

Discrimination in the sphere of Employment based on gender, age and disability factors

*Research Report in Armenia,
Georgia and Ukraine*



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INTRODUCTION

"Armavir Development Center" NGO involved in the fight for the protection and violation of women's rights in Armenia, as well as being an organization solving problems for people with disabilities, has initiated and conducted discrimination research in the sector of employment based on gender, disability and age factors in the framework of "Cooperation for Social Inclusion and Gender Employment Policy" project. It is funded by the Eastern Partnership / EaP Civil Society Forum collaborating with local Ukrainian and Georgian NGOs. The aim of the program is to promote equality in employment and reduce discrimination based on gender, age, and disability factors providing the participation of civil society organizations in strengthening dialogue mechanisms with the government. The aim of this study is to identify discrimination in employment sector conditioned with gender, age and disability of employees, find out their motives, determine the extent and prevalence of unequal treatment in employment, the main forms of manifestation as well as the target group's perceptions of discrimination.

Gender:

Despite modest progress registered in recent years women in Armenia continue to suffer from serious inequalities in political, social and economic life as evidenced a few international ratings on gender equality and women's empowerment. ("The Global Gender Gap Report 2017", insight report, World Economic Forum (WEF), 2017) Armenia is classified 97th out of 144 countries Armenia is 83rd in 2017 Women in Human Development Index (HDI), which is a United Nations Development Program (UNDP) rating and includes only 190 countries. In addition, Armenia is 64th out of 128 countries in "Women's Economic Opportunity 2012" index, Economist Intelligence Unit, 2012.

Disability.

Providing job to people with disabilities is important for several reasons. Researchers emphasize that "Disabled people without training and work can only rely on state-funded pensions." The RA National Report on Disability Issues states that "Employment is one of the key elements of social integration and self-determination for people with disabilities." People with disabilities should not be viewed as a target group for charity. Yes, they need support and help with medical, social services but they must be perceived as full citizens and should play a greater role through more active political, economic and civic participation, more effective direction of political interference connected to that can be increasing of economic opportunities (including hiring, self-employment, or entrepreneurship).

Employment is not only one of the best ways of social integration it is also the most important way to improve living standards, upward social mobility and thus a higher socio-economic position. This factor is not overestimated as the poverty rate among the disabled is disproportionately higher than that of the general public and other social groups. Improving access to employment for vulnerable groups, including the disabled is one of the most effective ways to solve their multiple problems.

Age.

Age-based discrimination occurs when a person's abilities are measured by his or her age (e.g., job opportunities). This can apply to both older and young people. It is mainly a result of stereotypical thinking. Basically, this type of discrimination occurs in working relations. It is a common stereotype that a person's physical and mental abilities decline with age and young people are more effective labor force than older people. The result is that employers usually prefer young people when employ without really testing the working abilities and skills of these two groups. But at the same time, recently, employers' reluctance to employ young people and especially new graduates has become widespread which is particularly justified by their lack of work experience. There is more discrimination against young girls because this social group is close to marriage and then the employer has to face the problem of temporary inactivity of motherhood and consequently the allowance for that subsidy which creates additional difficulties for the employer.

EXECUTIVE SUMMARY

There was conducted research in the sphere of employment in Armenia, Georgia and Ukraine devoted to discovering discrimination in the sphere of employment based on gender, disability and age factors. The main conclusions and recommendations are the following for each country:

Armenia.

- There is gender discrimination in the field of employment which is manifested against women while
 - *Getting a job*
 - *On the way to professional growth,*
 - *Dismissal*
- There is discrimination against people with disabilities in the field of employment which is manifested mainly when getting a job.
- And there is discrimination based on age in the field of employment moreover both towards the young and also the elderly. For young people, it is manifested mainly when getting a job and against the elderly when they dismissed.

Recommendations:

- Abolish the age limit on hiring a job. The age of the employee should not be a legal barrier or a reason for not concluding an employment contract.
- Ensure that national legislation and the conceptual framework relating to persons with disabilities / PWD fully embody the universal principles set out in the Convention on Persons with Disabilities, such as non-discrimination, equal treatment and equal opportunity, access to free employment and access to employment, , gender equality and full participation and inclusion in public life.
- Develop a conducive policy environment with the joint and coordinated efforts of all stakeholders to promote the issue of women and PWD employment as a definite priority and to gain public support around the issue.
- Ensure the participation of women and PWDs in decision making at all levels through the civil society organizations.
- Emphasize the importance of role models for government agencies by employing more women, youth and PWDs in these structures, including through a policy of "positive discrimination".
- Develop specific programs to promote the self-employment and entrepreneurship of PWDs and women.

Georgia.

Recommendations:

- It is desirable that the Labor Code of Georgia, the normative act regulating labor activities, define the concepts of direct and indirect discrimination. Accordingly, the definition should be formulated in such a way as to set prohibition of discrimination on any other grounds and should not list all the grounds.
- Changes and amendments in the Labor Code to ensure implementation of ILO Convention #100.
- Georgian government should develop the methodology, based on the objective criteria which will measure any work done by employees.
- Implement effective enforcement mechanisms (labor regulatory body) to guarantee the principle of equal remuneration between women and men for work of equal value is put into practice.
- Provisions of Georgian Labor Code stating that expiration of labor contract might cause dismissal from work, shall be removed from the Code without additional notice, highlighting the fact that this provision does not apply to pregnant women on those on maternity leave.
- Objective criteria shall be withdrawn from articles 6 and 37 of the labor code.
- Inspection of cases of discrimination in the workplace should be mandate of the labor inspection and relevant sanctions should be provided.
- Role of an employer should be outlined with regard to fighting against sexual harassment. This involves creating relevant policy documents, campaigns for raising awareness, etc.
- In order to be considered international labor standards , burden of proof should lie on an employer not only in the above-mentioned cases or when terminating labor relations, but in any case where there is a dispute on discrimination related to pre-contractual and labor relations.

Ukraine.

Recommendations:

- To recommend to legislators at all levels when developing, refining, improving the regulatory framework, use a comprehensive gender approach (CGA)¹⁶.

¹ In accordance with the Resolution of the Cabinet of Ministers of Ukraine dated April 12, 2006, № 584 "On conducting a gender expertise", all normative acts, which are developed and submitted to the Ministry of Justice of Ukraine, undergo such an examination. The methodical recommendations for this procedure are developed. It states that the gender legal examination of draft legal acts, the mandatory implementation of which is established by part three of Article 4 of the Law of Ukraine "On ensuring equal rights and opportunities for women and men", provides, in accordance with Article 1 of this Law, the analysis of draft normative and legal acts, legal acts, the result of which is to provide an opinion on their compliance with the principle of equal rights and opportunities for women and men, the purpose of gender expertise is to prevent the possible adoption of legislation teaching and executive authorities, and the President of Ukraine of normative legal acts containing prohibited discriminatory norms on the basis of gender, that is, promoting the establishment and protection of human rights and freedoms.

- To investigate the compliance of the current legislative norms of Ukraine with the provisions of Council Directive 2000/43/EU of June 29, 2000 on the implementation of the principle of equal treatment of persons irrespective of racial or ethnic origin; compliance of the current legislative norms of Ukraine with the provisions of Council Directive 2000/78/EU of November 27, 2000 establishing a general framework for the equal treatment of persons with disabilities in the field of employment and occupation; compliance with the current legislation of Ukraine by the provisions of Council Directive 2010/18/EU of March 8, 2010 on the implementation of the revised Framework Agreement on childcare leave repealing Directive 96/34/EU.
- Promote the adoption of anti-discrimination rules of the Labor Code of Ukraine (the Labor Code / the second reading/ July 24, 2017) with the provisions on gender equality and the prohibition of discrimination in terms of any discrimination in the sphere of labour and occupation, in particular the violation of the principle of equality of rights and opportunities, direct or indirect limitation of workers` rights depending on the following: race, color of skin, political, religious and other beliefs, sex, sexual orientation and gender identity, ethnic, social and foreign background and origin, age, health, pregnancy, disability, suspected or confirmed HIV / AIDS diagnosis, family and property status, family responsibilities, place of residence, membership in a trade union or other association of citizens, participation in a strike, appeal or intent to apply to a court or other bodies for the protection of their rights or to provide support to other employees in the protection of their rights, linguistic or other grounds, not related to the type of work or working conditions. It is the commitment of Ukraine in terms of the implementation of the Action Plan on Visa Liberalization, as well as in accordance with the Association Agreement with the EU and the implementation of Council Directive 2000/78 / EC (November 27, 2000) on the general principle of equality in employment and occupation.

RESEARCH METHODOLOGY:

The research of disability, age and gender discrimination in the sphere of employment was conducted in Armavir region of RA covering 3 urban communities of the region.

For the study there have been surveyed unemployed and working women of the region, unemployed and working people with disabilities, as well as unemployed and working youth (aged 16-20) and older people (over 60).

The sample of unemployed respondents was implemented both from the unemployed women, youth, elderly and disabled registered in employment centers, as well as collecting contacts from other unemployed people using the "snowball" method used in sociology.

The sample of working respondents was implemented from the list of women, youth, the elderly and the disabled working in the various workplaces, selecting random, as well as retrieving other employees' contacts from them again using the "snowball" method.

Respondents were informed in advance that non-names of answers is guaranteed. In addition at the beginning of the interviews respondents were shown questionnaires to assure them that their names or addresses are nowhere registered.

Overall 100 standardized face-to-face interviews were conducted from 2019 June 10 to July 12, of which 20 are with unemployed, 20 are with working women, 10 with unemployed and 10 with youth working, with 10 unemployed and working elderly, and as many as 10 unemployed and working people with disabilities. According to necessities, qualitative datas were coded and all datas were entered for SPSS analysis (Statistical Package for Social Studies).

Gender discrimination in employment sector.

The concepts of sex and gender have different meanings. The first is about the biological characteristic of a person. That is, discrimination in this sense is conditioned with the fact of being a man or a woman. For example, when a female worker is paid less than a man is paid for the same job. Or when it is prescribed by law for a woman: Or when a woman is provided for child care holiday by law, but a man is not. Unlike gender, the concept of gender has a social character, stereotypes fixed by the society according to sex attribute which lead to unequal treatment of sexes. For example, women in Saudi Arabia are forbidden to drive and even ride a bicycle or visit stadiums, and men are forbidden to sit in a car with women with whom they have no close kinship. It is clear that such inequality is not conditioned by the biological characteristics of the sexes. The reason is the stereotype embedded in society (which may have religious grounds) that such acts are publicly condemned and immoral.

This section summarizes the poll results and consists of the following subsections: protection of women's rights, Gender Discrimination in Employment, the importance of sex in working relationship, ways to find / look for a job.

55 percent of the interviewed women have completed vocational school / college, technical college, 12.5 percent - 10-year secondary school, and 30 percent attended or graduated higher education institutions.

50 percent of interviewed working women work in the public sector, 40 percent in the private sector. 30 percent of them work in educational sector, 25 percent in the service sector. 30 percent of workers have been working since the 2000s, and 25 percent since the 1990s.

Half of unemployed women - 50 percent are unregistered, 20 percent are registered. 45 percent of them have previously worked in the service sector, and 25 percent - for trade. 35 percent of unemployed interviewed women become unemployed since 2010, and 25 percent since the 2000s. 35 percent of them have become unemployed, because there have been cuts in organizations, and 25 percent according to her application.

Women's rights protection.

According to 52.5 percent of interviewed women Women's rights are not protected in Armenia today, here are included "Rather not" and "no" options. 35 percent of them think that women's rights are protected or rather protected in Armenia: The rest 12.5 percent simply found it difficult to assess their rights's protection.

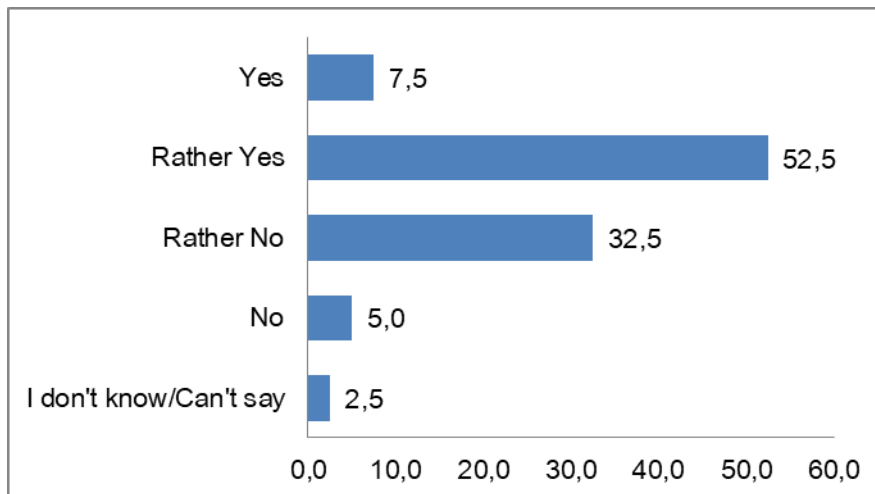
Then an attempt was made to find out how women classify areas of life where there is discrimination against women.

Accordingly, the areas were distributed in a such way:

- **Family** - it is found out that in the opinion of the majority of interviewed women that women's rights are most violated in the family,
- **Employment sector** - the second place is the employment sector, where there is unequal treatment towards women particularly when hiring and leaving, as well as on the path of professional growth.
- **Politics** - Women in Armavir say that women's rights are the least violated in politics.

And though the employment sector is in second place where there is a violation of women's rights 60 percent of respondents think that there is an unequal treatment towards women in the employment sector. Here's a mix of "yes" and "rather yes" options the general picture is shown in Figure 1.

