;
- The minimum wage barely amounts to one half of the average salary, failing to provide workers and their families with a decent living (Bosnia and Herzegovina)¹³;
- The minimum wage is not enough to cover the basic needs of a single adult or a single-parent household (Luxembourg)¹⁴;
- The minimum wage is not sufficient to ensure a decent standard of living for workers and their families (Cambodia, El Salvador, Uzbekistan, Czech Republic, Democratic Republic of Congo and Latvia)¹⁵.

¹² The Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of Serbia, 6 April 2022:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=E%2FC.12%2FSRB%2FCO%2F3&Lang=en.

¹³ The Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of Bosnia and Herzegovina, 11 November 2021:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=E%2FC.12%2FBIH%2FCO%2F3&Lang=en.

¹⁴ The Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of Luxembourg, 15 November 2022:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=E%2FC.12%2FLUX%2FCO%2F4&Lang=en.

¹⁵ The Committee on Economic, Social and Cultural Rights, Concluding observations on the second periodic report of Cambodia, 27 March 2023:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=E%2FC.12%2FKHM%2FCO%2F2&Lang=en.

The Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of El Salvador, 9 November 2022:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=E%2FC.12%2FSLV%2FCO%2F6&Lang=en.

The Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of Uzbekistan, 31 March 2022:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=E%2FC.12%2FUZB%2FCO%2F3&Lang=en.

The Committee on Economic, Social and Cultural Rights, Concluding observations on the third periodic report of Czech Republic, 28 March 2022:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=E%2FC.12%2FCZE%2FCO%2F3&Lang=en.

The Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the Democratic Republic of Congo, 28 March 2022:

- *Certain categories of workers remain outside the protection of the system of minimum wage*
- The minimum wage established by law does not apply to all categories of workers;
- Young people are paid less than the national minimum wage and work in substandard conditions;
- There is a high number of workers employed in the informal sector in the country who are not sufficiently protected by labour and social protection guarantees, including the minimum wage;
- There is no statutory minimum wage for the persons employed in the private sector.

Recommendations

- Taking legislative and administrative measures necessary to ensure that the minimum wage is applied to all sectors of the labour market and that **all workers** receive a minimum wage that provides them and their families with a decent standard of living;
- Establishing appropriate and regularly indexed national minimum wage in collaboration with the social partners (workers' organizations and employers' organizations), which will apply to **all workers**, regardless of the **type of contracts, working hour arrangements and sectors of employment**, in order to guarantee decent living conditions for them and their families;
- When setting the level of minimum wage, taking into account General Comment No. 23 (2016) on the right to just and favourable conditions of work;
- Indexation of minimum wage in accordance with the indicators of cost of living;
- Developing an effective mechanism for periodic review and revision of the minimum wage, with the participation of the workers, employers and their representative organizations;
- Strengthening the capacities of state inspection bodies and equipping them with the sufficient material, technical and human resources so that they carry out effective and unbiased monitoring of the minimum wage regulations in all sectors of employment;
- Ensuring safe and accessible ways for submission of complaints regarding the violation of minimum wage regulations;
- Providing information regarding the inspections carried out by the state inspection bodies on the issues of minimum wage, including the rate of compliance of employers

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FCOD%2FCO%2F6&Lang=en.

The Committee on Economic, Social and Cultural Rights, Concluding observations on the second periodic report of Latvia, 30 March 2021:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FLVA%2FCO%2F2&Lang=en.

with the minimum wage requirements, the penalties imposed on the employers failing to respect the right to minimum wage and the cases in which the rights of workers have been upheld following action taken by the labour inspectors;

- Enforcing the minimum wage regulations and carrying out inspections in the informal economy.

Out of 17 countries examined during 2021-2023, where the existence of a specific problem in relation to the minimum wage was revealed, the CESCR determined in case of 9 countries that the minimum wage was insufficient and it did not meet the needs of the decent life. In 6 of these cases it is unclear as to what were the factors that the CESCR took into account when making such a conclusion as the Committee does not provide the relevant explanation (Cambodia, El Salvador, Uzbekistan, Czech Republic, Democratic Republic of Congo, Latvia)¹⁶. In 1 case, when making such a conclusion, the Committee took into account the rate of comparison between the minimum wage and average wage (Bosnia and Herzegovina). In 1 case the Committee took into consideration the rate of comparison between the minimum wage and the minimum consumer basket (Serbia) and in 1 case – the Committee drew attention to the insufficiency of the minimum wage to cover the basic needs of a single adult or a single parent household (Luxembourg).

Within the framework of the Optional Protocol to the ICESCR, it is possible to submit individual communications regarding the violation of specific rights envisaged by the Covenant. As of now, 27 state parties have recognized the legally binding force of the Optional Protocol¹⁷. It should be noted that Georgia is not among these countries. As of now, no individual communication has been examined on the merits by the CESCR regarding the right to minimum wage¹⁸. 4 individual communications have been submitted to the CESCR in which the applicants formally raised the issue of a possible violation of the decent remuneration clause of the Covenant. The Committee found these communications inadmissible for not meeting the requirement of temporal jurisdiction. According to its assessment, the facts described in the communications occurred prior to the date of entry into force of the Optional Protocol for the respondent state and that there was no evidence contained in the communications for concluding that these events continued or any relevant new events occurred subsequent to the entry into force of the Optional Protocol¹⁹.

¹⁶ *Ibid.*

¹⁷ The status of ratification and accession to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, 8 July 2023;

https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3-a&chapter=4&clang=en.

¹⁸ Table of Pending Cases, Committee on Economic, Social and Cultural Rights:

<https://www.ohchr.org/en/treaty-bodies/cescr/table-pending-cases>.

The database of jurisprudence of the UN Treaty Bodies:

<https://juris.ohchr.org/>.

¹⁹ Committee on Economic, Social and Cultural Rights, Communication No. 6/2015, 26 February 2016:

<https://digitallibrary.un.org/record/833511?ln=en>.

Committee on Economic, Social and Cultural Rights, Communication No. 8/2015, 26 February 2016:

<https://digitallibrary.un.org/record/833513?ln=en>.

Committee on Economic, Social and Cultural Rights, Communication no. 12/2016, 20 July 2016:

<https://juris.ohchr.org/>.

Committee on Economic, Social and Cultural Rights, Communication No. 13/2016, 20 July 2016:

<https://juris.ohchr.org/>.

European Social Charter

The European Social Charter (ESC), adopted within the framework of the Council of Europe, represents an important international agreement on the European level regarding the social and economic rights. There are currently two versions of the European Social Charter: the initial version (which entered into force in 1965) and the revised version (which entered into force in 1999). The latter includes additional rights and reformulates some of the rights provided in the original version. Out of 46 member states of the Council of Europe, 42 have ratified one or the other version of the European Social Charter as of today. The majority of the member states, including Georgia, have ratified the revised version of the Charter. The clause related to the decent remuneration is recognized by 25 states in total as of now²⁰.

Both versions of the European Social Charter reinforce the right to a fair remuneration and consider a decent remuneration as one of its components. Both versions of the Charter impose similar obligations on the contracting states for the effective realization of the right to a fair remuneration:

1. To recognise the right of workers to a remuneration such as will give them and their families **a decent standard of living (decent remuneration)**;
2. To recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
3. To recognise the right of men and women workers to equal pay for work of equal value;
4. To recognise the right of all workers to a reasonable period of notice for termination of employment;
5. To permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards²¹.

According to the explanation of the European Committee of Social Rights (ECSR), the minimum wage is a means for ensuring **decent standard of living** for the workers and their families. **Decent standard of living goes beyond merely material necessities such as food, clothing and housing and includes resources necessary to participate in cultural, educational and social activities.** The level of

²⁰ Article 4 (1) of the Revised European Social Charter is recognized by 21 states and the Article 4 (1) of the initial version is recognized by 4 states as of now:

<https://rm.coe.int/country-by-country-table-of-accepted-provisions/1680630742>.