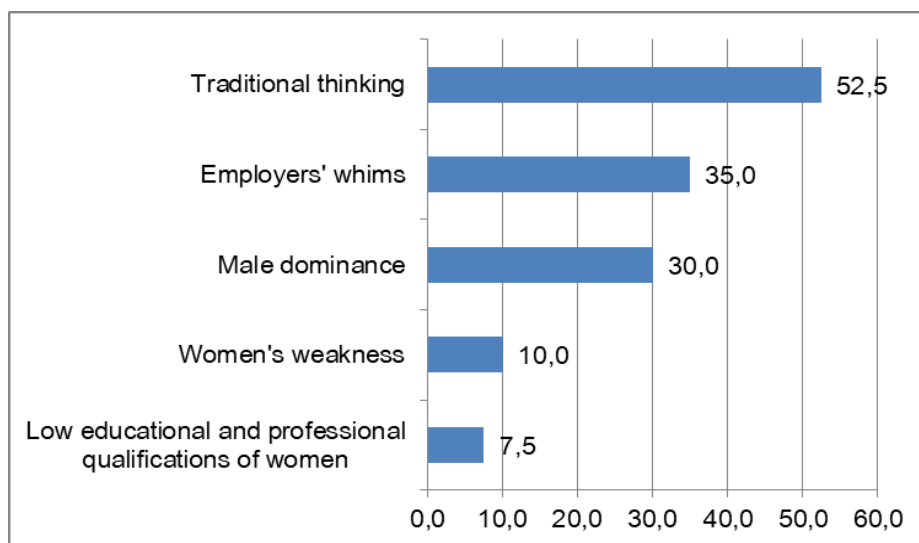
Figure 1. Are there unequal / differentiated attitude towards women in the employment sector? (percentage)



It is interesting that despite the fact that half of the unemployed women (50 percent), believe that there is a differentiated attitude towards women in the field of employment, however, only 30 percent of them consider it to be the cause of their unemployment. The majority, 45 percent Gender discrimination in employment sector does not consider the reason of their unemployment.

And it's interesting what the main reasons are for the latter. The respondents who think that there is discrimination against women in the employment field also mentioned the reasons for the latter. It is found out that traditional thinking comes first, that in employment sector causes unequal treatment towards women. About 52.5 percent of interviewed women think so.

Figure 2. Reasons for unequal / discriminatory attitude towards women in employment (percent)



Manifestations of gender discrimination in employment sector .

In employment sector gender discrimination has been observed in several main manifestations.

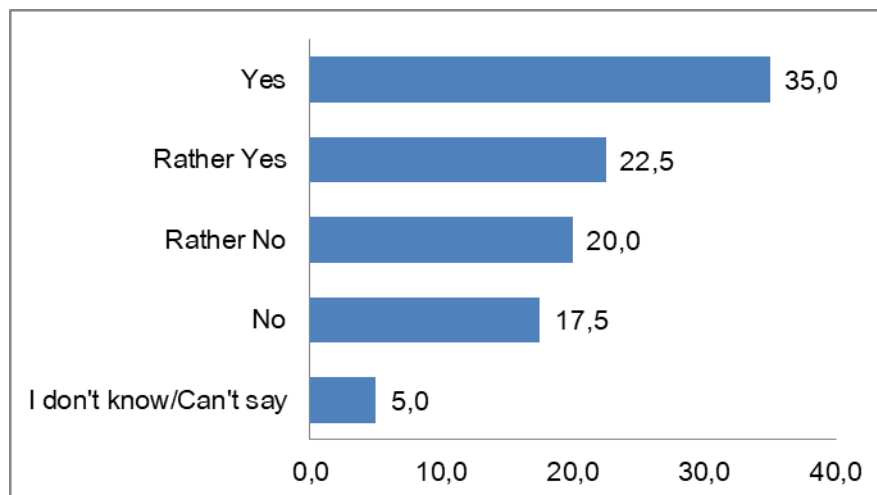
In particular

- discrimination when hiring
- discrimination in payment of equal work
- discrimination in dismissal
- unequal treatment towards women on the path of professional growth

They received different indices and grades in the views of unemployed and working women.

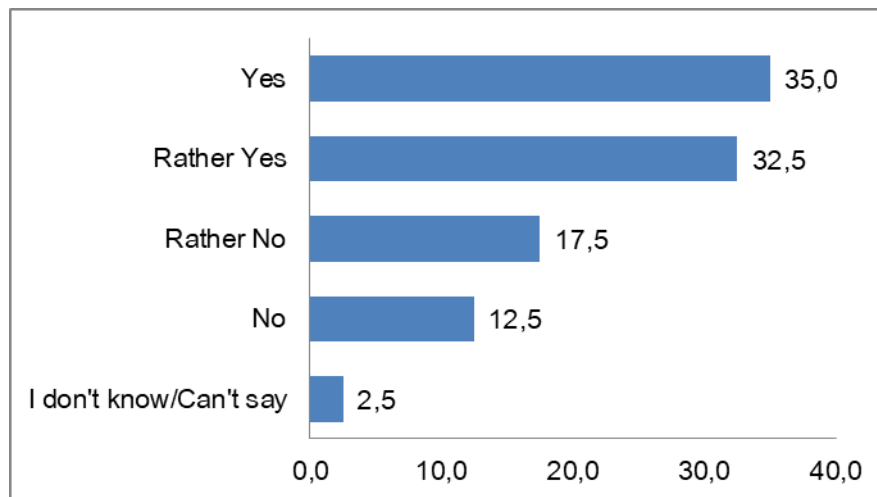
Discrimination against women when hiring obtained the same distribution among unemployed and working women. 57.5 percent of them think that there is a differentiated attitude towards men and women when hiring. However, when unemployed women were asked if it is the cause that they do not currently have a job, more than half of them, 55 percent, answered no. That is, although there is gender discrimination when hiring however they are not the bearers of them.

Figure 3. Is there a differentiated attitude towards men and women in getting a job? (percent)



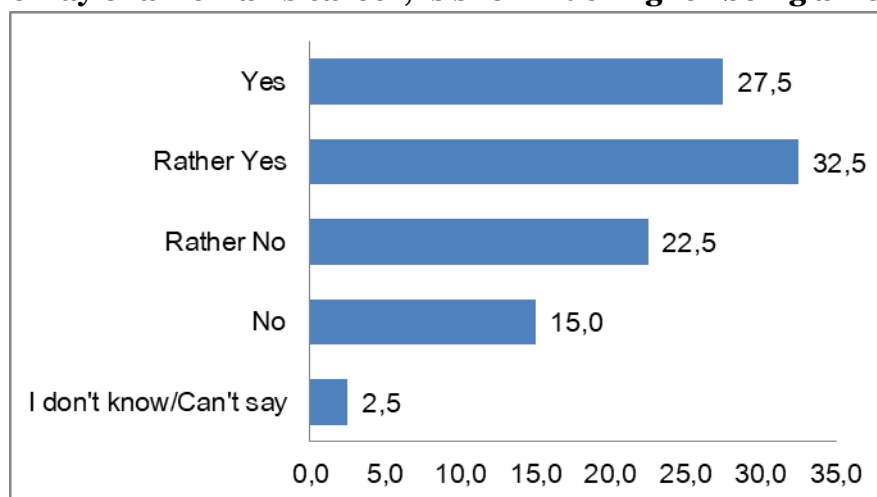
The next hypothesis of unequal treatment towards women in the employment sector is equal pay for equal work. The problem is that this phenomenon of gender discrimination exists in the Armenian reality however, it was not realized and manifested by our respondents. Thus, 70 percent of unemployed women and 65 percent of working women think that men and women in the same position are paid equally, or rather equally. Only 17.5 percent of them think they aren't paid equal, and that men's workforce is more valuable than women as a result of which women occupy lower paid positions and staffs in the labor market.

Figure 4. In the case of the same position are women and men paid equally? (percent)



Then the women were asked if they thought that being woman is the obstacle to a woman's career. The answers to this question are presented in Figure 5.

Figure 5. On the way of a woman's career, is she hindering for being a woman? (percent)



It is found out that yes, on the way of a woman's career, she is hindering for being a woman. Moreover, the factor of education did not play an important role here because that is what the majority of both employed and unemployed women think and those with lower education.

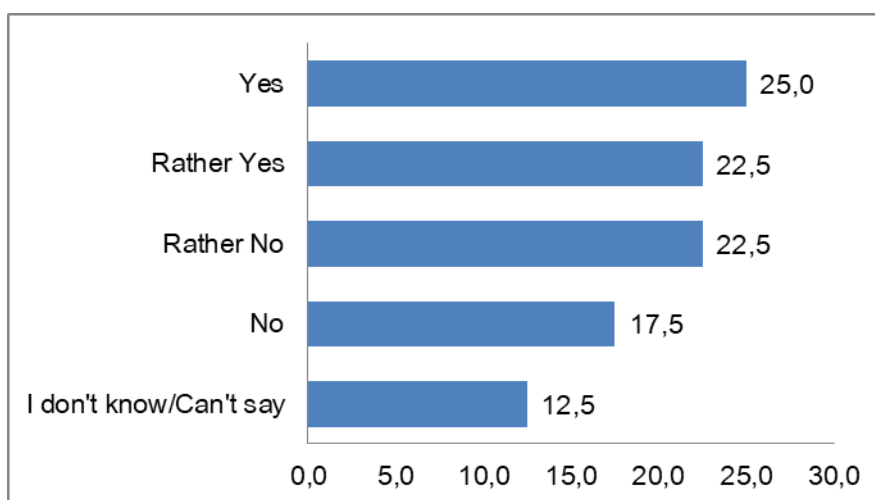
And why this is so, a number of opinions were voiced, such as: "family is the first for Armenian women", "family hinders, first of all we have to be a mother", "there is a traditional Armenian way of thinking about

women's professional development", "in that case they look with a different look or eye" and such other opinions. In fact the problem is that Armenian women have already accepted that way of thinking and stereotypes and they try little to struggle for overcoming it, first of all considering themselves a mother and a wife of the family.

Another manifestation of gender discrimination in employment is connected with unequal treatment towards women while dismissal.

It is found out that here more unemployed than working women agree that there is a differentiated attitude towards women and men while dismissal. 65 percent of unemployed women think so. And 30 percent of working women see a differentiated attitude towards women. And although most unemployed women think that there is such a problem in employment sphere however only 20 percent of them do not currently have a job on this reason. And 70 percent of them don't see the reason in the thing that there is unequal treatment towards women when they are fired.

Figure 6. Is there discrimination against women in dismissal? (percent)



The Importance of Gender in Working Relations:

An interesting image turned out when an attempt was made to find out viewpoints of working and unemployed women on the sex of the director and the employment relationship. First let's note that for 65 percent of unemployed women in the case of working have no significant difference what gender the director will be. Only 20 percent of them would like their director to be a woman and 15 percent would like his director to be a man.

Then it turned out that the director of 70 percent of working women was a men. And the question whether it contributes the formation of a normal working relationship between the respondent and the director 40 percent of respondents answered that "Director's gender has no role in working relationships." However, respondents whose director is male responded like this:

- Being a male director promotes the formation of normal working relationships -43 percent
- The gender of the director has no role in the employment relationship -36 percent
- Being a male director doesn't promote the formation of normal working relationships - 21 percent.

And the respondents whose director is a woman responded like this:

- Being a female director promotes the formation of normal working relationships - 34 percent
- The gender of the director has no role in the employment relationship – 50 percent
- Being a female director doesn't promote the formation of normal working relationships – 16 percent.

And when interviewed women were asked if they would like that their director was of the opposite sex it was found out that for 60% of them it is all the same.

It is also found that 60 percent of working women do their job with pleasure. 25 percent of them don't do their job with so much pleasure, 10 percent just have to do it and 5 percent do it unpleasantly. And what is about the intentions changing the work, then it turned out that 50 percent of them would not like to change their current job and the other half, 50 percent, would like to change that job. And the reason why they would like to change is the "Low salary".

By another questioning an attempt was made to find out how long working women stay in the workplace and consequently their employment rights are violated or not. It is found out that women's rights are not violated much in this sphere as 70 percent of them stay in the workplace until the end of their assigned work day. And 15 percent of them stay in the workplace while the director is in place. The director of all those who point to this option is a male and all are service workers. 15 percent of their work schedule is free.

Means of looking for/ finding a job.

During the survey an attempt was made to find out basic means of looking for and finding a job too. We had an interesting image when working women were asked how they have been assigned to the job they are currently working on. The answers were distributed in such way.

- **By familiar, pal, servitor-** It is found out that 60 percent of working women have been assigned to their current job by a familiar, pal, servitor.
- **By Examination / interview** -20 percent of them have been assigned to the job by an examination or interview. All of the respondents who answered this question were young people having graduated higher education in recent years and were mainly service workers.
- **By Competition** - Only 10 percent of respondents found a job by competition.
- **By a work agency** - Only two citizens were employed through this, and not any job seeker found a job through the employment center.

We had almost the same image when unemployed, job seeking women were asked to evaluate the effectiveness of several resources in finding a job. First, it should be noted that 80 percent of unemployed women are currently seeking a job. Some resources were offered which should be rated on a scale of 1-5 where 1 is not effective and 5 are very effective.

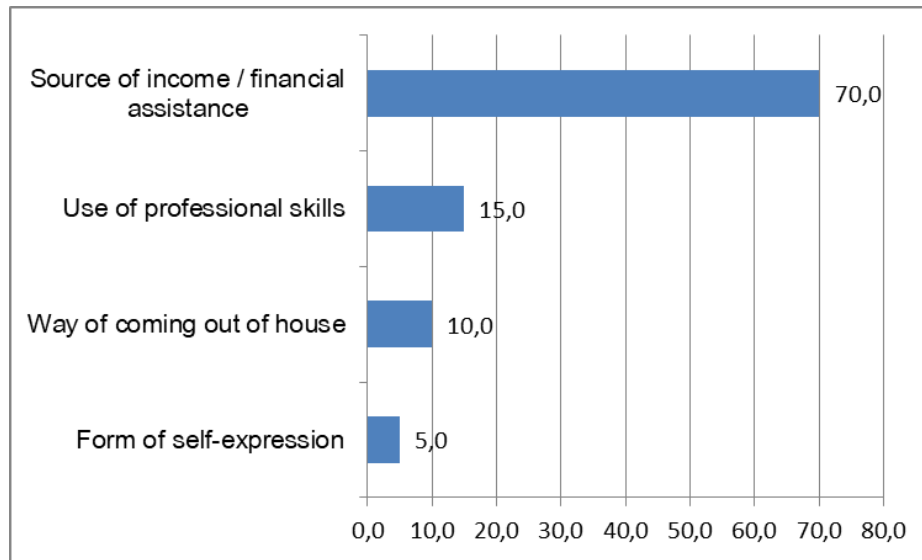
And here's the most effective way to find a job:

- ✓ Employment Agencies -1.2 points
- ✓ Employment Centers -1.1 points
- ✓ Various ads / newspapers, website, other - 2.8 points
- ✓ Familiar, pal, servitor - 3,4 points

As can be seen most of our citizens continue to rely on one or another familiar and pal in the process of job seeking.

And in the end we tried to find out what the job is for the Armenian women. According to 70 percent of the majority of examined women no matter how sad it may be to admit that work is considered a source of income and a means of supporting the family financially.

Figure 7. What is the job for an Armenian woman? (percent)



As it can be seen from the figure 15 percent of interviewed women consider work to be use of professional skills, for 10 percent of them, work is a way to come out from the house and 5 percent of women consider work a form of self-expression.

It is noteworthy that more unemployed than most of the working women consider work a source of income (accordingly 70 percent and 60 percent). It is also noteworthy that more young women saw work as a means to come out of the house probably not having a family burden on their shoulders yet (18-24 years).

Discrimination against people with disabilities in employment sphere.

In national legislation the prohibition on discrimination on the basis of disability is established under the RA "Law on social protection of the disabled People". In particular, in accordance with article 17 of this Law refusal is inadmissible for signing a contract of employment or promotion with a disabled due to his disability, dismissal on the initiative of the employer or transportation to another work except those cases when his health impedes his professional duties in the conclusion of the medical expert examination bodies or endangers the health and safety of others.

"Disability Discrimination" means any variant because of disability, exclusion or limitation, which aimed at limiting or minimizing the recognition of human rights and fundamental freedoms, their use or use in political, economic, social, cultural or any other field on equal basis with the others. It covers all forms of discrimination including refusal providing the necessary opportunities.

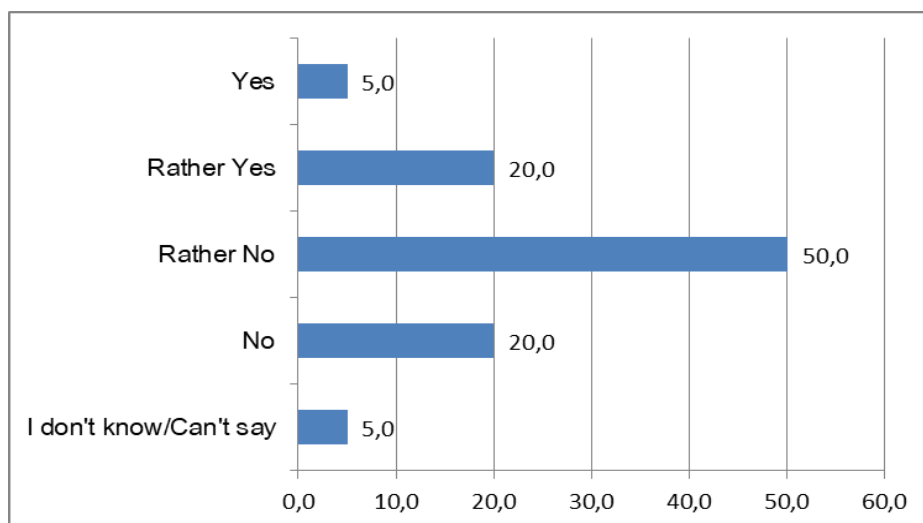
The study also aimed to find out the protection of the rights of People with Disabilities (PWDs) in the field of employment, discrimination against them, existing barriers in the employment field. The survey was conducted with unemployed and disabled people whose sample group was difficult to find. First, 60 percent of PWDs graduated from vocational school / college, technical college, 10 percent - 10-year secondary school and 30 percent attended or graduated from higher education. Sixty percent of interviewed PWDs are women and 40 are men. The majority of them 55 percent belongs to the age group of 45-54, 30 percent - to 35-44 age group.

Employment status of half of PWDs employed (5 people) is limited with self-employment (own small business, etc.), the rest of them works in the private sector and only 1 PWD works in the public sector. 3 of them work in the field of agriculture and 3 in industry / production, 2 in the field of trade and 2 in education. 60 percent of employees have been working since 2010 and 40 percent since the 2000s. All surveyed PWDs have a disability category 6 of them are 3rd degree disabled, 2 in the 2nd degree, 1 is the first degree disabled and another 1 is indefinite.

More than half of the unemployed PWDs (60 percent) are registered unemployed and 40 percent are unregistered. Only 30 percent of them have worked before and worked in the service sector and currently does not work because of illness. 30 percent of unemployed PWDs have become unemployed since 2010 and 50 percent since the 2000s. 70 percent of them have become unemployed because of illness and 30 percent according to their application. All the surveyed unemployed PWDs have a disability category, 6 of them are second degree disabled, 2 are in the 3rd category and 2 in the 1st category.

It was interesting to find out the PWD's assessment of the protection of their rights particularly in the field of employment. It turns out that the majority of them (70 percent) thinks that the rights of PWDs are not protected in employment field (here are combined "no" and "rather no" versions). The distribution of answers is shown in Figure 8.

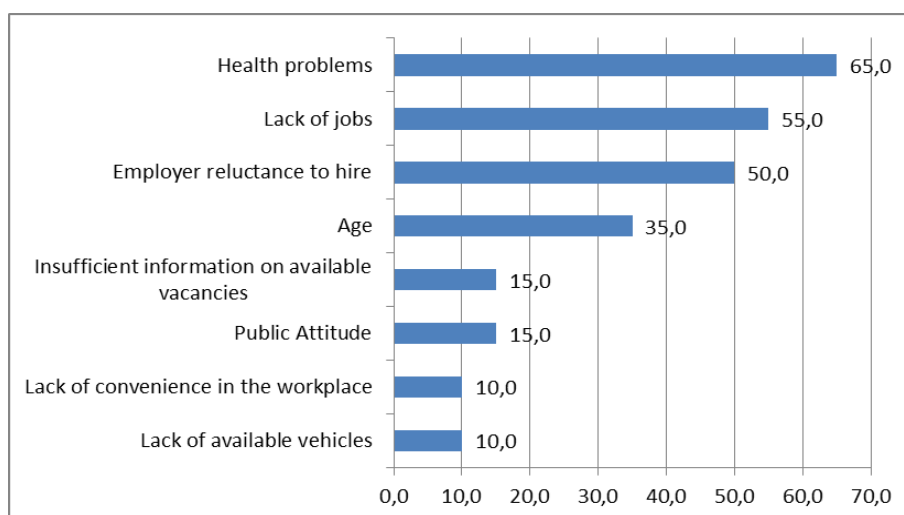
Figure 8. Are the rights of PWDs Protected in the employment field? (percent)



Then an attempt was made to determine what they considered to be the main obstacles for PWDs. to which they face in the field of employment. Respondents included in the PWD sample were presented with several possible obstacles and offered to name other obstacles except for them.

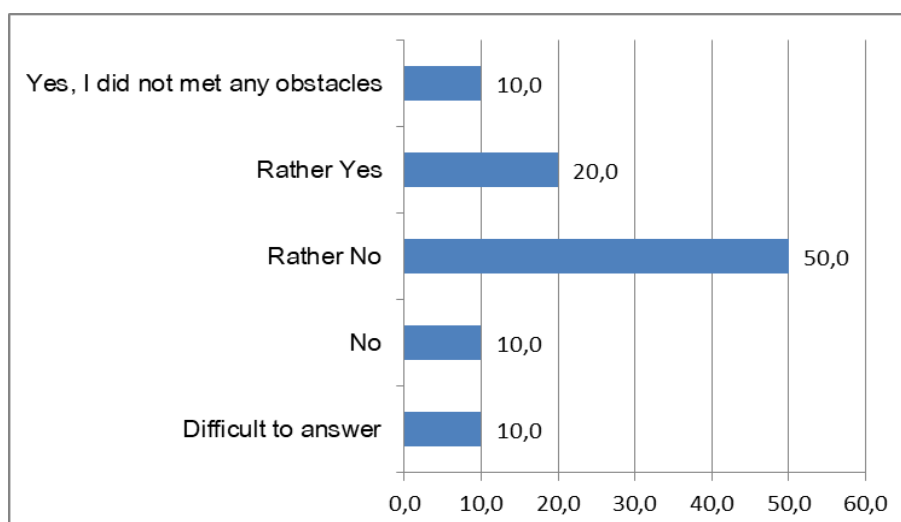
It was a multiple choice question and respondents could choose all the answers that they would consider appropriate. It should be noted that they considered health problems as the most significant obstacle. This factor was singled out by more than half of the respondents (65 percent or 13 people). The second biggest obstacle was the lack of workplaces (55 percent or 11 people) which was followed by employer reluctance to hire disabled people (50 percent or 10 people).

Figure 9. Major barriers that PWDs face in the field of employment (percent).



The surveyed PWDs were asked to find out how they had got that job. And since half of them have self-employment so they found work by implementing their own ideas or by a familiar, pal and servitor. The other 4 people again found work by a familiar, pal, servitor and only 1 PWD was employed with the support of the Employment Center. It turns out that working PWDs have not so easily overcome barriers and stereotypes associated with the job search process. They are shown in Figure 10.

Figure 10. Have you easily overcome barriers and stereotypes related to the job search process (percent)



And to what extent PWDs do their job with pleasure then it turned out that working PWDs mostly do their job with pleasure which is probably due to the fact that half of the respondents are self-employed with own small business. And 4 of the other half don't do their job with pleasure.

As for job search for unemployed PWDs then it should be noted, that 6 out of 10 PWDs are looking for a job, 4 are not. Job seekers look for work by a familiar, pal, servitor (4 people) and with the support of the Employment Center (2 people). And those who are not looking for a job are not looking for because they think "It won't work" (2 people).

Obstacles associated with PWD employment are so significant that PWDs cannot be left to solve their problems by their own means for the simple reason that that they really need serious support. Out of 6 PWDs selected for the survey currently unemployed and job-seeking who applied for jobs from different companies and institutions and no one was hired even when appliers were not offered great demands. 5 of them were refused and 1 was stii in in the waiting phase at the survey moment. And why they were refused some answers were voiced: 3 of them were told that at this moment they had no free workplaces, which maybe both right or even not, and the other 2 were refused because of their disability. So job seeking PWDs were clearly discriminated.

They have become victims of prejudice and stereotypes. The most common forms of discrimination in this case were related to age and ability. Facing with real or such perceived discrimination and prejudice many PWDs get disappointed and bittern stopping to look for work.

Despite the fact that employment centers and agencies can and sometimes be useful, their support is very limited because of a limited range of their abilities, current economic environment, the labor market situation, ideas shared by employers and generally the public and others.

Age discrimination in employment sphere.

Age-based discrimination occurs when a person's abilities are measured by his or her age (e.g., job opportunities). This may apply to both adults and young people. It is mainly a result of stereotypical thinking. Mostly, this type of discrimination occurs in labor relations. There is a widespread stereotype that with age the physical and mental abilities of a person decrease and young people are more efficient workforce than older people. The result of that is that employers when hiring as a rule prefer young people without really testing the working abilities and skills of these two groups. At the same time we should take a note that in some circumstances age-related treatment may be linked to a specific job requirement(s) in which case the treatment won't be considered discrimination. Putting an age restriction on the job announcement for an actor will not be considered discrimination if the role is reserved for a young character. The definition of a minimum age (28 years) related to life experience, worldview has objective features for judges. At the same time definition of different retirement age for men and women will lead to indirect discrimination with age and sex protected characteristics.

In the framework of this study an attempt was made to find out protection of the rights of both the elderly and young people in the field of employment, discrimination against them, existing barriers in the field of employment. The survey was conducted with young and old unemployed and working people. The youngest age group of 16-20 is defined as young, and older - a group of people over 60 who have not reached retirement age yet and can still work.

Youngsters.

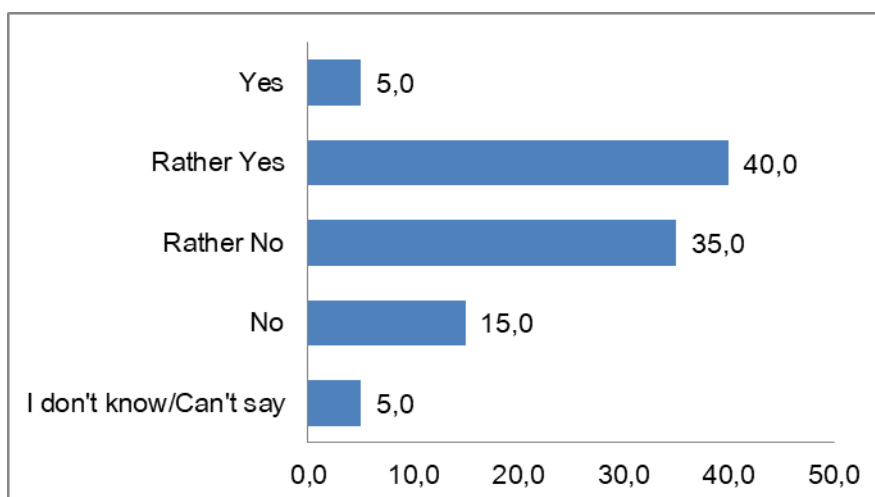
First it should be mentioned that 13 or 65 percent of the 20 young surveyed people have completed higher education institution, 4 or 20 percent - vocational school / college, technical school and only 3 or 15 percent of a 10-year secondary school. 65 percent of young surveyed people are women and 35 percent are men.

Only 1 of the 10 young surveyed people works in the public sector, 7 of them work in the private sector and 2 in the public sector. The areas of employment are service, education, trade.

None of 10 unemployed youth is registered unemployed but is looking for a job.

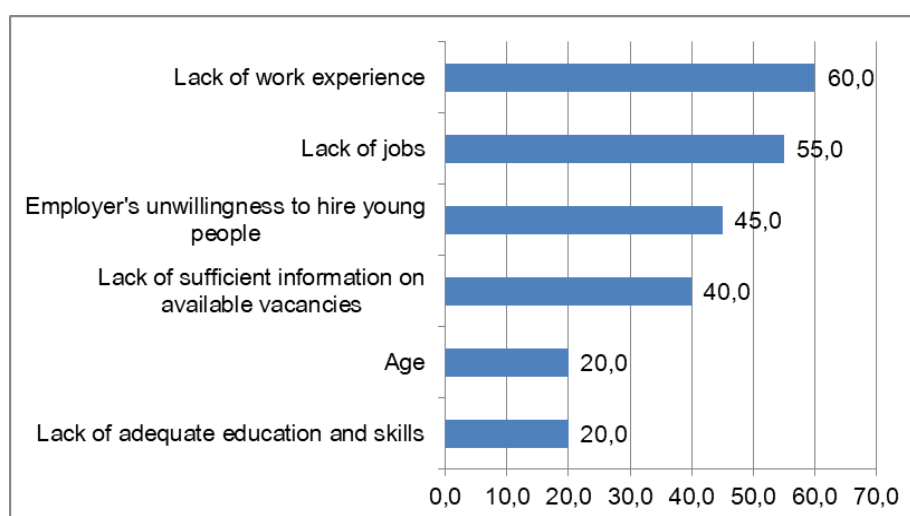
It was interesting to find out the assessment of young people on the protection of their rights particularly in the field of employment. Both working and also unemployed youth were asked that question. It turns out that most of them 50 percent to 45 percent with very little difference think that youth rights are not protected in the field of employment (here are combined the "no" and "rather no" versions). The distribution of responses is shown in Figure 11.