²¹ European Social Charter (1961), Article 4 (1):

<https://rm.coe.int/168006b642#:~:text=All%20workers%20have%20the%20right%20to%20a%20fair%20remuneration%20sufficient,for%20themselves%20and%20their%20families.&text=All%20workers%20and%20employers%20have,their%20economic%20and%20social%20interests>.

European Social Charter (1996), Article 4 (1):

<https://rm.coe.int/168007cf93>.

minimum wage should be sufficient to meet these needs, supplemented by any additional benefits where applicable²².

According to standards of ECSR, to be considered fair within the meaning of Article 4§1, the minimum wage paid in the labour market must not fall below 60% of the net average national wage. The assessment is based on net amounts. Where the net minimum wage is between 50% and 60% of the net average wage, it is for the State Party **to provide evidence** that this wage ensures a decent standard of living. Such can be the information regarding the additional social assistance benefits available for the minimum wage earners, for example, exemption from the co-payment in respect of health care or the right to increased family allowances. When the minimum wage is below 50% of the net average wage, the situation will be held to be in breach of the Charter. It should be also underlined that the wage does not meet the requirements of the Charter, irrespective of the percentage, if it is below the poverty line in the given country²³.

When a statutory national minimum wage exists in the given country, its net value for a full-time worker is used as a basis for comparison with the net average full-time wage. If possible, the calculation is made across all sectors for the whole economy, but otherwise for a representative sector, such as a manufacturing industry or for several sectors. In the absence of the statutory national minimum wage, the lowest wage determined by collective agreement or the lowest wage actually paid in the labour market is taken into account²⁴.

The right to decent remuneration applies to **all workers**. It covers both the public and private sectors of employment, including the forms of employment not covered by the collective agreements, atypical forms of employment and workers with special status (e.g. migrant workers). Atypical jobs may be part-time work, temporary work, fixed-term, casual and seasonal work. The ECSR pays special attention to workers who are employed in emerging arrangements, such as the gig economy or platform economy, who are incorrectly classified as self-employed and therefore, do not have access to the applicable labour and social protection rights. Because of the misclassification, such persons cannot enjoy the rights and protection to which they are entitled as workers. **These rights include the right to a minimum wage**²⁵.

The European Committee of Social Rights issued conclusions concerning 19 countries during 2022. In all cases, the Committee asked targeted questions and requested information as to what measures were taken by the state authorities in order to ensure the fair remuneration sufficient for a decent standard of living, for workers in atypical jobs, those employed in the gig or platform economy and workers with zero hours contracts²⁶. The Committee also asked for information about enforcement activities, carried out by the labour inspectorates or other relevant bodies when it comes to the circumvention of minimum wage requirements. The attention was drawn to the following schemes in

²² European Committee of Social Rights, Conclusions 2010 – Statement of Interpretation – Article 4 (1): [Conclusions 2010 - Statement of interpretation - article 4-1 \(coe.int\)](https://rm.coe.int/conclusions-2010-statement-of-interpretation-article-4-1-coe.int).

²³ The Digest of the Case Law of the European Committee of Social Rights, pages 72-73: <https://rm.coe.int/digest-ecsr-prems-106522-web-en/1680a95dbd>.

²⁴ *Ibid.*

²⁵ European Committee of Social Rights, Conclusions 2022 - Albania, pages 14-15: <https://rm.coe.int/conclusions-2022-albania-e/1680aa985b>.

²⁶ The Conclusions of the European Committee of Social Rights issued during 2022: [https://hudoc.esc.coe.int/eng#{%22sort%22:\[%22escpublicationdate%20descending%22\],%22escdctype%22:\[%22Conclusion%22\]}](https://hudoc.esc.coe.int/eng#{%22sort%22:[%22escpublicationdate%20descending%22],%22escdctype%22:[%22Conclusion%22]}).

this regard: sub-contracting, service contracts, including cross-border service contracts, platform-managed work arrangements, resorting to false self-employment, with special reference to areas where workers are at risk of or vulnerable to exploitation, for example, agricultural seasonal workers, hospitality industry, domestic work, care work and temporary work²⁷.

The European Committee of Social Rights assessed the situation in terms of minimum wage requirements in the state parties by the above-described standards during 2022. In 6 out of 19 countries examined by the Committee, the minimum wage was between 50% and 60% of the average wage²⁸. In 4 of these cases (Andorra, Belgium, Ireland and Portugal), the Committee requested from the state authorities to provide additional information in the next reports, which would demonstrate that the existing level of minimum wage was sufficient for ensuring the decent standard of living, such as the information about additional social benefits available for persons earning the minimum wage²⁹. Pending receipt of the information requested, the Committee reserved its position on the issue. In 1 case (France), the Committee found that the situation was not in conformity with Article 4§1 of the Charter. The reason for such conclusion was the fact that the Government had not provided the information requested by the Committee during the previous review, concerning the evidence that would demonstrate that the level of minimum wage in the country (53% of the average wage) was sufficient to ensure a decent standard of living³⁰. In 1 case (Slovak Republic), the Committee considered that the minimum wage, together with additional social assistance benefits, ensured a decent standard of living. The case concerned the situation existing in the Slovak Republic where the minimum wage represented 59% of the average wage. In this case, the government provided information about the additional social assistance benefits, such as the activation allowance and the housing allowance, which were available for the minimum wage earners. The Committee considered that the minimum wage, together with these benefits, ensured a decent standard of living. However, in the end, the Committee deferred its conclusion regarding the state of fulfilment of Article 4§1 of the Charter, as the state had not provided other requested information, according to its assessment³¹.

In cases where the minimum wage was lower than 50% of the average wage, the CESCR found that it did not meet the needs of a decent standard of living³². It should be noted that in some cases, it was not possible to determine the ratio between the minimum wage and the average wage as the

²⁷ *Ibid.*

²⁸ Andorra, Belgium, France, Ireland, Portugal and Slovak Republic.

²⁹ The European Committee of Social Rights, Conclusions 2022 – Andorra:
<https://rm.coe.int/conclusions-2022-andorra-e/1680aa985c>.

The European Committee of Social Rights, Conclusions 2022 – Belgium:
<https://rm.coe.int/conclusions-2022-belgium-e/1680aa9865>.

The European Committee of Social Rights, Conclusions 2022 – Portugal:
<https://rm.coe.int/conclusions-2022-portugal-e/1680aa9872>.

The European Committee of Social Rights, Conclusions 2022 – Ireland:
<https://rm.coe.int/conclusions-2022-ireland-e/1680aaa247>.

³⁰ The European Committee of Social Rights, Conclusions 2022 – France;
<https://rm.coe.int/conclusions-2022-france-e/1680aa9869>.

³¹ The European Committee of Social Rights, Conclusions 2022 – Slovak Republic:
<https://rm.coe.int/conclusions-2022-slovak-republic-e/1680aa9874>.

³² Austria, Azerbaijan, Ireland (in the context of the minimum wage for young workers), Lithuania, Luxembourg and United Kingdom.

governments did not provide the relevant information or provided incomplete information. In most of such cases, the Committee concluded that the decent standard of living was not met.

As of today, the European Committee of Social Rights has examined 6 cases within the framework of the collective complaint mechanism, where the applicants have alleged the violation of Article 4§1 of the Charter, among other articles. In 4 of these cases, the allegations raised under Article 4§1 were rejected as unsubstantiated³³. The Committee examined the alleged violation of the right to decent remuneration on merits in 2 cases³⁴. One of these cases concerned the regulations existing in Greece in 2012, according to which the minimum wage of workers below the age of 25 was substantially below the national minimum wage, as well as below the national poverty line. The Committee concluded that these regulations were breaching Article 4§1 of the Charter. According to its assessment, it was permissible to pay a lower minimum wage to younger persons in certain circumstances, if the state presented objective justification that it furthered a legitimate aim of employment policy and was proportionate to achieve that aim. Such cases may include, for example, apprenticeship schemes or other forms of vocational training aimed at improving the employability of younger workers and enhancing their access to the labour market. However, the Committee underlined that any such reduction in the minimum wage should not fall below the poverty level of the country concerned. As for the particular circumstances of the case in question, according to the explanation of the Committee, the less favourable treatment of younger workers served a legitimate aim of employment policy, namely to integrate them into the labour market during a serious economic crisis. However, the Committee concluded that the extent of the reduction in the minimum wage (falling below the national poverty level), and the manner in which it was applied to all workers under the age of 25, was disproportionate even when taking into account the particular economic circumstances in question. Therefore, the Committee found a violation of Article 4§1 of the Charter in the light of the non-discrimination clause³⁵.