Figure 11. Are youth rights protected in employment sphere? (percent)



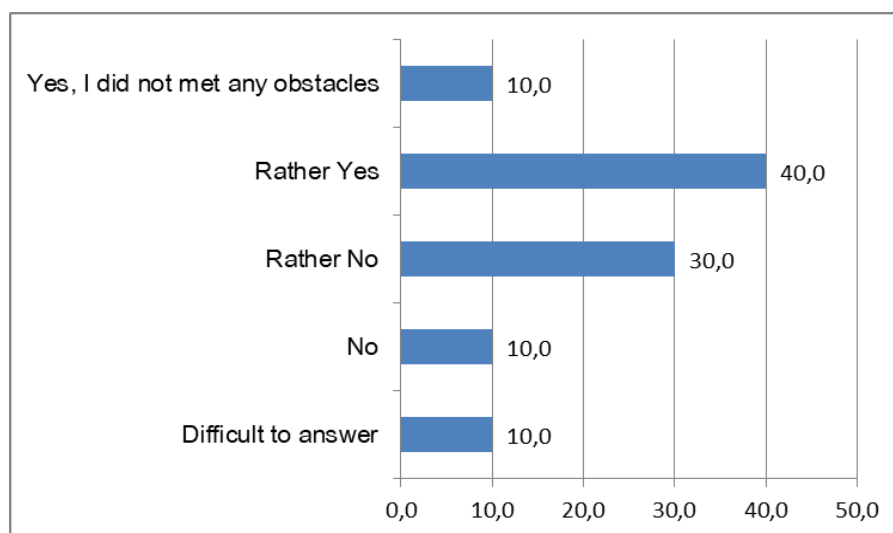
Then we tried to find out, that according to them which were the main obstacles for the youth that they collide in the field of employment. Some possible obstacles were presented to working and unemployed youth and it was offered to name other obstacles except for them. It was a multiple choice question and respondents could choose all the answers that they considered appropriate. It should be noted that the most significant obstacle they considered absence of work experience which was singled out by more than half of the respondents (60 percent or 12). The second biggest obstacle was the lack of workplaces (55 percent or 11 people) which was followed by the employers' reluctance to hire young people (45 percent or 9 people).

Figure 12: Main obstacles for youth in employment field (percent)



The surveyed working youth were asked to find out how they had been assigned to that job. So it turned out that half of them, straight 5 had found a job by a familiar, pal, servitor, the other 4 by competition, and only 1 young person was hired with the support of the employment center. It turns out that working youth have mostly easily overcome difficulties in the process of finding a job. They are shown in Figure 13.

Figure 13. Have you easily overcome difficulties in finding a job? (percent)



And to what extent young people enjoy their work, it turned out that the young surveyed people mostly do their job with pleasure, 6 out of 10 young surveyed people said so, and the other 3 don't do their job with pleasure and only 1 young man has just to do his job.

The last question for the working youth concerned was whether being young had been an obstacle to find a job. It turns out to be "not so", as 5 out of 10 young people had responded in such way, 3 said yes, it was an obstacle, 1 said no, and another 1 found it difficult to answer.

As for the job search of unemployed youth then it should be noted that all young surveyed people are definitely looking for a job. They look for a job through various announcements (5 people), by familiar, pal, servitor (3 people) and through employment agencies (2 people). It should also be noted that young people looking for a job who applied different companies and institutions for Jobs though no one had been hired yet however, they were not discouraged and were still actively seeking for a job applying to different organizations. The positive experience of the current new authorities and a high appreciation of the potential of young people on their career path was a little motivation and example for young people.

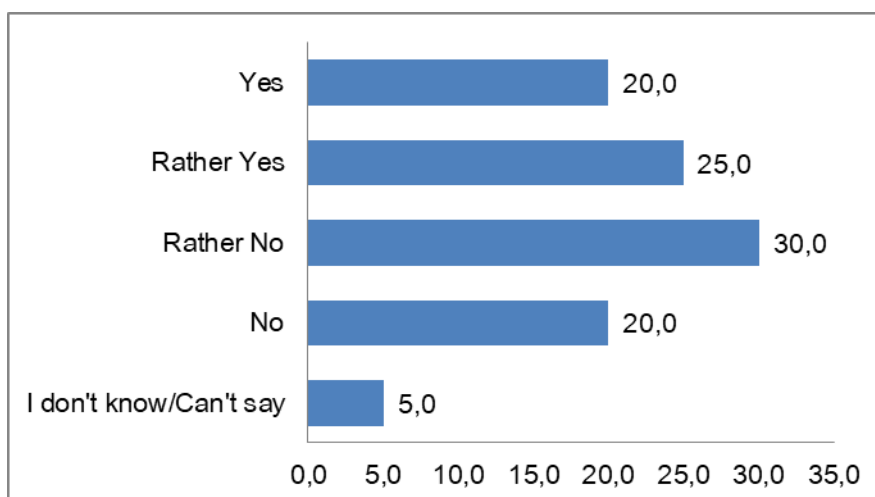
Elderly.

14 or 70 percent from 20 surveyed seniors have graduated from higher education institution, 4 people or 20 percent - of vocational school, college, vocational college and only 2 people or 10 percent graduated from 10-year high school. 70 percent of the surveyed elderly are women and 30 percent are men.

3 out of 10 surveyed working elderly work in the public sector, 3 of them work in the private sector, and 4 are self-employed / own their own small business. The areas of employment are education, service, trade. Only 1 out of 10 unemployed elderly is registered and the other 9 are unregistered unemployed, but 6 out of 10 people are looking for a job.

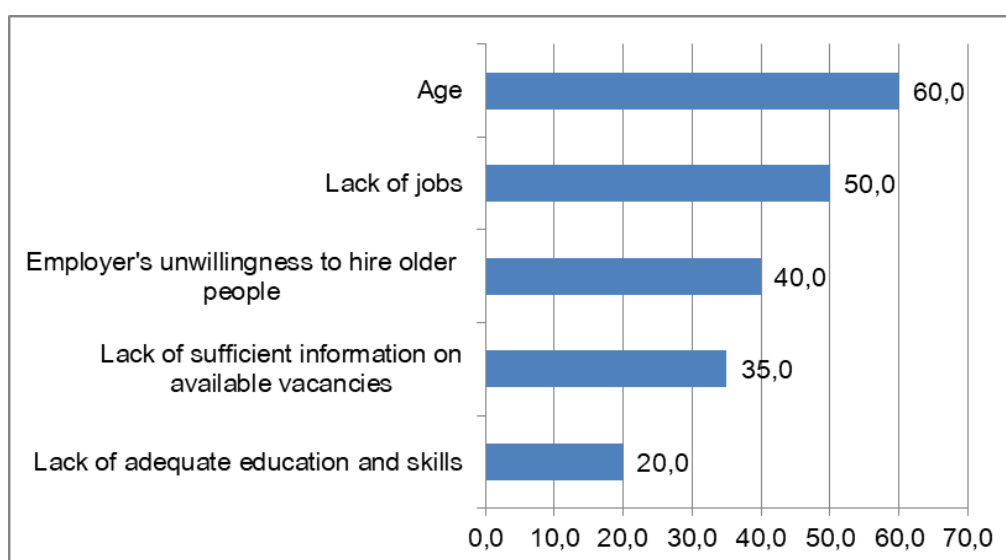
First of all, we tried to find out the elders' assessment of the protection of their rights, particularly in the field of employment. The question was addressed to both working and unemployed elderly. It turns out that just half of them (50 percent) think that elderly rights not protected in the field of employment. (Here the "no" and "rather no" versions are combined). The distribution of the answers is shown in Figure 14.

Figure 14. Are the rights of the elderly protected in the field of employment? (percent)



It was interesting to find out what, in their view, were the main obstacles for the elderly to which they face in the field of employment. Working and unemployed seniors were again presented with several possible obstacles and it was suggested to name other obstacles except for them. It should be noted that they considered age the most significant obstacle which was singled out by more than half of the respondents (60 percent or 12 people). The second biggest obstacle was the lack of workplaces (50 percent or 10 people), which was followed by employers' unwillingness to hire older people (40 percent or 8 people).

Figure 15. Major obstacles the the elderly face in the field of employment (percent)



It turned out that 3 out of 10 surveyed working elders have found their job, more accurately have been preserved from past times by appointment, the other 3 have found jobs by a familiar, pal, servitor, the other 4, on their own initiative being a self-employed, a founder of their own business. Consequently, the working elderly had no significant difficulties in finding a job.

And how much they enjoy doing their job then it turned out that the surveyed elderly were mostly happy to do their job, so did 7 out of 10 respondents and the other 3 didn't do their job with pleasure.

The question addressed to the elderly whether their age was not an obstacle to get a job, in this case was not so actual because they had not new got it and consequently at that time they were not old. But they said that their age was as an obstacle to maintain their job as 3 of them had already passed to retirement age, and the 3 were on the threshold and therefore it is always risky to lose their job. Of course, this was only for public and private sector employees because it does not pose such a danger for the self-employed, they decide their work. In any case, none of them wants to lose their job and "enjoy" senility, as pension is too little to cover their living needs.

When talking about unemployed seniors it should be noted that 6 out of 10 people are looking for work. They are looking for work by a familiar, pal, servitor (4 people) and through various announcements (2 people). It should also be noted that elders looking for a job who have applied for jobs to different companies and institutions no one had got it yet.

CONCLUSIONS:

Gender discrimination.

- 52.5 percent of surveyed women think that women's rights are not protected in Armenia today.
- 55 percent of respondents think that women's rights are most violated in the family. Employment sector is in the second place and gender discrimination is the least in politics.
- 60 percent of surveyed women think that there is an unequal treatment towards women in the employment field.
- 52.5 percent of surveyed women think that traditional thinking generates a differentiated attitude towards women in the field of employment.
- 57.5 percent of women of Armavir think that there is a differentiated attitude towards men and women while hiring.
- 67.5 percent of women think that men and women working in the same position are paid equally, or rather equally.
- 60 percent of respondents think that a woman's career hinders her being a woman.
- 47.5 percent of women agree that there is a differentiated attitude towards men and women being dismissed.
- For 65 percent of unemployed women in the case of working there is no significant difference between what gender the director will be.
- 40 percent of working women responded that the director's gender does not play a role in employment.
- 70 percent of working women stays in the workplace until the end of their assigned work day.
- 60 percent of working women have found a job by a familiar, pal, servitor.
- 70 percent of women of Armavir think that work is a source of income and a means of supporting families.

So there is gender discrimination in the field of employment which is manifested against women while

- **Getting a job**
- **On the way to professional growth,**
- **Dismissal**

Discrimination against people with disabilities.

- 70 percent of people with disabilities think that PWDs are not protected in the field of employment.
- Health problems, lack of workplaces, employers' unwillingness to employ people with disabilities are the main obstacles that they face in the field of employment.
- 60 percent of people with disabilities have overcome the barriers and stereotypes associated with the job search process with great difficulties.
- 60 percent of unemployed people with disabilities are looking for work but no one has yet found a job and those who are not looking for work are disappointed and are not looking for because they think that won't succeed .

Thus, there is discrimination against people with disabilities in the field of employment which is manifested mainly when getting a job.

Age-Related Discrimination.

- 50 percent of surveyed young people think that youth rights in employment field are not protected.
- Lack of work experience, lack of workplaces, employers' reluctance while supporting the young with work are the main obstacles that they face in the field of employment.
- Half of the surveyed working youngsters have found his/her job by a familiar, pal, servitor.
- Working youngsters have mainly easily overcome the difficulties while finding a job (50 percent).
- All surveyed unemployed youngsters are looking for work. Though none of them had found a job yet but they were not discouraged and were actively going on job search process.
- Again half of the surveyed elderly, 50% think that the rights of the elderly in employment field are not protected.
- Age, lack of workplaces, employers' reluctance to support older people with work are the main obstacles that they face in the field of employment.
- Although for surveyed working elders did not find their age an obstacle to find a job however, it is an obstacle to maintain it.
- 6 percent of surveyed unemployed elderly are looking for a job but none of them have found succeeded yet.

So there is discrimination based on age in the field of employment moreover both towards the young and also the elderly. For young people, it is manifested mainly when getting a job and against the elderly when they dismissed.

GEORGIA

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Tbilisi, Georgia 2019

Main national acts on prohibition of discrimination in the workplace are:

- Constitution of Georgia-2018 year
- Labor code-2010 year
- Law on public service-2015 year
- Law on Prohibition of gender based discrimination-2010 year
- Law on prohibition of all forms of discrimination-2014 year

Main international acts on prohibition of discrimination in the workplace are:

- ILO Convention 111 on Equal Remuneration N100, 1951, ratified by Georgia in 1996
- ILO Convention 100 Prohibition of Discrimination N 111, 1958 ratified by Georgia in 1895
- Convention on the Elimination of all Forms of Discrimination against women (CEDAW) 1979 ratified by Georgia 1994
- European Social Charter , 1996, ratified 2005
- UN Covenant on Economic, Social and Cultural Rights, 1966, ratified 1994
- EU Directives

General Problem Statement

Equality in the workplace remains a challenging topic in Georgia. These discrepancies are often reported by numbers of international and national organizations, such as: International labor Organization², CEDAW Committee³, US State Department⁴, European Committee of Social Rights⁵, Public Defenders Office⁶ and etc.

With the recognition that inequalities remain an important challenge in Georgia, the Georgian New Constitution adopted in 2018 introduced the special measures by the article 11 which states: „ All persons are equal before the law. Any discrimination on the grounds of race, color, sex, origin, ethnicity, language, religion, political or other views, social affiliation, property or titular status, place of residence, or on any other grounds shall be prohibited. State shall ensure equal rights and opportunities for men and women. State shall implement special measures to ensure substantive equality between men and women and to eliminate inequality”. The new constitutional provision underlines the state’s acknowledgment toward the importance of the equality in the country that needs to be substantive and considered in policy and legislative level.