³³ *Unione Nazionale Dirigenti dello Stato (UNADIS) v. Italy*, Complaint No. 147/2017, 30 June 2021:

<https://hudoc.esc.coe.int/eng/#{%22sort%22:%22escpublicationdate%20descending%22,%22tabview%22:%22document%22,%22escdcidentifier%22:%22cc-147-2017-dmerits-en%22}}>.

Confederazione Generale Sindacale (CGS) v. Italy, Complaint No. 144/2017, 9 September 2020:

<https://hudoc.esc.coe.int/eng/#{%22sort%22:%22escpublicationdate%20descending%22,%22tabview%22:%22document%22,%22escdcidentifier%22:%22cc-144-2017-dmerits-en%22}}>.

Associazione Professionale e Sindacale (ANIEF) v. Italy, Complaint No. 146/2017, 7 July 2020:

<https://hudoc.esc.coe.int/eng/#{%22sort%22:%22escpublicationdate%20descending%22,%22tabview%22:%22document%22,%22escdcidentifier%22:%22cc-146-2017-dmerits-en%22}}>.

European Council of Police Trade Unions (CESP) v. Portugal, Complaint No. 37/2006, 3 December 2007:

<https://hudoc.esc.coe.int/eng/#{%22sort%22:%22escpublicationdate%20descending%22,%22tabview%22:%22document%22,%22escdcidentifier%22:%22cc-37-2006-dmerits-en%22}}>.

³⁴ *Greek General Confederation of Labour (GSEE) v. Greece*, Complaint No. 111/2014, 23 March 2017:

<https://hudoc.esc.coe.int/eng/#{%22sort%22:%22escpublicationdate%20descending%22,%22tabview%22:%22document%22,%22escdcidentifier%22:%22cc-111-2014-dmerits-en%22}}>.

General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 66/2011, 23 May 2012:

<https://hudoc.esc.coe.int/eng/#{%22sort%22:%22escpublicationdate%20descending%22,%22tabview%22:%22document%22,%22escdcidentifier%22:%22cc-66-2011-dmerits-en%22}}>.

³⁵ *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece*, 23 May 2012, paragraphs 60-69:

<https://hudoc.esc.coe.int/eng/#{%22sort%22:%22escpublicationdate%20descending%22,%22tabview%22:%22document%22,%22escdcidentifier%22:%22cc-66-2011-dmerits-en%22}}>.

Another case where the European Committee of Social Rights examined the alleged violation of the right to decent remuneration on merits again concerned the minimum wage for young workers in Greece. In this case, decided in 2017, the Committee found that the minimum wage of young workers below the age of 25 was far below the thresholds established by the Committee, as it amounted to 41% of the average wage. Thus, the Committee found a violation of Article 4§1 of the Charter in the light of the non-discrimination clause³⁶.

The Similarities and Differences between the Standards of ICESCR and ESC

Both the International Covenant on Economic, Social and Cultural Rights and the European Social Charter recognize **the right of all employed persons to a remuneration which ensures a decent standard of living for them and their families** (in the present research, this type of remuneration is also referred as a decent remuneration). According to the supervisory committees of both international agreements, **the minimum wage represents a means of realization of this right**. The Committees have developed guidelines to clarify what is implied under the decent standard of living and what needs must be addressed by the minimum wage. In both cases, the concept of decent standard of living goes beyond the basic physical needs and encompasses the **social welfare needs** as well. **According to CDESCR, the decent standard of living includes both the needs envisaged by the right to an adequate standard of living, including adequate food, water, sanitation, housing, clothing and commuting costs, and the needs envisaged by other Covenant rights, such as social security, health care and education**³⁷. As for the ECSR, according to its explanation, **a decent standard of living goes beyond merely material necessities such as food, clothing and housing and includes resources necessary to participate in cultural, educational and social activities**³⁸.

According to CDESCR, **the concept of minimum wage should be recognized in legislation, defined with reference to the requirements of a decent living**. As for the legal mechanisms for determining the concrete level of the minimum wage, no specific approach is proposed by the CDESCR in this regard. In this case, the approaches of the CDESCR and ECSR are similar. The state parties are free to decide what legal methods will be used to determine the appropriate level of minimum wage - statutory regulations, collective agreements concluded between the employers and employees, the individual contracts signed between the employers and employees or any other legal means. In both cases, the following common fundamental principle applies: the system of minimum wage must cover **all workers**, regardless of the type of contract, sector of employment, form of employment and working hour arrangements. Special attention must be given to the informal employment sector and the situation of workers at high risk of exploitation. Both mechanisms underline the need of the labour inspection bodies, equipped with adequate resources, which will effectively reveal whether employers

³⁶ *Greek General Confederation of Labour (GSEE) v. Greece*, Complaint No. 111/2014, 23 March 2017, paragraphs 187-197:

[https://hudoc.esc.coe.int/eng/#{%22sort%22:\[%22escpublicationdate%20descending%22\],\[%22tabview%22:\[%22document%22\],\[%22escdocidentifier%22:\[%22cc-111-2014-dmerits-en%22\]\]}](https://hudoc.esc.coe.int/eng/#{%22sort%22:[%22escpublicationdate%20descending%22],[%22tabview%22:[%22document%22],[%22escdocidentifier%22:[%22cc-111-2014-dmerits-en%22]]}).

³⁷ United Nations, Economic and Social Council, Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work, Paragraph 18: <https://digitallibrary.un.org/record/1312521?ln=en>.

³⁸ European Committee of Social Rights, Conclusions 2010 – Statement of Interpretation – Article 4 (1): [Conclusions 2010 - Statement of interpretation - article 4-1 \(coe.int\)](https://www.coe.int/t/Convention/Conclusions/2010/Statement_of_interpretation_-_article_4-1_(coe.int).htm).

comply with the minimum wage obligations in practice and ensure their enforcement with the relevant measures.

The right to minimum wage has two dimensions: **1. Substantial and fundamental** **2. Quantitative and relative**³⁹. The abstract descriptions of a decent standard of living put forward by the CESCR and ECSR belong to the first dimension of the right to minimum wage. They represent the substantial, fundamental and universal components of the right. The practical manifestations of these components, including their quantitative measurement, may vary from one country and society to another, depending on their resources and the level of socio-economic development. The second – **quantitative dimension** – of the right to minimum wage recognizes these differences⁴⁰. This dimension is changeable and may progress gradually, along with improvement of the socio-economic situation in a given country. According to the standard of the European Social Charter, if the average wage increases in the country, the level of minimum wage should increase as well, as its adequacy is determined by a specific ratio to the average wage. As for the approaches of the CESCR, its general standards underline the need for periodic review and indexation of the minimum wage, considering the changes in the cost of living. However, beyond indexation, they do not indicate the need for an increase in minimum wage similar to that of the ECSR.

Like the ECSR, when assessing the compliance of the level of minimum wage with the requirements of a decent standard of living, the CESCR pays attention to the quantitative indicators reflecting the country's socio-economic status, such as the average wage, consumer prices and the level of cost of living. However, the CESCR's guidelines are less specific than those of the ECSR when it comes to the measurement of the minimum wage level with the requirements of a decent standard of living.

Theoretical Foundations for Justiciability of Right to Minimum Wage

The right to minimum wage belongs to the category of social and economic rights, the justiciability of which is weakly developed in international and national legal systems. Some of the main arguments against the justiciability of social and economic rights are as follows: 1) Interference in the field of social and economic policy by the judiciary violates the principle of separation of powers. 2) The judicial branch lacks sufficient competence to decide on the issues of social and economic policy. 3) The realization of social and economic rights requires significant financial resources, which are not available for many states. 4) The state obligations imposed by the social and economic rights are vague and indeterminate⁴¹. Below, the research looks into the counterarguments that demonstrate how the justiciability of social and economic rights can be developed in international and national legal systems, including in the context of the right to minimum wage.

³⁹ Hani Ofek-Ghendler. "Globalization and Social Justice: The Right to Minimum Wage". *Journal - Law & Ethics of Human Rights*, Volume 3, Issue 2 (2009), pp. 269-270. The Hebrew University, Jerusalem.

⁴⁰ *Ibid.*

⁴¹ Nolan, Aoife and Porter, Bruce and Langford, Malcolm. "*Justiciability of Social and Economic Rights, an Updated Appraisal (July 16, 2009)*", CHRGI Working Paper No. 15: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1434944.

According to the first argument, it is an exclusive competence of the executive and legislative branches of government to develop social and economic policies and prioritize the relevant budgetary expenditures. The proponents of this argument consider that the adjudication of socio-economic rights by courts and rendering decisions, which find the particular program of socio-economic policy to be contrary to law and which lead to high budgetary costs, represent interference into these competencies⁴². According to the opposite view, the exclusive competencies of the legislative and executive branches of government do not mean absolute freedom to decide the socio-economic policy issues, but freedom to select a measure from the range of existing options⁴³. When the courts adjudicate on the socio-economic rights, they are not imposing on the other branches of government to apply a concrete program of socio-economic policy, but they reveal a concrete violation, which can be redressed by the appropriate measure that the other branches of government select from the existing options. Thus, the adjudication of socio-economic rights by courts does not violate exclusive competencies of other branches of government, but rather, it upholds the principle of “*checks and balances*”, according to which different branches of government shall balance each other to avoid absolute concentration of power in one branch⁴⁴.

According to the second argument against the justiciability of social and economic rights, the judges are not equipped with the relevant expertise and qualification to examine the specific issues of social and economic policy. This concern reflects a misunderstanding of what is required of courts while adjudicating rights claims. Rights claimants do not turn to courts for “*some kind of superior expertise in the policy issues*”, but for their traditional judicial competencies⁴⁵. Such methods include: hearing the positions, arguments and evidence presented by the parties, hearing other witnesses, inviting experts and specialists, commissioning expert and consultation work about particular issues, requesting information from all relevant state bodies, legal and physical persons and finally, applying the law to the facts in a fair, objective and impartial manner⁴⁶.

According to the third argument against the justiciability of social and economic rights, the realization of social and economic rights requires significant financial resources, which are not available for many states. This argument cannot be used against the right to minimum wage as, in this case, the burden of providing financial resources falls mainly on the employers operating in the private sector and not on the state directly⁴⁷. The main sector of employment is the private sector, not the public sector. By establishing the level of minimum wage, the state fulfils its **positive obligation** for the protection of the right to decent remuneration, as it creates the relevant legislative and administrative mechanisms to ensure payment of a decent remuneration by the third parties (employers operating in the private sector) and protect workers from exploitation. From the economic point of view, the following issue should be taken into account when setting the minimum wage level

⁴² *Ibid*, pp. 13-15:

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1434944.

⁴³ Liebenberg, Sandra. Article “*The Protection of Economic and Social Rights in Domestic Legal Systems*”, Textbook on Economic, Social and Cultural Rights (Second Revised Edition), Brill | Nijhoff, 2001, pp. 55-84.

⁴⁴ *Ibid*.

⁴⁵ Nolan, Aoife and Porter, Bruce and Langford, Malcolm. “*Justiciability of Social and Economic Rights, an Updated Appraisal (July 16, 2009)*”, CHRGI Working Paper No. 15, p. 17:

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1434944.

⁴⁶ *Ibid*.

⁴⁷ Eriksson, Stina. “*The Right to a Living Wage – The Obligation of State Parties to the International Covenant on Economic, Social and Cultural Rights to Realise the Right to a Living Wage*”, Uppsala University, 2015, p. 37.

- the minimum wage should not be so high as to harm the country's economy, including employment, competitiveness and economic growth⁴⁸.

According to the fourth argument against the justiciability of social and economic rights, the content of social and economic rights is vague and indeterminate that makes it difficult for the courts to ascertain as to what are the corresponding state responsibilities⁴⁹. Indeed, many social and economic rights are vaguely formulated in the international human rights conventions. However, this problem is not a fundamental obstacle to the justiciability of social and economic rights. It does not present any inherent reason as to why socio-economic rights should not be justiciable⁵⁰. It does not concern the question of "Why", but the question of – "How"⁵¹. It asks the question as to how social and economic rights can be justiciable⁵².

There are various theoretical foundations concerning how social and economic rights can be justiciable by international mechanisms. The concept of minimum core obligations is one of them. According to the explanation of the UN Committee on Economic, Social and Cultural Rights, social and economic rights have the "minimum essential levels", the obligation of fulfilment of which is of **immediate nature**⁵³. The concept of minimum core obligation focuses on the most severe forms of "material deprivation", which must be addressed urgently⁵⁴. According to CESCR, a state party is *prima facie* failing to meet its minimum core obligations under the Covenant if the significant number of individuals living in the country are deprived of essential foodstuffs, essential primary health care, basic shelter and housing, or the most basic forms of education⁵⁵. The non-fulfilment of the minimum core obligations can be attributed to the lack of resources only if the state demonstrates that it resorted to every effort to use all resources that were at its disposition to satisfy those minimum obligations as a matter of priority⁵⁶.

⁴⁸ Davit Darakhvelidze – "The Assessment of Impact of the Increase of Minimum Wage in Georgia", Friedrich Ebert Stiftung, January 2019:

<https://library.fes.de/pdf-files/bueros/georgien/14971.pdf>.

⁴⁹ Nolan, Aoife and Porter, Bruce and Langford, Malcolm. "Justiciability of Social and Economic Rights, an Updated Appraisal (July 16, 2009)", CHRGI Working Paper No. 15, p. 11:

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1434944.

⁵⁰ Liebenberg, Sandra - "Social and Economic Rights" in M. Chaskalson et al (eds.), *Constitutional Law of South Africa* (Cape Town; Juta, 1996) 41-11, as cited in Nolan, Aoife and Porter, Bruce and Langford, Malcolm - "The Justiciability of Social and Economic Rights: An Updated Appraisal (July 16, 2009)", CHRGI Working Paper No. 15, p.11: Available at SSRN: <https://ssrn.com/abstract=1434944>.

⁵¹ Trispiotis, Ilias. "Socio-Economic Rights: Legally Enforceable or Just Aspirational?", *Opticon* 1826, Issue 8, 2010, p. 4:

<https://student-journals.ucl.ac.uk/opticon/article/id/929/>.

⁵² *Ibid.*

⁵³ UN Committee on Economic, Social and Cultural Rights, General Comment No. 3: The Nature of State Parties' Obligations, paragraph 10:

<https://www.refworld.org/pdfid/4538838e10.pdf>.

⁵⁴ Tadege, Mesenbet Assefa. "Defining the Minimum Core Obligations - Conundrums in International Human Rights Law and Lessons from the Constitutional Court of South Africa", pages 7-8. *Mekelle University Law Journal* Vol 1 No1. August 2010:

Available at SSRN: <https://ssrn.com/abstract=2496975>.

⁵⁵ UN Committee on Economic, Social and Cultural Rights, General Comment No. 3: The Nature of State Parties' Obligations, paragraph 10:

<https://www.refworld.org/pdfid/4538838e10.pdf>.