It should be noticed, that Labour Code of Georgia adopted in 2006 was one of the most deregulated in the world. It was result of neoliberal reforms based on which almost all labor legislation was abolished and all labor market institutions, including labor inspection were liquidated.

There were many regulations in labor code which caused discrimination base on different grounds and did not ensure workers with the minimum labor rights. For example, labor code used to foresee verbal and short term labor contracts without any restrictions, no previous notice and justification was needed for

² https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3342182:NO

³ https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_670146.pdf?fbclid=IwAR0y2FurNZV5Zy6V_j5Mpr1e_rX6pdb2P8nDh67XJ99H5DQSiUdiiZlZYyO

⁴ <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhslDcrOIUTvLRFdjh6%2Fxp1pWDqKYdAsZCi%2FpTG5mONu7rLEgGDzC4uYj4EX9q0OwGtztAeryJ0NdpVEHSESXwGVYxjsz8OaUw6uleEqhG0qBpr7G2F1eAhw8U9lp5arMXA%3D%3D>

⁵ <https://www.state.gov/wp-content/uploads/2019/03/GEORGIA-2018-HUMAN-RIGHTS-REPORT.pdf>

⁶ <https://mycloud.coe.int/s/MN5DMbSANnFZkWM#pdfviewer>

⁷ <http://www.ombudsman.ge/res/docs/2019042620571319466.pdf>

terminating an employment relationship, employer could dismiss workers any time even based on discriminatory ground. The only legal requirement for the employer to dismiss a worker was the payment of one month salary. Consequently, several sources reported the cases of discriminatory dismissals in Georgia. The grounds most frequently invoked in national jurisprudence on discrimination are political opinion, sex, age, disability, and trade union activities, though these reasons of dismissals had been explicitly prohibited by ILO Convention #158.

Besides, as tool of discrimination were used verbal and short term labor contracts that were not restricted by the code.

On 12 June 2013 the Parliament of Georgia introduced certain changes and amendments to the Labour Code of Georgia. At the initial stage international organizations and social partners, including trade unions were involved in the working process of the draft-law, including the trade unions. As a result of this cooperation the document adopted on 16 May 2013 by the Parliament at the first hearing was in general in compliance with the international labor standards and Georgia's international obligations. However, after this stage the developments around the process were progressed in violation of the social partnership format as the government maintained the consultations only with employers. Such attitude resulted in changes of the draft to the worse for workers. Trade Union received only post-factum information about further changes.

Finally the document was adopted, which to the certain extent improved workers' situation, specifically: discrimination has been prohibited in the pre-contract relations; the subjects of labour relations have been identified precisely; obligations of employers have been determined; oral and short-term agreements/contracts have been restricted considerably; the essential conditions of employment agreement have been defined and they may not be altered only under employer's sole decision; the term of individual contract would be declared null and void had it run counter to the Labour Code or Collective Agreement, except the cases when the individual labour agreement improved the workers' conditions. It has prohibited dismissal of a pregnant women and etc.

Despite these positive changes labor legislation still does not provide enough protection from discrimination in the workplace.

One of the most frequent ground of unequal treatment is gender.

Women's economic activity is directly linked to the index of their employment. Despite the number of positive steps made to improve labor regulations in last years, the issues of women's promotion, women's economic empowerment and equal participation in economic development, as well as proper pay remain problematic. The feminization of poverty and a high rate of violence against women is mainly caused by a low economic activity of women. According to an official statistical data, more women are employed than man. However, women's average pay is much lower than men's one. Income inequality is mostly caused by employment of women in low paid sectors and position and by deeply entrenched so called "glass ceiling" impeding women's career promotion and advancement.

Lack of the legal guarantees for women is reflected in an official statistical data provided by the National Office of Statistics (Geo stat), according to which only 52.9% of women are reportedly employed compared to 67.1% of men. There is almost no gap between male and female educational attainment, highlighting the disproportionate challenges faced by young women transitioning from education to work. The gender wage gap is also one of the most problematic issues. In 2017 the average monthly salary was 770,2 GEL for women, and 1 197,4 GEL for men, which means 35,7 % differences between women and man salary in favor of men. Gender inequalities are most challenging in the rural areas. Gender stereotypes, unequal division of unpaid agricultural and domestic work and a lack of gender-responsive services and programmes limit women's abilities to acquire new skills, develop agricultural or other businesses and earn sustainable income. Female entrepreneurs face challenges with access to finance, information,

training, access to networks for business purposes as well as reconciliation of business/work with family responsibilities.⁷

The same problem refers to the public sector in line with the private sector. According to the official statistical data majority of the employees in public service are men that equals to 71 %, compared with women, whose are represented in amount of 29 %. There are 4 404 men employed on managerial positions in public service, while females on the same positions are represented by 1229 women, which means only 21,8 % women's representation out of the 78.2 % men's representation on the managerial positions⁸.

The violation of women's labor rights and discriminatory approach is a multi-factorial issue and it has to be explored within several cross-cut areas. It deals with the traditional cultures and stereotypes that usually hinder women's participation, the lack of positive actions and excessive gender neutral legislation, the lack of employment opportunities, the lack of legal aid and consulting etc.

The woman's role has always been considered as to take care of domestic tasks. Stereotypes about women's ineffectiveness in the managerial and decision-making positions are still deep-rooted. Regrettably, The Government of Georgia has not taken any substantial steps or implemented relevant policies to wage awareness increasing campaigns to promote women's equality in labor relations and to gradually eradicate persisting gender stereotypes in the society.

Legal frameworks, though undergoing significant changes, are still lacking gender sensitive provisions. Unfortunately, the need for affirmative action is not adequately supported. The Parliament of Georgia has failed to adopt the law of Georgia on Gender Quota, which could enable equal presentation and participation of women in the Parliament and the local municipalities. Due to a big disbalance between family and work responsibilities, women are affected to combine pregnancy, delivery, breastfeeding and childcare with a full-time job and workload. Women often sacrifice their professional career to their family responsibilities. Many employers treat women as "problem causing" workers, who would often be absent and demand additional privileges, like maternity leave. Such situation leads to gender discriminations, when employers are reluctant to employ women; women are low-paid, not promoted etc. There are no concrete policies in place in Georgia, to provide meaningful assistance to women to combine their family responsibility with their work duties. According to the 2018 Parliamentary report of the Public Defender of Georgia, women's activity and participation in the country's economic life is very low. The Ombudsman reports that, according to the data from the "Global Gender Gap Index"⁹ Georgia ranks 85th out of 149 countries.

There are multiple forms of women discrimination in labour relations, however these facts are relatively less explored due to the following reasons: lack of statistics, lack of court-cases and lack of reporting on behalf of the victim. Often, the woman victim cannot realize that she has been discriminated and regards unfavorable conditions of overt and covert discrimination as normal.

Covert discrimination is very much related with cultural stereotypes and prejudices which are internalized by many victims. However, it is also frequent that the woman victim of discrimination is simply afraid to report: in case of ineffective reaction, she will be further discriminated and isolated.

In the cases when the victim applies to the court other significant barriers include the difficulty of gathering relevant evidence and the burden of proof.

Women's promotion barriers "the glass ceiling" also represent a common form of discrimination, however one of the most difficult to prove. As the report states, women and women's rights organizations doesn't

⁷ www.Geostat.ge

⁸ Bureau of public service. <http://csb.gov.ge/ge/publications/%E1%83%AC%E1%83%9A%E1%83%98%E1%83%A3%E1%83%A0%E1%83%98-%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%98>

⁹ <http://www.weforum.org/reports/global-gender-gap-report-2013>

have much practice to gather relevant data and evidence to qualify an action as the result or the process of discrimination due to "glass ceiling".

Discrimination in the pre-contact relations is common and starts from the job-announcement phase. It includes the format and the content of the job-interview and the conditions of the contract. As the report states, there are still numerous cases when women report about the pre-contract discrimination but don't fill a case at the court.

One of the most covered and unreported discrimination forms is the sexual harassment. It has been declared illegal by the changes in the Labor Code and Gender Equality Law of Georgia in June, 2019.

It should be noticed, that these last positive steps mainly were initiated based on obligations derived from ratification of ILO conventions and besides, Association Agreement between Georgia and European Union.

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

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

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

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

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

- Article 227 is about the International Labour Organisation's (ILO) Declaration on Fundamental Principles (prohibition of discrimination) and Rights at Work of 1998. Also, it is about the State's obligation to have legislation (policy) that promotes protection of labor rights, to achieve high level in this direction and sustain it;
- Article 229 focuses on the importance of international trade development such a way as to ensure whole and productive employment/decent work (decent work implies gender equality, among the other aspects), respect and realize in the law and practice fundamental standards of the International Labour Organisation (ILO), its No. 100 and No. 111 conventions on prohibition of discrimination of labor rights;
- Article 348 (employment, social policy and equal opportunities): The Parties shall strengthen their dialogue and cooperation on promoting the Decent Work Agenda, employment policy, health and safety at work, social dialogue, social protection, social inclusion, gender equality and anti-discrimination, and corporate social responsibility;
- Article 349 focuses on the importance of gender equality and equal opportunities;

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

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

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

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

Prohibition of Discrimination and Gender Equality			
#	EU Directives	Term for implem entation	Year of starting implem entation
1	Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation ¹⁰	4 years	2018
2	Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) ¹¹	4 years	2018
3	Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security ¹²	4 years	2018
4	Directive 2000/43/EC on implementing the principle of equal treatment between persons irrespective of racial and ethnic origin.	3 years	2017
5	Directive 2000/78/EC on establishing general framework of equal treatment in employment and occupation.	3 years	2017
6	DIRECTIVE 2004/113/EC on implementing the principle of equal treatment between men and women in the access to and supply of goods and services	3 years	2017

Concept of Discrimination According to the Georgian Legislation

According to the Article(2. Employment Relations) of the Labor Code:

¹⁰ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006L0054&from=EN>

¹¹ Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC).

¹² Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31979L0007&from=EN>

- Employment relations are established on the basis of the contract reached between the parties as a result of the voluntary expression of free will based on the principle of equality.
- Any form of discrimination is prohibited in the employment and pre-contractual relationship based on race, color, language, ethnic or social belonging, nationality, origin, economic condition or status, place of residence, age, gender, sexual orientation, disability, membership of religious, public, political or any union, including professional unions, marital status, political or other views.
- Direct or indirect oppression of a person that aims to or causes the creation of a frightening, hostile, disgraceful, dishonorable and insulting environment is considered to be discrimination. Creation of conditions that directly or indirectly worsens a person's condition in comparison to their person in the same conditions is also considered to be discrimination.
- The need to differentiate between persons due to the essence and specificity of a position the conditions of its fulfillment which aims to achieve a legitimate goal and is a reasonable and commensurate mean for its achievement is not considered to be discrimination.
- It is prohibited to terminate labor contract or/ and any kind of negative action or influence on worker because he/she applied or cooperated with the relevant administrative body against discriminatory action .

Problem Statement at National level

Despite the fact that Organic Law, labor Code of Georgia recognizes non-exhaustive lists of prohibited grounds of discrimination, there is still some lack of classic signs of discrimination such as: citizenship ,health conditions, pregnancy or childcare, whereas the most unequal treatment and discrimination is linked to abovementioned grounds of discrimination.

Thus, adding the pregnancy or citizenship, childcare, and health conditions, as classic grounds of prohibition of discrimination in Labor Code will prevent or mitigate gender based discrimination at labor relations.

A we see, According to the Labor Code of Georgia, article 2, paragraph 3, discrimination is:

1. **Harassment** – direct or indirect harassment with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.
And/or
2. **Unequal treatment** – Creating conditions where one person, directly or indirectly, is treated less favorably than another is, has been or would be treated in a comparable situation.

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

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

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

and reasonable justification and is necessary in a democratic society and where the measures applied are proportional for the achievement of such purpose.

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

Conclusions:

- The abovementioned norms of the “Law on the Elimination of all Forms of Discrimination” are in compliance with the contents of the international labor standards
- Concept of harassment defined in the Labor Code complies with the concept of harassment written international labor standards.

Recommendations:

- It is desirable that the Labor Code of Georgia, the normative act regulating labor activities, defined the concepts of direct and indirect discrimination
- Accordingly, the definition should be formulated in such a way as to set prohibition of discrimination on any other grounds and should not list all the grounds

Denial in employment

According to the article 5.8 (Pre-Contractual Relations and Exchange of Information Prior to Conclusion of Employment Contract) of the Labor Code:⁸an employer shall not be liable to substantiate his/her decision not to hire an applicant.

The right granted to the employer by the labor Code - not to justify the reasons for denying the employment during the pre-contract labor relations - remains as an encouraging factor for discrimination based on different grounds. This provision creates a problem of accessibility to the justice, as it does not oblige the employer to develop the document describing the reasons for denial that could be used by the party for appealing. The practices of the Georgian Trade Union Confederation (GTUC) show that this provision mostly affects women, who were denied in employment because of their family responsibilities (married women, child care or women career of persons with disabilities, mothers of large families) and pregnancy.

People very often get denials to be employed because of their age (young, old) or disability. Frequently, there are cases when in job announcements there are indicated certain age in the qualification criteria, for example 20-25 years old or/and several years of work experience. Such situation prevents young people to get jobs. That is why there is almost 30% of unemployment among youth in Georgia¹³.

¹³ www.geostat.ge

Recommendation

Article 5 para 8 Should be amended as follow: If candidate indicates circumstances that creates a reasonable doubt to believe that the employer acted against article 2 paragraph 3 of the labor Code, (prohibition of discrimination), employer shall be obliged to justify the refusal in employment¹⁴.

Equal pay for Equal work

One of the most frequent type of discrimination in the labor relations is the pay gap. There is no existing regulation providing equal pay for equal work in Georgian labor legislation. The Georgian legislation does not give full expression to the principle of equal remuneration for men and women for work of equal value. Neither labor code give any definition of remuneration. The principle of the ILO Convention #100 is not reflected explicitly in the Labor legislation, even if Georgia had ratified. Article 2 of the Code contains just a general prohibition of discrimination in labor relations. Georgia has no methodology to measure/evaluate value of job.

The ILO Committee of Experts of the Application of Conventions and Recommendations (CEACR) recalls that even though general non-discrimination and equality provisions are important, they are not sufficient to give effect to Convention #100 if they do not capture the key concept of “work of equal value”. This concept lies at the heart of the fundamental right of equal remuneration for men and women for work of equal value, and the promotion of equality.