⁵⁶ *Ibid.*

The concept of the minimum core obligation is related to the concept of the minimum core content of social and economic rights. According to this concept, the core of the right is its most basic feature, which makes it distinct from other rights⁵⁷. This concept is a subject of significant criticism. According to the criticism, the idea of the minimum core narrows the content of the right, as it reflects only those aspects which satisfy the basic needs of the rights-holder, while this right may have a broader content⁵⁸. The task of ascertaining the minimum core obligations is also made difficult by the fact that the minimum core content is not clear for all social and economic rights. The existing CESCR explanations do not shed light on these issues sufficiently.

According to the explanations of international human rights mechanisms, the minimum wage is a means of realization of a right to decent remuneration, which aims to meet the needs of a decent standard of living. These needs are more than basic physical needs (such as food, housing, clothing, sanitary conditions, etc.) and include the needs of **social welfare** as well, such as **social security, health care, education and participation in cultural and social activities**. No international human rights instrument indicates that the right to a minimum wage has a minimum core content. Thus, the needs envisaged by the minimum wage should not be narrowed down and limited to a certain group of needs. However, it should be noted that those social and economic rights, which should be covered by the right to minimum wage, from a theoretical point of view, do have similar minimum essential levels. Although there is not enough clarity as to what exactly is implied under the “*minimum essential level*” in case of each social and economic right as of now, these issues may become more clear as the justiciability of social and economic rights develops gradually.

Besides minimum core obligations, the state parties to the ICESCR bear several more obligations of **immediate nature** for realizing social and economic rights. Among them is the obligation to take steps, **by using all appropriate means**, within the maximum of its available resources, for achieving the full realization of the rights envisaged by the Covenant⁵⁹. While the full realization of the relevant rights may be achieved **progressively**, steps towards that goal must be taken reasonably soon after the Covenant enters into force for the state concerned. Such steps must be **deliberate, concrete and targeted as clearly as possible** towards meeting the obligations recognized in the Covenant⁶⁰. “*All appropriate means*” must be defined according to their full and natural meaning. The states must substantiate as to why the selected measures were “*the most appropriate*” under the existing circumstances. Among the measures that might be considered appropriate, the Committee underlines the need for legislative measures and effective judicial remedies for the justiciability of the relevant rights. Among other measures, the Committee refers to the administrative, executive, financial, educational and social measures⁶¹.

According to the explanation of the CESCR, the obligation to take steps for the full realization of social and economic rights neither requires nor precludes any particular form of government or economic system, provided that it is democratic and all human rights are thereby respected. The

⁵⁷ Young, Katharine G. “*The Minimum Core of Economic and Social Rights: A Concept in Search of Content*”. The Yale Journal of International Law. Vol. 33: 113. 2008. p. 126.

⁵⁸ *Ibid*, pages 127-128.

⁵⁹ UN Committee on Economic, Social and Cultural Rights, General Comment No. 3: The Nature of State Parties’ Obligations, paragraphs 1-2:
<https://www.refworld.org/pdfid/4538838e10.pdf>.

⁶⁰ *Ibid*, Paragraph 2.

⁶¹ *Ibid*, Paragraphs 4-7.

Committee also underlines that the interdependence and indivisibility of the two sets of human rights, civil and political rights and social and economic rights, must be recognized and reflected in any system in question⁶².

In case of the right to minimum wage, the obligation to take steps for the full realization of socioeconomic rights implies that the state must take deliberate, reasonable, concrete and targeted steps so that the minimum wage increases gradually, over time, keeping in mind that the final goal is fully meeting the needs of decent living. When assessing the fulfilment of these obligations, the following issues should be looked at:

- Based on what methods and factors is the level of minimum wage determined, reviewed, revised and corrected;
- Whether the intervals between the above processes are reasonable and based on what they are determined;
- When determining and reviewing the level of minimum wage, whether the indicators of economic development and the increase of average wage are taken into account;
- Whether a preliminary economic analysis is carried out to assess the possible impact of the increase of the minimum wage on the country's economy.

The obligation to take steps for the full realization of the right to minimum wage, along with the creation of a relevant legislative framework, includes steps necessary for the effective execution of the minimum wage obligations. As described above, the international human rights mechanisms suggest the following measures for this purpose:

- Carrying out inspections on the situation of fulfilment of minimum wage obligations;
- Ensuring safe and accessible ways for submitting complaints for the individuals whose right to minimum wage has been violated;
- Applying adequate sanctions towards the employers who violated the minimum wage obligations;
- Subsequent supervision, for the prevention of further violations in future;

To fulfil these functions, it is necessary to have labour inspection bodies equipped with sufficient material, technical and human resources, which will carry out effective and impartial monitoring of working conditions, including the minimum wage obligations, in all sectors of employment.

Another obligation of an immediate nature in relation to the social and economic rights is their implementation without any kind of discrimination. The states are obliged to immediately eradicate discrimination on the legislative level and take practical measures to prevent, diminish and eliminate the conditions and attitudes, which cause or perpetuate substantive or de facto discrimination⁶³. The obligation of non-discrimination applies to both public and private spheres of life and includes both

⁶² UN Committee on Economic, Social and Cultural Rights, General Comment No. 3: The Nature of State Parties' Obligations, Paragraph 8:

<https://www.refworld.org/pdfid/4538838e10.pdf>.

⁶³ United Nations, Economic and Social Council, Committee on Economic, Social and Cultural Rights, General Comment No. 20 – Non-discrimination in Economic, Social and Cultural rights, Paragraph 8:

<https://digitallibrary.un.org/record/659980?ln=en#record-files-collapse-header>.

the direct and indirect forms of discrimination⁶⁴. The system of minimum wage, whether established by law, provided for by collective agreements or envisaged by any other legal means, should exclude any discriminatory treatment and should not leave any group of employed persons outside the guarantees of protection.

International Labour Organization

There are three conventions operating within the framework of the International Labour Organization (ILO) as of now regarding the issues of the minimum wage: the 1928 Convention on Minimum Wage Fixing Machinery (No. 26) (The Convention covers spheres of manufacture and commerce)⁶⁵, Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99)⁶⁶ and Minimum Wage Fixing Convention, 1970 (No. 131)⁶⁷. The Convention N131 is intended to be of general application, although it pays particular attention to the needs of developing countries. Each Convention is accompanied with the corresponding recommendations⁶⁸, which provide guidelines as to how the principles enshrined in the Conventions shall be implemented in practice. All three conventions are open to accession. N26 Convention has been ratified by 105 countries as of now⁶⁹. As for the N131 Convention, it has been ratified by 54 countries⁷⁰.

The International Labour Organization conventions on minimum wages focus on procedural aspects of minimum wage fixing. Unlike the ICESCR and the ESC, the International Labour Organization conventions do not address the content of the minimum wage as a human right, which is their shortcoming.

According to the N131 Convention and N135 Recommendation on Minimum Wage Fixing, the following criteria should be taken into account when determining the level of minimum wages, among others: the needs of workers and their families, general level of wages in the country, cost of living,

⁶⁴ United Nations, Economic and Social Council, Committee on Economic, Social and Cultural Rights, General Comment No. 20 – Non-discrimination in Economic, Social and Cultural rights:
<https://digitallibrary.un.org/record/659980?ln=en#record-files-collapse-header..>

⁶⁵ Minimum Wage Fixing Machinery Convention, 1928 (No. 26):
https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C026.

⁶⁶ Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99):
https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C099.

⁶⁷ Minimum Wage Fixing Convention, 1970 (No. 131):
https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312276:NO.

⁶⁸ Minimum Wage Fixing Machinery Recommendation, 1928 (No. 30):
https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312368.

Minimum Wage Fixing Machinery (Agriculture) Recommendation, 1951 (No. 89):
https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R089.

Minimum Wage Fixing Recommendation, 1970 (No. 135):
https://www.ilo.org/dyn/normlex/en/f?p=1000:12100::NO:12100:P12100_INSTRUMENT_ID:312473.

⁶⁹ International Labour Organization:
https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312171:NO.

⁷⁰ International Labour Organization:
https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312276:NO.

social security benefits, relative living standards of other social groups and economic factors. The latter include the requirements of economic development, the levels of productivity and the desirability of attaining and maintaining a high level of employment⁷¹. The N131 Convention and N135 Recommendation on Minimum Wage Fixing do not clarify as to what kind of needs are implied under the concept of needs of workers and their families. The Recommendation N89 on Minimum Wage Fixing Machinery (Agriculture), supplementing the Convention N99 on Minimum Wage Fixing Machinery (Agriculture), calls on the wage fixing bodies of the state parties to take into account the necessity of enabling the workers to maintain a suitable standard of living when determining the minimum rates of wages. However, the recommendation does not clarify as to what is implied under the suitable standard of living and what are the needs covered by it⁷². The Recommendation N30 on Minimum Wage Fixing Machinery, supplementing the Convention N26 on Minimum Wage Fixing Machinery, also recommends that the state parties consider the necessity of enabling the workers to maintain a suitable standard of living when determining the minimum rates of wages. However, this recommendation does not explain either as to what is meant under the suitable standard of living and what needs are covered by it.

Despite the shortcomings described above, the conventions of the International Labour Organization offer certain useful standards for developing procedural mechanisms of the minimum wage system. Such standards include the principle of **full consultation and participation** of social partners (workers' organizations and employers' organizations) in the establishment, operation and modification of minimum wage fixing machinery⁷³. The consultations must take place before the decisions are made, and the representatives of the workers' organizations and employers' organizations should be provided with all necessary official information in this process. The social partners must be given the opportunity to participate in the process of determining the initial level of minimum wage, as well as in the processes of reviewing and adjusting the minimum wage levels from time to time. Steps should be taken to ensure that the concerns and arguments put forward by the social partners are really taken into account. The standards of ILO also include requirements similar to those of the ICESCR and ESC regarding the existence of effective inspection and sanctioning mechanisms in case of violations of minimum wage obligations. **Overall, three mechanisms - ICESCR, ESC and ILO – supplement each other and considering all three of them is important to ensure that the right to minimum wage is fully understood both in the substantive and procedural aspects.**

The Situation in Georgia in the Light of International Standards

According to the standards of the international human rights mechanisms, the minimum wage is a means to ensure the labour remuneration that will meet the needs of workers and their families for a

⁷¹ Minimum Wage Fixing Recommendation, 1970 (No. 135):
https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:::NO:12100:P12100_INSTRUMENT_ID:312473.

⁷² Minimum Wage Fixing Machinery (Agriculture) Recommendation, 1951 (No. 89):
https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:::NO:12100:P12100_INSTRUMENT_ID:312427:NO.

⁷³ International Labour Organization, Minimum Wage Policy Guide, page 25:
https://www.ilo.org/global/docs/WCMS_508566/lang--en/index.htm.

decent standard of living. The UN Committee on Economic, Social and Cultural Rights underlines that the connection of the minimum wage to the requirements of decent living must be recognized in legislation. This recognition provides a basis for understanding that the minimum wage is a human right, serving the needs of decent living. The following legal mechanisms, establishing the appropriate level of minimum wage, should be developed based on this understanding. The reality in Georgia completely contradicts these standards. The Georgian legislation, specifically the secondary normative acts, **determine only the level of minimum wage**. As for the **content of minimum wage as a human right and its connection with the needs of decent living**, the legislation is silent regarding this issue. This issue is overlooked both by the primary and secondary normative acts. The normative acts setting the level of minimum wage do not indicate **which human rights it serves to ensure and what factors are taken into account when determining its level**. The amount of minimum wage is extremely low and cannot even meet the basic physical needs, not to mention the needs of decent living.

The right to decent remuneration, the means of realization of which is a minimum wage, is not recognized by the Georgian legislation as of today. The concept of the right to decent remuneration is found neither in the supreme law of Georgia – the Constitution, nor in the Organic Law regulating the labour relations – the Labour Code of Georgia. In the list of labour rights enumerated in the Constitution of Georgia, the labour remuneration is not mentioned at all. As for the Labour Code of Georgia, it recognizes only certain types of fair remuneration – prohibition of discrimination on the conditions of labour remuneration⁷⁴, equal remuneration for equal work⁷⁵ and equal remuneration for equal work of female and male workers⁷⁶. The concept of decent remuneration is not found in the legislation related to labour service in the public sector either – the Law on Public Service and the Law on Labour Remuneration in Public Institutions.

According to №351 Order of the President of Georgia, the minimum wage of the workers employed in the private sector amounts to **20 GEL a month**⁷⁷. Since 1999, the amount of this minimum wage for the persons employed in the private sector in Georgia has never increased. According to №351 Order, considering the level of socio-economic development of the country, the Ministry of Social Protection, Labour and Employment of Georgia⁷⁸, in agreement with the Ministry of Finance and the Ministry of Economy, should make proposals **on increasing the minimum wage** in the prescribed manner⁷⁹. However, no such proposal has ever been made.

Compared to the private sector, the minimum wage is slightly higher in the public sector. However, it is still highly inadequate for ensuring needs of decent living for the workers and their families. According to №43 Order of the President of Georgia, adopted in 2005, the minimum salary for

⁷⁴ Organic Law of Georgia – Labour Code of Georgia, Article 5, Paragraph C:
<https://matsne.gov.ge/en/document/view/1155567?publication=23>.

⁷⁵ Organic Law of Georgia – Labour Code of Georgia, Article 78, Paragraph 1:
<https://matsne.gov.ge/en/document/view/1155567?publication=23>.

⁷⁶ Organic Law of Georgia – Labour Code of Georgia, Article 4, Paragraph 4:
<https://matsne.gov.ge/en/document/view/1155567?publication=23>.

⁷⁷ The №351 Order of the President of Georgia on the Amount of Minimum Wage, 4 June 1999:
<https://www.matsne.gov.ge/document/view/112786?publication=1>.

⁷⁸ Currently: the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Protection of Georgia.

⁷⁹ The №351 Order of the President of Georgia on the Amount of Minimum Wage, 4 June 1999:
<https://www.matsne.gov.ge/document/view/112786?publication=1>.

employees of the executive branch of government **amounts to 135 GEL a month**⁸⁰. The order does not envisage the need to review, adjust, or increase the level of the aforementioned minimum wage.

In 2002, the 2002-2005 State Program for the Improvement of Ratio between the Minimum Wage and Subsistence Minimum was adopted in Georgia by Order №192 of the President of Georgia. According to the program, along with increasing budgetary revenues and average wage, the convergence of minimum wage and average wage levels should have been ensured in the budget-financed sector until the minimum wage corresponded to the subsistence minimum. According to the program, in the non-budgetary sector, the state's direct intervention in the process of regulating the ratio between the minimum wage and average wage was not advisable. However, the program did not provide adequate justification in this regard⁸¹.

In some employment sectors, special regulations are operating in Georgia in relation to the specific category of workers, which envisage higher than the national minimum wage. Such workers include the teachers employed in the public schools and the medical staff (doctors and nurses) working in the clinics which provide inpatient care and are included in the universal healthcare program. The minimum salary of public school teachers amounts to 384 GEL in case of full-time work⁸². Since 1 January 2023, the minimum salary of the doctors referred above amounts to 7 GEL an hour (1260 GEL a month (gross)) and for nurses - 4.4 GEL an hour (792 GEL a month (gross))⁸³.

The sectoral minimum wages described above are only individual cases of the relatively improved minimum wage standard. Sectoral minimum wages are not a widespread practice in Georgia as of today. It should be noted that such practice is actively used in European countries where sectoral minimum wages are often the result of the processes of tripartite negotiations between the social partners (state bodies, workers and employers)⁸⁴.