Due to historical attitudes and stereotypes regarding women’s aspirations, preferences and capabilities, certain jobs are held predominantly or exclusively by women (caring professions) and others by men (construction). Often, “female jobs” are undervalued in comparison with work of equal value performed by men when determining wage rates. The concept of “work of equal value” is fundamental to tackling occupational sex segregation because it permits a broad scope of comparison, including, but going beyond equal remuneration for “equal”, “the same” or “similar” work, and also encompasses work that is of an entirely different nature which is nevertheless of equal value.

The Committee, once again, urges the government to take concrete steps to give full legislative expression to the principle of equal remuneration for men and women for work of equal value, with a view to ensuring the full and effective implementation of the Convention.

Besides it should be underlined, that After the abolition of the Labor Inspection Service in 2006, no labor supervisory body was put in place which means that there is no adequate and effective enforcement mechanism to ensure that the principle of equal remuneration between men and women for work of equal value is applied into practice and to allow workers to avail themselves of their rights. Without the creation of a labor supervisory body, the existing and future provisions ensuring workers’ labor rights, the prevention of discrimination will stay unattended and unreported.

According to the assessments by the independent experts the wages paid to female employees generally constitute only 2/3 of wages paid to male employees in the country (GenderPayGap-GPG).

The Georgian Bureau of Statistics provides annual gender-disaggregated data on market participation, average salaries and average education. According to official statistics, the average salary of women is falling behind that of men. According to the last statistical datas, the average monthly nominal salary of men constituted GEL 1197 while GEL 770 for women. Respectively, women earned on average 64% of men’s salary in 2017 (Georgian Bureau of Statistics).

The survey conducted by the Center for Social Sciences (CSS) in 2014 also depicted the inequality among the average salary distribution among men and women, regardless of similar education. Women’s average

¹⁴Para 6 of Article 2 of European Social Charter, CEACR: Individual Observation concerning Right to Organize and Collective Bargaining Convention, 1949 (No. 98) Georgia (ratification: 1993) Published: 2010

salary ranges between GEL 251-400 whereas for men the average salary is between GEL 401-700. The educational level does not affect men's salary (except in the case of a PhD degree), while women need an undergraduate or graduate degree to earn as much as a man with a secondary education degree. The unequal average salaries can be influenced by the fact that more men (65%) work in the private sector, whereas women are working in private and public sectors in equal shares (47% respectively) .

Horizontal and vertical segregation also contributes to wage inequality and the study found evidence of both horizontal and vertical segregation in Georgia. Vertical segregation is manifested by the fact that 65% of respondents reported having a male manager, whereas 31% reported having female direct managers. Horizontal segregation is reflected in findings that 79% of employees working in health and social sectors and 78% of employees in education sector are women, compared to 96% of employees in construction sector, 91% of employees in transportation and storage sectors and 47% of employees in public administration and defense, compulsory social security sectors are men.

Gender disparity exists in benefits and other wage components: 66% of men (who have been eligible for bonuses/compensations) got bonuses, compared to 34% of women. 60% of men got premiums, compared to 41% of women (who responded that they were rewarded compensations/benefits by their employer). There is also a wide gender gap regarding health insurance: 67% of men and only 33% of women claimed having health insurance provided by their employer.

Despite the fact that national health insurance does exist in Georgia, private health insurance often provides better or extra coverage of health-related expenses. Many gender differences regarding bonuses, benefits and compensations may be also explained by the gender segregation in the Georgian labor market. However the gender gap concerning bonuses, premiums and compensations was significantly large which may also point to gender discrimination¹⁵.

Case of Georgia was discussed in the ILO Conference by the ILO Committee of Standards because of non implementation of the Convention #100 in 2018.

Recommendations

- Changes and amendments in the Labor Code to ensure implementation of ILO Convention #100.
 - Georgian government should develop the methodology, based on the objective criteria which will measure any work done by employees.
 - Implement effective enforcement mechanisms (labor regulatory body) to guarantee the principle of equal remuneration between women and men for work of equal value is put into practice.

The right of employed women to protection of maternity

The labor code does not provide enough protection of maternity .Often this is the cause of discriminatory approach towards women

Women in private sector get only 1000 GEL benefit from state budget during maternity leave and employer does not have an obligation to reimburse her compensation, the gap between her salary for 183

¹⁵ study the gender discrimination in workplace, the representative survey has been conducted in entire Georgia [excluding the separated territories of the South Ossetia and Abkhazia]. The survey has included the individuals who reported themselves as employed formally or informally in urban areas of Georgia. It has not included the self-employed individuals or employed individuals residing in the rural 23 areas. Totally, 1364 full interviews were collected, reflecting the specified target group with the 95% confidence interval. (<https://article42.ge/media/1001447/2017/09/11/6c0cb0d69764bea21f32052f5abce8ce.pdf>).

days and state benefit 1000 GEL. In practice, this regulation obliges an employee to return to job as soon as possible to get salary and therefore her right to maternity is violated.

Also, Georgian labor code does not provide any guarantees of maintaining jobs for women after expiration of maternity leave. It should be mentioned that female public servants get full amount of salary during maternity and additionally they are protected from dismissal during 3 years after childbirth. This attitude can be considered as discrimination depending on place/sector of employment. Because of the above mentioned situations, women in Georgia often are in front of the dilemma to make an option between job and child birth.

In addition, pregnant women cannot get free time for medical examination. In case she is absent even for this reason it can be considered as the violation of labor contract or even ground of dismissal.

ILO Convention 183 on Maternity Protection”, European Social Charter, article 8, **Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) define that the state should take measures for protection of women during pregnancy, maternity leave and child care and take the appropriate measures.**

Article 6 of the convention 183 states that cash benefits for maternity leave shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living and that medical benefits shall be provided for the woman and her child in accordance with national laws and regulations

Recommendation

Labor legislation should contain regulations (paid leave, free time for medical examinations, reconciliation of family responsibilities with work, flexible working hours and etc.) which will give enough protection for maternity in compliance with the international labor standards.

Termination of labor contracts

Article 37, para 3, (Grounds for Termination of Employment Relations) of the Labor Code: c) Pregnancy leave for the period specified in Paragraph g) of Article 36 from the moment the employee notifies the employer about her pregnancy, with the exception of cases when the employment contract is terminated on the grounds set in Subparagraphs b) (**Expiration of the employment contract**), c) (**Performance of the work considered under the employment contract**), d) (**Resignation of the employee**), e) (**Joint written agreement of the employer and the employee**), g) (**Gross violation of the employee's obligations set by the employer under the employment contract, internal regulation or collective agreement**), h) (**Repeated violation of the employee's duties provided by his/her employment contract, internal regulations or collective agreement within one year after disciplinary sanctions have already been imposed**), j) (**Enforcement of a court judgment or decision which makes the performance of work impossible**) and l) (**Death of the employer as a physical person or death of the employee**) of Paragraph 1 of this Article;

One of the problematic issues is termination of labor relations during the period of pregnancy. Although the Labor Code protects pregnant women from unlawful dismissal, but not with regard to all possible grounds for termination of labor relations envisaged by the law. For example, the law allows dismissal of a

pregnant woman because of expiry of the contract term. Very often the pregnant women are denied from conducting new contracts because of expiry of the previous contract term, while the contracts are easily renewed for new term with other employees.

The current law does not secure the employee possessing an infant from dismissal. Very often, after the maternity leave the employees are asked to pass different examinations (attestation, tests, etc.) thus creating the objective problem because, after the long leave the employee needs reasonable time to adapt to the changed environment.

Besides, the Labor Code states that in case of 'objective circumstances' the labor contract can be concluded for the fixed term less than one year Article 6, para¹² lit 'e') and besides labor contract can be terminated based on objective reason (Article 77, 1, „o"). 'Objective circumstances' is a category, which completely depends on subjective interpretation by the employer and such provision may encourage dishonest employer to abuse this right through deliberate mis-interpretation of 'objectiveness'. It should be mentioned that short term contracts have already turned into the effective weapon of employers to dismiss workers base on discriminatory grounds

Recommendations:

- **Provisions of Georgian Labor Code stating that expiration of labor contract might cause dismissal from work, shall be removed from the Code without additional notice, highlighting the fact that this provision does not applies to pregnant women on those on maternity leave**
- **Objective criteria shall be withdrawn from articles 6 and 37 of the labor code**

Sexual harassment

One of the most covered and unreported discrimination forms is the sexual harassment. The legislation did not provide the definition of the sexual harassment and did not include any sanctions to be assigned.

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

This problem is discussed in the Report 2018 of the experts committee of the International Labor Organizations.¹⁶

It is worth noting, that on April 4, 2017, the Georgian Government received an ordinance on the "Definition of General Rules of Ethics and Behavior in the Public Institution", that somehow regulates aspects¹⁷ of sexual harassment. This is a positive step forward, though it does not comply with the standards set by the Directives. Apart from that, private legal relationships are not regulated, as these rules are related only to the public sector.

The Parliament of Georgia has finally adopted a legislative package concerning the definition of Sexual Harassment it has been prepared by the Gender Equality Council of the Parliament in a close cooperation and engagement with civil society organizations, including trade unions in June, 2019 . The bill proposed amendments to several laws including the labor code of Georgia and administrative code. The law defines

¹⁶ http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3342182:NO

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

sexual harassment as “unwanted sexual behavior against a person in a public space aimed at and/or causing a dishonoring, frightening, hostile, humiliating, or offensive environment”. The changes also envisage regulating sexual harassment in the workplace. In addition, the definition of sexual harassment is to be written into the Labor Code, which reads that sexual abuse may be regarded as 'an undesirable behavior of a sexual nature aimed at infringing a person's dignity or creating a humiliating, hostile or insulting environment'. The additions to the labor code also define sexual harassment as creating “such circumstances that directly or indirectly worsen the conditions of a person as compared to other people working in a similar environment”(article 2).. Sexual harassment would be punishable by administrative fine of 300 GEL on the first offense and 500 GEL or community service if repeated within one year. More severe cases, including sexual harassment of a minor, in the presence of minor, or of a pregnant woman, would be punishable by a fine up to 1,000 GEL or 10 days administrative imprisonment (article 166 prima). The law defines sexual behavior as including making sexually explicit comments, showing genitalia and other verbal or non-verbal sexual behavior.

The Public Defender's office is designated as an enforcement mechanism in labor relations and will be empowered to make binding recommendations on private entities in cases of discrimination.

Recommendation:

- Inspection of Cases of Sexual harassment in the workplace should be mandate of the labor inspection and relevant sanctions should be provided
- Role of an employer should be outlined with regard to fighting against sexual harassment. This involves creating relevant policy documents, campaigns for raising awareness, etc

Unequal Treatment related to Working Time

The labor legislation contains a discriminatory approach regulation working time.

The Code determined **the maximum weekly threshold of working hours** and it amounts to 40 hours. There is an exception of those enterprises where the working process is specific as requires uninterrupted regime or the working process which exceeds 8 hours per day. For these latter cases the weekly working hours amount to 48 (Article 14). This is a clear discrimination. The Code obliged the government to approve the list of the economic branches with specific working regime (despite the fact that the Code itself refers to “enterprises” with specific working regimes and not to the “branches”) within three months after enactment of the amended Labour Code.

Based on the Code, those working in the so called specific regimes are obliged to work 8 hours more per week, i.e. 1 extra working day per week without any additional compensation. Besides, their overtimes are reimbursed after weekly 48 hours limit as long as 48 is considered as their normal weekly working hours. Because of this such employees become victims of even more unequal treatment where there is a violation of the equal reimbursement principle for the equal work. Such treatment conflicts with the Constitution and with the number of the International Acts (EU Social Charter (chapt.2), Universal Declaration of the Human Rights (chapt. 23), Convention on Human Rights and Fundamental Freedoms (chapt. 14), International Pact on Economic, Social and Cultural Rights (chapt.7), ILO Convention #111 of 1958 on "Discrimination in the Labor and Employment Spheres", Council Directive 2000/78/EC of November 27, 2000 establishing a general framework for equal treatment in employment and occupation, Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time.

After the abovementioned, on December 11, 2013 Georgian government adopted the Ordinance #329 on "Approval of the list of the branches with specific working regimes" which covers almost all economic spheres and in fact the 48 hour working week became a normal threshold instead of an exception.

It should be also stressed that neither the Code itself nor the Ordinance #329 by the government provide effective mechanisms for resolution of the situation when the parties to the employment relations

disagree over whether the work regime is specific or not and what working time (40 or 48 hours per week) should apply. The Ordinance #329 only stipulates that in case of disagreement between the employee(s) and the employer over “the specificity of the work regime” the case could be referred to the Tripartite Social Partnership Commission (TSPC) for its consideration. Taking into account the fact that the TSPC’s mandate is limited to only issuing a recommendation (which is not binding) the case of disagreement will not be resolved at all and it will be the workers who will suffer in the end as if they don’t agree with the employer-proposed contract they may be dismissed.

Recommendation:

40 hours working week shall be withdrawn from the labor code.

Unequal treatment in the enjoying right to strike

The labor legislation also contains regulations which unequally treats to workers in the processed of enjoying their rights to strike.

In para 3 of Article 47 of the Labor Code the following are identified as the grounds when the disputes arise: a) violation of human rights and freedoms envisaged by Georgian legislation; b) violation of employment agreement and/or employment conditions; c) disagreement between workers and employers regarding substantial conditions of individual employment agreement and/or collective agreement.

The Code determines exhaustive list of substantial conditions (Article 6 para 9), which lacks such important issues as health and life insurance, labor and health safety conditions, mass redundancy, sympathy strike, national-wide/general strike, and others. If workers may not be able to initiate collective dispute on these or other disagreements raised within the employment relations then their right to go on strike will be seriously restricted, since a strike is a result of collective dispute as stated in the Labor Code.

Transitional provisions of the Code state that the Government shall elaborate the list of professions related with the human life and health. This is connected with deprivation of the right to strike to the certain category of workers (Article 51 para 2). The legislation however provides no compensation mechanisms for restriction of the said right, either simplified procedure for dispute resolution or any other reparations. This is a clear example of restriction of the right to freedom of association and collective bargain.