The regulations existing in Georgia, according to which the minimum wage amounts to 20 GEL a month for the persons employed in the private sector, grossly contradict international human rights standards. The existing level of minimum wage is extremely low and cannot even meet the basic physical needs, not to mention the needs of decent living. As of June 2023, the subsistence minimum for a man of working age amounted to 254.5 GEL per month and for an average consumer - 225.4 GEL per month⁸⁵. It should be noted here that the methodology for calculating the subsistence minimum

⁸⁰ №43 Order of the President of Georgia, 24 January 2005:

<https://matsne.gov.ge/ka/document/view/94168?publication=9>.

⁸¹ №192 Order of the President of Georgia on the Adoption of the 2002-2005 State Program for the Improvement of Ratio between the Minimum Wage and Subsistence Minimum, 22 April 2022:

<https://www.matsne.gov.ge/ka/document/view/115780?publication=0>.

⁸² №126/N Order of the Minister of Education and Science, Article 9:

<https://matsne.gov.ge/ka/document/view/2995627?publication=18>.

⁸³ №36 Resolution of Government of Georgia on the Measures To Be Taken for Transitioning to Universal Health Care, Article 20, Paragraph 5⁴, Subparagraph A:

<https://matsne.gov.ge/ka/document/view/1852448?publication=82>.

The Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Protection:

<https://www.moh.gov.ge/ka/news/7186/2023-wlis-pirveli-ianvridan%2C-egimebisa-da-egTnebis-minimaluri-saaTobrivi-anazRaureba-dawesdeba?fbclid=IwAR3ijJaDM8M3vEj1-puyNUDUhYQevrye2dq46d5ByvmzFR4PS1OVetl6aRw>.

⁸⁴ Schulten, Thorsten. "Contours of a European Minimum Wage Policy", October 2014, p. 4:

<https://library.fes.de/pdf-files/id-moe/11008.pdf>.

⁸⁵ National Statistics Office of Georgia:

is significantly flawed in Georgia; it does not correspond to the real socio-economic needs of people⁸⁶ and should be of a much higher amount. **Even under such conditions, the minimum wage in the private sector amounts to only 7.85% of the subsistence minimum of a man of working age and only 8.87% of that of the average consumer.** This reality is in stark contradiction with the international human rights standards, according to which the minimum wage shall in no circumstances be less than the subsistence minimum⁸⁷. Another indicator, taken into account by the international human rights mechanisms to assess whether the minimum wage meets the needs of decent living, is the ratio between the minimum and average wages. This ratio is also highly inadequate in Georgia - **the minimum wage in the private sector amounts to only 1.16% of the average wage** (taking into account the average monthly nominal salary of the first quarter of 2023, which amounted to 1716.6 GEL⁸⁸).

Georgia is a state party to the International Covenant on Economic, Social and Cultural Rights, according to which it bears a positive obligation to ensure that all workers in the country are paid a decent remuneration. The fact that the state is failing to fulfil this positive obligation is visible both by the shortcomings in the legislation and the reality existing in practice. Many workers in Georgia have a **labour remuneration lower than a subsistence minimum.** According to the information of the Revenue Service, in January 2023, **the salary of 57,014 employed persons was less than 200 GEL**⁸⁹. It is also alarming that there is a sharp disparity between the salaries of men and women in Georgia and more women receive salaries lower than the subsistence minimum. As of 2020, the average salary of women in Georgia was 36.2% lower than that of men⁹⁰. According to the data of 2021, among the total number of persons employed in the private sector throughout the whole country, the share of women whose salary was less than 250 GEL was 11.7%, and that of men - 5.4%⁹¹.

Based on the obligations envisaged by the International Covenant on Economic, Social and Cultural Rights, Georgia must **immediately take steps** using all appropriate means, within the maximum of its available resources, in order to ensure decent remuneration for all workers. These steps must be reasonable, deliberate, concrete and targeted as clearly as possible towards the goal of full realization of the right to decent remuneration. These steps must include periodic review, adjustment and increase of the minimum wage, according to the levels of socioeconomic development of the country.

<https://www.geostat.ge/en/modules/categories/791/subsistence-minimum>.

⁸⁶ Public Defender of Georgia – Research “Assessing the Minimum Wage Policy in the light of Georgia’s Socio-Economic Development and International Obligations”, 2016, pages 13-14:

<https://www.ombudsman.ge/geo/spetsialuri-angarishebi/minimaluri-xelfasis-politikis-shebamisobis-shemowmeba-saqartvelos-socialur-ekonomikuri-ganvitarebisa-da-saertashoriso-valdebulebebis-chrilshi>.

⁸⁷ The Digest of Case Law of the European Committee of Social Rights, June 2022, page 73:

<https://rm.coe.int/digest-ecsr-prems-106522-web-en/1680a95dbd>.

⁸⁸ National Statistics Office of Georgia:

<https://www.geostat.ge/en/modules/categories/39/wages>.

⁸⁹ Revenue Service of Georgia:

<https://www.rs.ge/statistics>.

⁹⁰ Giorgi Chanturidze – Research “Difference in Wages based on Gender in Georgia”, page 7:

<https://shorturl.at/dlnH9>.

⁹¹ The International School of Economics at Tbilisi State University (ISET), Research Institute – “Will establishing a minimum level of labor remuneration affect the poverty rate among women in Georgia – A Simulated Case Study on the Example of Georgia”, February 2023:

https://iset-pi.ge/storage/media/other/2023-04-11/95ec7e60-d858-11ed-80f5-b9e9a106efef.pdf?fbclid=IwAR2m74w46PaYgOVDfFMvyZEPtP4eRkR8U_0TDwf_XpYiEVRC3-k8ZmkbMBg.

Since 1999, the socioeconomic situation in Georgia changed substantially. The indicators of economic growth and the advancement of the standard of living speak about both the potential and the need to increase the level of minimum wage. Despite this, the minimum wage in the private sector has remained the same in Georgia since 1999. The existing reality is a clear example of violating the principle of **progressive realization** of social and economic rights.

As of now, the last concluding observations in relation to Georgia were adopted by the UN Committee on Economic, Social and Cultural Rights in 2002⁹². The observations were developed after examining the periodic report submitted by Georgia in 2001⁹³. While reviewing the problems existing in the country during the reporting period, the Committee expressed deep concern about the extremely low level of salaries, including the minimum wage, which was far below the minimum level of subsistence⁹⁴. During 2002-2022, the Government of Georgia has not submitted periodic reports to the CESCR, which was contrary to its obligations under the Covenant. Georgia submitted the last report to CESCR in December 2022, which should be reviewed in 2024⁹⁵.

Georgia ratified the revised European Social Charter in 2005. At this moment, Georgia has accepted 63 of the Charter's 98 paragraphs. Georgia has not yet recognized the provision related to the right to decent remuneration (Article 4§1), which includes the right to a minimum wage⁹⁶. In the 2015 Report on the Non-Accepted Provisions of the European Social Charter, the Committee negatively assessed the situation in Georgia under Article 4§1. It underlined that the aim was to increase the number of accepted provisions of the Charter, and recalled that Georgia had undertaken obligations similar to Article 4§1 under the UN Covenant on Economic, Social and Cultural Rights⁹⁷. The Committee drew attention to the situation in relation to Article 4§1 in the 2021 report on the non-accepted provisions as well. The report notes that the Georgian authorities have not provided sufficient information, due to which the Committee was unable to assess the situation in the country in terms of the requirements of Article 4§1 of the Charter⁹⁸.

⁹² UN Committee on Economic, Social and Cultural Rights – Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations, Georgia, 19 December 2002: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2F1%2FAdd.83&Lang=en.

⁹³ United Nations, Economic and Social Council, Implementation of the International Covenant on Economic, Social and Cultural Rights – Second Periodic Report, Georgia, 19 June 2001: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2F1990%2F6%2FAdd.31&Lang=en.

⁹⁴ UN Committee on Economic, Social and Cultural Rights – Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant, Concluding Observations, Georgia, 19 December 2002, Paragraph 15: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2F1%2FAdd.83&Lang=en.