Finally, the list of professions related with the human life and health has been approved by the Order №01-43/6 of the Minister of Labor, Health and Social Affairs issued on December 6, 2013; According to the list the professions related with the human life and health cover the following occupations:

- a) working in ambulance service;
- b) working at stationary medical service facility and/or at emergency service of ambulatory facility;
- c) working at energy generation, distribution and dispatching facilities;
- d) working at water supply and sewage facilities;
- e) working at telecommunication facilities;
- f) working at aviation, railway, marine and land transportation security facilities;
- g) working at institutions ensuring the country's defensibility, legality and law enforcement, among them:
 - g.a) Ministry of Defense and the Agencies within the ministry's system;
 - g.b) Ministry of Internal Affairs and the Agencies within the ministry's system;
 - g.c) Ministry of Corrections and the Agencies within the ministry's system;
- h) working at judiciary system;
- i) working at Cleaning Municipal Departments;
- j) working at Fire and Rescue Services;
- k) working at natural gas transportation and distribution facilities;
- l) working at oil and gas production, preparation, oil refinery and gas processing facilities;

It is noteworthy, that except the professions determined by the Minister's Order, according to the Law on "Prosecutor Office", and namely its article 31 (11) provides that "servants of the prosecutor's office are restricted to go on strike or participate in a strike".

According to the Order, all individuals employed at the occupations determined by the list are also restricted from going on strike. It is obvious, that the list is quite long and covers the occupations where according to ILO standards (established by the Committee of Freedom of Association, and fully accepted by the Experts' Committee) it is unreasonable to restrict rights of striking, such as, for example: i) working at Cleaning Municipal Departments; k) working at natural gas transportation and distribution facilities; l) working at oil and gas production, preparation, oil refinery and gas processing facilities; - because employees' performances in the named organizations do not relate directly with the human life and health.

Besides, the mentioned Order covers significant part of the public servants, (e.g.: g) working at institutions ensuring the country's defensibility, legality and law enforcement, among them: g.a) Ministry of Defense and the Agencies within the ministry's system; g.b) Ministry of Internal Affairs and the Agencies within the ministry's system; g.c) Ministry of Jails and Corrections and the Agencies within the ministry's system; h) working at judiciary system;), while pursuant to ILO standards the right to strike can be restricted only to the high level public authorities performing their duties on behalf of the State, therefore, spreading out such restrictions to all ordinary servants of the same institutions contradicts the ILO standards.

Full restriction of the right to strike for the professions related with human life and health also contradict with ILO standards, as according to the ILO recommendations, it is important that the law considers minimal service system for the mentioned institutions to be maintained. More precisely this refers to the type of services that are necessary to avoid risks to the human life and health and the state security. Here we mean the fields included in the list established by the Order, such as individuals employed at railway transportation system, at energy generation, dispatch and distribution system and etc.

These regulations were criticized by the ILO Committee of Experts.

Recommendation:

Right to strike shall be regulated according to the international labor standards.

Burden of Proof in case of discrimination

According to the requirements of the international standards burden of proof on defendant/employer in any legal case that is based on discrimination.

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

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

Compensation and Pay for Damage in case discrimination

International Standards set obligations to elaborate legislation and mechanisms that ensure victims of discrimination receive effective compensation and/or pay for damage.

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

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

Anti Discrimination Mechanism

Member States to not only adopt legislation but also launch effective mechanisms that ensure equality.

According to the statute of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia, approved by the Government of Georgia, ordinance #473, on October 14, 2018, the main activities of the Ministry in the field of labor and employment is implementation of social security mechanisms in organizations and establishments and promotion¹⁸ of elimination of labor discrimination.

According to this statute, tasks and competence of the Department of Labor Conditions Inspection are: to elaborate relevant recommendations¹⁹ for preventing cases of discrimination at workplace or forced labor and, in case of request of employees and/or employer, study and analyze cases of discrimination and its causes at workplace and elaborate relevant recommendations²⁰.

Though, by the statute of the department, such functions are restricted at this stage²¹.

The department has opportunities to work on the issues of discrimination within the framework of the State Program 2018 of Labor Inspection approved by the #603 ordinance of the Government of Georgia. Though, it can not be effective, as it is based on voluntariness. In case of violation, the Department will restrict only with recommendations²².

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

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

The Public Defender of Georgia carries out the cases on discrimination on the basis of applications and complaints of physical and legal persons or group of persons. The Public Defender is authorized to end the case with conciliation. If conciliation is impossible and discrimination is proved, it refers relevant person to restore the rights of a victim. Within the framework of the mandate, the Public Defender is authorized

¹⁸ Government of Georgia, ordinance #473, on approving the statute of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia, article 2, paragraph “f”, “e, d” subparagraphs.

¹⁹ Article 19, paragraph “c”

²⁰ Article 19, paragraph “d”

²¹ Ordinance of Georgia on Labor, Healthcare and Social Protection #01-1/N. Article 7

²² Ordinance of Government of Georgia, #603, on 2018 State Program of labor Inspection article 2, paragraph 1, article 3, paragraph “f”.

to issue a general proposal and send it to the relevant establishment for preventing discrimination and fighting against it.

If an administrative body does not fulfil a recommendation and there are enough proofs to prove discriminatory treatment, the Public Defender is authorized to file an appeal to a court against the administrative body²³.

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

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

Common courts are means for fighting against discrimination. They discuss cases on discrimination according to the special rule of court processes. As a result of a court dispute, a victim of discrimination can request termination of discriminatory actions and/or elimination of its results and compensation²⁴ for moral and material damage.

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

²³ Law on "Elimination of all Forms of Discrimination" article 6

²⁴ Civil Procedure Code of Georgia, chapter 7

UKRAINE

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Introduction

Currently, in accordance with the Association Agreement between Ukraine and the EU, an active process of the legislation reform in the social sphere is taking place in Ukraine. The work in the direction of European integration is focused on implementation of the EU directives in the social sphere as well as the provisions of Chapter 21 "Employment, social policy and equal opportunities cooperation" of Section V of the Association Agreement.

Recently regulatory acts which should facilitate the effective implementation of the Association Agreement have been adopted by the Ukrainian government. Thus, in March 2016, Ukraine ratified the International Labor Organization Convention on Minimum Welfare Provisions № 102, and in November 2016 the European Social Welfare Code was signed. The Government has approved the State Social Program for Ensuring Equal Rights and Opportunities for Women and Men for the Period up to 2021. This program is focused on increasing the level of observance of the principle of equal rights and opportunities for women and men in all life spheres of Ukrainian society.

According to the State Statistics Service of Ukraine, there is a significant gender gap in remuneration between men and women in Ukraine. Among women it is observed a higher level of unemployment and marginal employment, moreover, they are dependent on social support, often have difficulties in obtaining bank loans, etc. However, one of the possible ways to change this situation is an introduction of anti-discrimination Directives of the EU in accordance with the Association Agreements between Ukraine and the European Union.

Within the project "Practice of the Ministry of Social Policy in terms of ensuring equality for women and men in the labor market in the context of the relevant EU directives implementation", accomplished by the NGO "Bureau of Social and Political Developments" in 2017, the Ukrainian situation in the sphere of non-discrimination on gender in the areas that cover the Directives and the process of their implementation was analyzed. This work resulted in the scientific study "Gender discrimination in access to employment and services: assessment of the implementation in Ukraine of the Anti-Discrimination Directives established by the EU Council".

Recommendations of the study were presented at the international conference "Government and business: prospects of introducing non-discriminatory norms in the Ukrainian labor market". The event was held with the participation of representatives of the Ministry of Social Policy, State Employment Service of Ukraine, scientists of the Labour and Employment research institute, international experts of the European and Eastern Partnership Council (Moldova, Georgia, Armenia), specialists of the Center for Implementation of European Social Rights, the Coalition Against Discrimination in Ukraine, as well as representatives of trade unions and businesses.

Members of the conference ratified a resolution, in which the parties provided proposals for strengthening non-discriminatory policy in the Ukrainian employment market. Participants appreciated the results of the implementation in Ukraine of the six "non-discriminatory" EU Council Directives which focus on equal opportunities for Ukrainian citizens: to combine family and career regardless of gender, to build a social security system taking into account the principle of gender equality, to introduce the principle of gender-equal treatment in access to goods and services, the field of media, advertising and education.

The dialogue was increased on the implementation of the non-discriminatory Directives of the EU Council and the International Labor Organization conventions between experts and managers of Ukraine, the countries of the Eastern Partnership and the EU. Valuable experience, related to the implementation of the non-discriminatory EU Directives (2000/43 / the EU, 2000/78 /, the EU, 2004/113 / the EU, № 96/34 / the EU, № 92/85 / EEC, № 79/7) was taken into account / EEC) and the ILO Conventions (№102, №103, №111, №156, №171, №183, №187, №189) in the format the EU + 3 (Ukraine, Georgia, Moldova) and the possibility of their full introduction in Ukraine.

Among the events which took place it should be outlined the creation of a coalition "Employment Equality" and the signing of a Memorandum of Understanding for a joint and consolidated activity to

protect freedom, justice and equality in the access of women and men to the labor market and the protection of their employment and social rights. The memorandum was initiated by five organizations: the NGO "Bureau of Social and Political Developments", the NGO "Labor Initiatives", Kyiv Institute of Gender Studies, the Confederation of Free Trade Unions of Ukraine and the Labor and Employment Research Institute of the Ministry of Social Policy and the National Academy of Sciences of Ukraine, "Center for European Social Law Implementation Problems of the Taras Shevchenko National University in Kyiv.

During the event, representatives of civil society called for united efforts to ensure equal rights and opportunities in the employment sphere. In particular, the initiators of the Memorandum are convinced of the need to ensure equal access for women and men to obtain professional skills, fairly paid work, social infrastructure and support. In Ukraine, it is necessary to eliminate all forms of direct and covert discrimination, as well as to ensure civilized working conditions. This will improve the lives of citizens of both genders and will facilitate the economic and social development in the country.

In 2018, the NGO "Bureau of Social and Political Developments" in cooperation with its partners, initiated and implemented the following project: "Practices of MSP to enhance expert work on the implementation of the "anti-discrimination" directives of the EU Council". Its realization became possible with the assistance of the European Union and the International Renaissance Foundation within the framework of the grant component of the project "Civic Synergy". The project appears to be a logical continuation of the previous work of the Bureau and is aimed at strengthening the expert capacity of the Government and authorities to implement anti-discrimination directives, to coordinate expert support for their implementation by the executive authorities.

A number of expert assessments (i.e. socio-legal and gender) have been developed within the framework of the project. Also, recommendations have been drawn up on the urgently needed sub-normative acts and the normative base for the drafts submitted for the implementation of the Council's anti-discrimination Directives. The comparative tables of compliance of the national legislation with the EU Directives have been developed as well.

During the project implementation on May 22, October 4, and December 20, 2018, the Bureau experts participated in the meetings of the Expert Advisory Group (formed by the Order of the Ministry of Social Policy of Ukraine dated February 3, 2015) on the implementation of the directions of Section III "Justice, Freedom and Security "and Subsection 21" Employment, Social Policy and Equal Opportunities Cooperation ", the Association Agreement between Ukraine and the European Union, the European Atomic Energy Community and their Member States.

Invited of the International Labor Organization in November 2018, Bureau experts participated in the training for trainers "Maternity Support and Gender Aspects of Social Security", where they shared their experience in bringing Ukrainian legislation closer to the EU directives and ILO Conventions (in particular, on parental leave, maternity support, harmonization of professional and family responsibilities of workers in Ukraine, taking into account the need to implement EU labor standards in this sphere).

Developed during the implementation of the project "Practices of MSP to enhance expert work on the implementation of the "anti-discrimination" directives of the EU Council", the expertise was also presented to the Working Group on Social Dialogue and Social Work Policy of the Eastern Partnership Civil Society Forum within the framework of the project "Social Partnership for Equality". The partners of the project are the two largest trade union organizations in Ukraine: the Confederation of Free Trade Unions of Ukraine and the Federation of Trade Unions of Ukraine, as well as trade unions and non-governmental organizations of Georgia, Moldova and Armenia. Approval recommendations and a proposal for an advocacy campaign from the International Confederation of Trade Unions and the European Trade Union Confederation were received.

In accordance with the Association Agreement, Ukraine has committed itself to adapting national legislation to EU standards in the area of employment, social policy and equal opportunities. Civil society is a rightful partner in the movement to intensify European integration processes in Ukraine in order to ensure the synchronization of conservative Ukrainian legislation with the European one.

The purpose of the project **"Practices of MSP to enhance expert work on the implementation of the "anti-discrimination" directives of the EU Council"** was to analyze the state of implementation of the three Directives:

1. Directive №92/85/EEC on the taking of measures to improve the safety and health care at work of pregnant workers, workers who have recently given birth or are breastfeeding (tenth individual Directive within the Article 16 (1) of Directive 89/391 / EEC);

2. Council Directive№ 79/7/EEC of December 19, 1978, on the gradual implementation of the principle of equal opportunities for men and women in matters of social security;

3. Council Directive №2004/113/EU of December 13, 2004, on the implementation of the principles of equality between men and women in their access to goods and services.

Apparently, the assessment of these Directives is rather complicated and demanding one and requires considerable time and appropriate qualifications. It is necessary to work out a significant part of the legislative base of Ukraine, both at the central and local levels. That is why three Directives have been processed, which at the moment are partially implemented in Ukrainian legislation.

During the expert assessment it was taken into account that no document can be implemented in the same way as international documents. This is due to features, traditions, mentality; the primacy of national legislation when developing / updating international laws and norms; the recommendatory nature of accountability in national legislation, but not the requirements of the exact copying of the Recommendations and Directives.

Legislation and legal analysis of employment in Ukraine

In 2015, the Ministry of Social Policy carried out a thorough analysis of the compliance of Ukraine's legal acts with the requirements of **COUNCIL DIRECTIVE 79/7/EEC of December 19, 1978 on the GDADUAL IMPLEMENTATION of the PRINCIPLE of EQUAL OPPORTUNITIES for MEN and WOMEN in the FIELD of SOCIAL SECURITY.**

A directive №79/7/EEC is one of the six anti-discrimination directives that are of primary importance for implementation in Ukraine, in accordance with the Association Agreement between Ukraine and the European Union.

The provisions of the directive are mainly introduced in national legislation. The Ministry of Justice of Ukraine reported that there was no comment on the review of the Ukrainian legislation provided by the Ministry of Social Policy regarding compliance with the principles defined in the Directive (a letter of the Ministry of Justice of 02.02.2016 № 3127 / 29956-0-26-15 / 12). During the second meeting of the 6th cluster (Employment, Health Care, Social Policy and Equal Opportunities) of the Subcommittee on Economics and Other Sector Cooperation of the Association Committee between Ukraine and the EU, held on June 08, 2017 in Brussels, the Ukrainian delegation informed the European party that the directive had been implemented in national legislation.