⁹⁵ UN Treaty Body Database: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=GEO&Lang=EN.

⁹⁶ Georgia and the European Social Charter: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168049288a&format=pdf>.

⁹⁷ European Committee of Social Rights - Second Report on the Non-Accepted Provisions of the European Social Charter, Georgia, November 2015, page 25: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804966d6>.

⁹⁸ European Committee of Social Rights - Third Report on the Non-Accepted Provisions of the European Social Charter, Georgia, 29 September 2021, page 11:

Georgia has accepted Article 7§5 of the European Social Charter, which recognizes the right of young workers and apprentices to a fair wage. Over the last decade, the European Committee of Social Rights has requested information from the government several times (in 2015, 2017 and 2019) regarding the minimum wage paid to young workers in practice, in different economic activities. The government has never provided the relevant information. Therefore, the Committee has repeatedly found non-conformity with the Article 7§5 of the Charter⁹⁹. When assessing the situation for the period of 2018-2021, the Committee again asked the targeted questions and requested statistical information from the government regarding the net minimum wages payable to young workers, including in atypical jobs, gig or platform economy and zero-hours contracts. The government again failed to submit the relevant information to the Committee¹⁰⁰.

As of now, Georgia has not ratified the conventions of the International Labour Organization in relation to the issues of minimum wage.

The 2019-2023 Strategy and Action Plan of the Labour and Employment Policy of Georgia envisages discussing issues of minimum wage in 2023 through social dialogue, in the format of the Tripartite Social Partnership Commission. The Tripartite Social Partnership Commission is an advisory body of the Government of Georgia, the parties of which are the Government of Georgia and the unions of workers and employers. According to the Strategy and Action Plan, this process should include the assessment of the economic feasibility of the minimum wage and, if necessary, planning relevant activities based on the impact assessment of the regulation¹⁰¹. **The vision of the state on minimum wage policy is not visible in the strategy and action plan.** The provisions related to the minimum wage are vague and do not indicate whether the state supports the existence of a minimum wage system in the country. As for the Tripartite Social Partnership Commission, which should have discussed the issues of minimum wage during 2023, it is problematic that the composition of the Commission does not include the representatives of civil society organizations and various sectoral trade unions, which have significant experience in terms of working on the issues of labour and social policy. Besides, the Commission has allegedly not fulfilled its functions during 2023. The Social Justice Center addressed the relevant governmental bodies, requesting public information regarding the work carried out by the Commission during 2023. These requests were never answered. The information regarding the activities of the Commission is not available in the open sources either.

The Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Protection of Georgia, with the help of international consultants, developed a Concept Paper on Determining Minimum Wage in Georgia. The purpose of the concept paper is to facilitate the elaboration of the definition of the minimum wage in Georgia and to develop a vision in this regard. The concept paper supports the introduction of an adequate minimum wage and points out the

<https://rm.coe.int/3rd-report-georgia-na-provisions-eng/1680a5d629>.

⁹⁹ European Committee of Social Rights, Conclusions 2019, Georgia, page 11:

<https://rm.coe.int/rapport-geo-en/16809cfbb2>.

¹⁰⁰ The Government of Georgia, 16th National Report on the Implementation of the European Social Charter, 30 December 2022, pages 6-7:

<https://rm.coe.int/rap-rcha-geo-16-2023/1680aa229a>.

¹⁰¹ The 2019-2023 Strategy and Action Plan of the Labour and Employment Policy of Georgia, page 24, pages 43-44 and pages 78-79:

https://matsne.gov.ge/document/view/4761408?publication=0&fbclid=IwAR1U4_8Aa2kRw7ULJDfsoFsbAaUqr2XA4LxsByYmRAq-P6JWpWLrdZyvjk8.

benefits it can bring to the country, which should be assessed positively. However, there is a significant shortcoming in the document. **It does not envisage the standards of neither the International Covenant on Economic, Social and Cultural Rights, nor that of the European Social Charter regarding the issues of minimum wage.** The document does not explain **what kind of needs** of workers and their families the minimum wage should meet, which are **essential substantive components** of the minimum wage and should include both basic physical needs and **social welfare needs**. The concept paper does not mention the social welfare needs of workers and their families at all. When it comes to the applicable principles for institutional and legal framework on minimum wage setting, the document considers the ILO Minimum Wage Fixing Convention, 1970 (No. 131) as a highly relevant instrument. As discussed in the present research, this instrument focuses on the procedural aspects of minimum wage fixing, and it does not look into the content of the minimum wage, as a human right¹⁰². The same vision is reflected in the concept paper prepared by the state. **Although the document mentions that the minimum wage is a human right, it does not touch upon its content.**

Conclusion and Recommendations

The international human rights law recognizes the right of all workers to a decent remuneration, which should ensure a decent standard of living for them and their families. The primary means for achieving this aim is a minimum wage – the minimum level of labour remuneration, controlled by the state, which should be determined in accordance with the needs of decent living. For the minimum wage to apply to all workers in the country, various legal mechanisms can be used, including, the setting of minimum wage by legislation at the national level, setting of minimum wage by legislation at the sectoral level, regulating minimum wages by collective agreements at the sectoral level and mixed models. The states are free to decide for themselves, depending on the local context, what legal methods they will use to develop a uniform minimum wage system. The main principle is that the scope of protection of the system of minimum wage should cover all employed persons in the country, and all employers should be subjected to its effective control. In countries with no experience of successful regulation of minimum wage, this task may be associated with significant challenges.

For countries in a situation similar to Georgia, the call of the UN Committee on Economic, Social and Cultural Rights to recognize the minimum wage by legislation and define it with reference to the requirements of decent living, is particularly important. **This recognition provides a basis for understanding that the minimum wage is a human right, serving the needs of decent living.** The minimum wage system can be developed effectively only if it is based on a correct understanding of the essence of minimum wage. Therefore, in the first place, the state needs to recognize the concepts of decent remuneration and minimum wage and their connection with the needs of decent living by law. As for the legal mechanisms for determining the relevant level of minimum wage, they can be developed by the subordinate normative acts.

The government of Georgia is the primary responsible body for the socio-economic consequences of the minimum wage. Therefore, it should coordinate the process of determining the appropriate level of minimum wage and make the final decision in this regard. This process requires broad

¹⁰² See the Chapter of the Present Report – “*International Labour Organization*”.

involvement of social partners, including organizations of workers and employers, who should be given access to all necessary official information to be able to contribute to the decision-making process effectively. The composition of the Tripartite Social Partnership Commission, the advisory body of the Government of Georgia, whose functions include the discussion of minimum wage issues, should be expanded and include more sectoral trade unions and civil society organizations. The Tripartite Social Partnership Commission should become functional and hold discussions on the issues of minimum wage with a renewed composition.

According to standards of international human rights law, the minimum wage level should be determined by considering the needs of decent living and the indicators of the socio-economic development of the country in question. **The needs of decent living include both basic physical needs and social welfare needs.** They entail both adequate living conditions and other fundamental social rights, including social security, health care, education and the opportunity to participate in cultural and social activities. The concept of decent living does not have any minimum content. Thus, the right to decent remuneration should not be narrowed by any such content and the needs envisaged by the minimum wage should not be limited to any concrete group of needs.

The minimum wage should address all essential needs of decent living. However, the extent by which it satisfies each of them may depend on the resources of the country in question and its existing level of socio-economic development. The experiences of the European countries demonstrate that before the minimum wage reaches the threshold satisfying the decent standard of living, envisaged by the European Social Charter, it goes through the stages of gradual growth. This process should be implemented through pre-planned and reasonable steps. The minimum wage should increase by reasonable amounts and intervals, in order to keep pace with the economic growth and the development of the standard of living of the country in question. In this process, it is vital for the state to realize that the full realization of social and economic rights is not impossible and it can be achieved through **gradual steps**, by the adequate use of all appropriate resources available to it.