The purpose of the Directive adoption was the gradual introduction of the principle of equal treatment of men and women in the field of social security. The directive covers the compulsory social security systems that provide protection in case of illness, disability, old age, unemployment, industrial accidents and occupational diseases. The provisions of the Directive also apply to social assistance provided they are aimed at supplementing or replacing the above social security systems.

The scope of Directive 79/7/EEC is an expanded one and not limited to workers only, its provisions apply to both employed population (including self-employed persons) and workers or self-employed persons whose activity is interrupted due to illness, accident or involuntary unemployment, job seekers, as well as workers and self-employed persons who are retired or have a disability.

In general, the provisions of Directive 79/7/EEC, which determine its objectives, tasks and scope, are taken into account in state legislation. There are general rules governing the equality of men and women in the field of social security. At the same time, in the special legislative acts regulating certain types and forms of social security, the principle of equality in general, and gender equality, in particular, is not enshrined. This is one of the main shortcomings of the current state of Directive 79/7/EEC implementation.

The legal analysis, carried out on the basis of a detailed comparison of the provisions of Directive 79/7/EEC and the national social security legislation, highlighted the main issues of the state of its implementation in Ukraine:

- a) the lack of a consolidation of the principle of gender equality in the special legislation on social security;
- b) discrepancies in the application of terms for determining social risks;
- c) the existence of gender-related discriminatory norms in the social-security legislation;
- d) the absence of a mechanism for counteracting indirect discrimination in social- security legislation;
- e) the imperfection of the mechanism of anti-discrimination and gender legal examination of normative legal acts;

The legislation of Ukraine determines the necessity of anti-discrimination and gender legal expertise of both draft normative legal acts and already existing legal acts. These provisions contribute to the implementation of article 5 Directive 79/7 / EEC, which states: "Member States shall take the necessary measures to ensure that any laws, regulations or administrative provisions that are inconsistent with the principle of equality of treatment are repealed."

Accordingly, it will help to identify and eliminate the rules that violate the principle of equality in the field of social protection.

During the gender expertise of Directive 79/7/EEC, a database of normative legal acts relevant to the scope of the Directive was analyzed, and the part that regulates (provides legal guaranties) for the protection of women and men in the case of illness, disability, old age, accidents at work and occupational diseases or unemployment.

On the basis of available materials, a list of 22 laws governing the Directive 79/7/EEC was drawn up. Based on the analysis of this base of normative legal acts, it was clarified that in Ukraine issues of equality and non-discrimination (in particular, by gender) are legally irregular.

For the most part, direct discrimination in revised regulations is absent. Instead, the issues of equality and non-discrimination in a number of areas are simply not regulated by law, being supported by moral guidelines, customs, norms of etiquette, as well as the preferences of people with an appropriate position, determined by their functional duties or powers to dispose of or take current decisions in various spheres.

The issue of identifying the norms of indirect discrimination in the field of services and labor is becoming a key methodical challenge for the implementation of all "anti-discrimination" directives of the Agreement which are the norms that impose direct discrimination. They do not include the normative legal acts. However, while the study of indirect discrimination cannot be limited to legislative texts and requires more profound analysis taking into account the practice of their implementation.

Another problematic issue in implementing this and other "anti-discrimination" directives of the Agreement is the actual way of defining indirect discrimination is a methodological one. The requirement of Directive 79/7/EEC is to establish equal protection guarantees (in particular, by gender) where they are not present, as well as the identification and termination of the norms that lead to discrimination. Ideally, the full implementation of Directive 79/7/EEC and other "anti-discrimination" directives would require a complete gender analysis of the laws and regulations that are present in the scope of each of the aforementioned directives.

To do the **gender analysis**²⁵ of the by-laws of the Directive 79/7/EEC, the expertise of the selected three basic laws was conducted. Namely: "*On Ensuring Equal Rights and Opportunities for Women and Men*", "*On Collective Agreements and Treaties*" and "*On Population Employment*" (the corresponding tables are attached).

As a result of the analysis of the base of normative legal acts that is in the scope of Directive 79/7 / EEC there was created the list of selected normative legal documents regulating the sphere of relations, corresponding to the **Directive**²⁶.

It should be noted in general that there is a positive trend towards the implementation of the provisions of the Directive in national legislation. However, for better efficiency of these normative requirements, it is expedient to ensure that the monitoring of the implementation of legislative norms on equality in the field of social security is an appropriate one. This will reveal not only the shortcomings of legal regulation, but also will contribute to further improvement of the legal framework for regulating the specified sphere. It is important to take measures to advocate among the judiciary in the application of the provisions of the Directive, which are implemented in national legislation, in order to ensure equality in the field of social security more effectively.

However, with further work towards legal support (in terms of regulatory determination measures and forensic practical application) should sustain a reasonable balance in an effort to ensure women's rights, progress towards gender equality and does not go to the other extreme where gender equality is replaced with a paternalistic approach to women.

Thus, conducting such monitoring will help identify problems that affect men or women and take appropriate measures to address these issues at the legislative level and prevent them from continuing in future.

One of the positive approaches to eliminating the problems of the equality principle implementing is a quantitative study on fixing its violations. The results of such a study would form the basis for identifying the main factors that violate the principle of equality, would serve as a benchmark for further actions of the state and society.

Priority measures necessary for the implementation of Directive № 2004/113/EC should include:

- 1) The consolidation of the principle of gender equality in the corresponding legislation on the provision of certain types of social security (the Fundamentals of the Ukrainian legislation on compulsory state social insurance, the Laws of Ukraine: "*On Mandatory State Social Insurance*", "*On Mandatory State Pension Insurance*", " On compulsory state social insurance in a case of unemployment ", "*On social services* ", etc.);
- 2) Settlement of differences in the application of terms for defining social risks defined in Article 3 Directives (in relation to old age, illness);
- 3) Eliminating discriminatory norms based on gender from the Law of Ukraine "*On Mandatory State Pension Provision*" (Articles 28, 33, 115) that do not comply with the requirements of Directive 79/7 / EEC and the provisions of national legislation guaranteeing equality, including gender-based one and need to be changed through the establishment of identical insurance and seniority requirements for men and women;
- 4) Improvement of the mechanism of anti-discrimination and gender-legal expertise of legal acts in the field of social security;

²⁵ The analysis was carried out with the help of the recommendations of the Ministry of Justice of Ukraine "Methodological recommendations for conducting a gender legal examination of legislation", which provides for an assessment of each normative act on the compliance with the principle of equality of women and men

²⁶ ²A total of 492 normative legal acts were revised and analyzed. It has been established that there are 278 normative legal acts that are gender specific for Directive 79/7 / EEC, which need to be further analyzed more deeply

COUNCIL DIRECTIVE 92/85/EEC ON TAKING MEASURES TO IMPROVE THE SAFETY AND HEALTHY WORKING CONDITIONS FOR PREGNANT WORKERS, WORKERS WHO HAVE RECENTLY GIVEN BIRTH OR ARE BREASTFEEDING (TENTH INDIVIDUAL DIRECTIVE IN THE ARTICLE 16 (1) OF DIRECTIVE 89/391/EEC) adopted in connection with the need for legal regulation of additional guarantees for workers in the field of safety and health, based on their reproductive function and the need to create conditions for the birth of healthy children.

In general, the provisions of the Directive defining its objectives are taken into account in national legislation. Both general rules regulating the equality of men and women in the workplace and special norms that determine the possibility of implementing positive actions as special legislative measures aimed at increasing the guarantees for ensuring the equality of opportunities of certain social groups, including women are provided.

The labor legislation of Ukraine establishes the need for special legal regulation of the work of pregnant women (partially, also of women who are breastfeeding).

During the legal analysis of the implementation of Directive № 92/85/EEC in Ukraine, the following issues were outlined:

- a) the absence of statutory rules for assessing agents, working conditions and production processes that are hazardous to pregnant workers, workers who have recently given birth or are breastfeeding;
- b) Employer's assessment of working process risks for pregnant workers, workers who have recently given birth or are breastfeeding;
- c) temporary adaptation of working conditions for pregnant workers, workers who have recently given birth or are breastfeeding;
- d) limiting the involvement of pregnant workers, workers who have recently given birth or are breastfeeding;
- e) dismissal from work for the period of medical examination during the pregnancy monitoring;
- f) Prohibition on dismissal and protection of the right to work;

During the gender expertise of Directive 92/85/EEC, sub-normative acts regulating legal relations were analyzed. The main focus is on the compliance of the national regulatory framework with the needs and interests of those population groups which are targeted by the regulatory action of the Directive (working mothers, future mothers (pregnant women), women who have recently given birth or are breastfeeding).

From the point of view of gender analysis, the main legislative and normative acts regulating the legal relationship in the area of the Directive are 4 laws and 4 subordinate legal acts. The analysis was carried out by distinguishing normative legal **acts**²⁷ related to eight documents mentioned above with their subsequent review and evaluation on

- a) gender / inconsistency (relevancy);
- b) compliance / non-compliance with the needs of target groups (working women, future and current mothers).

Consequently, Directive № 92/85/EEC on the taking of measures to improve safety and health working conditions of pregnant workers, workers who have recently given birth or are breastfeeding, **has been adopted and implemented in Ukraine only partially.**

Thus, fully taken into account in the national legislation is only an Article 8 "Maternity leave".

Partly taken into account in the national legislation can be considered Article 5 "Actions following the results of the inspection", Article 9 "Dismissal from work for the time of medical examination during

²⁷ ³In total about 1446 normative documents were analyzed. As a result of the selection, 316 of the number of gender-relevant and relevant target groups in the Directive 92/85 / EEC were included, 91 additional NPAs and 83 conditionally related ones were detected.

the period of observation of pregnancy", Article 10 "Prohibition on dismissal", Article 11 "Employment rights", Article 12 "Rights protection".

The following provisions of the Directive: Article 2 "Definitions", Article 3 "Guidelines", Article 4 "Evaluation and Information", Article 6, are not fully or more closely taken into account in national legislation (or Ukrainian legislation is contrary to the provisions of the Directive). "Cases in which influence is prohibited", Article 7 "Working during night hours", Appendix I "An incomplete list of agents, processes and working conditions, Appendix II" An incomplete list of agents and working conditions".

One of the ways to ensure the protection of target groups of the Directive № 92/85 / EEC may be the recommendation (especially for companies in the field where women's work was previously prohibited) to introduce a gender representative, who also performs the functions of the adviser of the head of the enterprise.

Additional attention should be paid to the legal acts relating to military service in the Armed Forces of Ukraine, the State Border Service of Ukraine, Management of State Defense in Ukraine, other military and paramilitary services/ structures. In particular, it is necessary to supplement the risk assessment of the impact on the health adjustment of working conditions and the list of hazardous agents, processes, conditions.

An additional tool to ensure the improvement of safety and security at work target groups Directive № 92/85/EEC is possibility of application of normative legal acts on the statistical observations, instructions and clarifying about the state statistical reporting on working conditions, benefits and compensations for work in harmful working conditions.

The priority measures necessary for the implementation of Directive № 92/85/ EEC are:

1. Determination in the labor legislation of the concepts of "pregnant worker", "worker who has recently given birth", "breastfeeding worker" in national labor legislation.
2. Establishing legal safeguards at the workplace for workers who have recently given birth or nursing workers, distinguishing them from legal guarantees for those with family responsibilities, namely, men and women who have children under the age of three.
3. Developing and approval of valid rules for assessing the impact of physical, chemical and biological agents and production processes on the health of the workers concerned. Determination of the list of agents, working conditions and production processes, the availability of which should limit the possibility of applying the labor of pregnant workers, workers who have recently given birth or are breastfeeding.
4. Changing the labor law approach, namely, prohibiting the engagement of pregnant workers, workers who have recently given birth or who are breastfeeding to certain types of work, the impossibility of forcing them to perform certain types of work by the employer, as defined by the Directive.
5. Guaranteeing the preservation of the work place and the average salary of a pregnant worker during a medical examination in connection with pregnancy (if such an examination is to be carried out during working hours).
6. Normative regulation of exceptional cases not related to their condition (pregnancy), because of which a pregnant worker is not present at work. Such exceptions should be envisaged in the Labor Code of Ukraine in order to protect the interests of the employer and eliminate discriminatory results for employees, pregnant women or women who have children under the age of three.
7. Determination (at the level of sub legislative legal acts) of the list of factors (physical, biological, chemical), processes and working conditions and other agents that pose a threat to the health of workers, pregnancy or breastfeeding (in accordance with Annexes 1, 2 of the Directive).

COUNCIL DIRECTIVE № 2004/113/EU OF 13TH DECEMBER 2004 ON THE IMPLEMENTATION OF THE PRINCIPLE OF EQUAL TREATMENT FOR MEN AND WOMEN AS REGARDS ACCESS TO GOODS AND SERVICES is one of the six directives concerning non-discrimination and equality, the provisions of which are to be implemented in the current Ukrainian legislation in accordance with the EU-Ukraine Association Agreement, Annex XI to Section 21 "Employment, Social Policy and Equal Opportunities Cooperation".

The directive aims to build a structural framework for *combating gender-based discrimination in access to goods and services*. At the same time, it should be noted that the Directive does not apply to the issue of employment and occupation, as well as to entrepreneurship. The directive applies only to insurance and pension payments, which apply to each individual, are voluntary and not related to employment relationships.

In general, the provisions of the Directive defining its objectives are taken into account in national legislation. There are provided both general rules (regulating the equality of men and women in access to goods and services) and special rules (governing the relationship in specific areas of human life, which guarantees the equal treatment of men and women in access to goods and services).

However, there are shortcomings in the current legislation that need to be improved. In addition, current absence of valid mechanisms for protecting a person against discrimination in access to goods and services is a significant disadvantage.

Also, the mechanism for implementing the provisions of the Directive into the current legislation seems to be imperfect itself. Thus, in order to implement the Directive 09.17.2014 there was approved the *Action Plan for the implementation of the Association Agreement* (including the implementation of the Directive). In particular, according to the plan, the following list of measures was envisaged:

- the resumption of the Gender Advisers Institute;
- generalization of international and public organizations` experience in the field of combating gender discrimination;
- Organizing and conducting trainings and training events aimed at raising awareness of staff in the field of gender equality and gender-based discrimination;
- drafting a bill on amendments to the Law of Ukraine "On the Principles of Discrimination Prevention and Counteraction in Ukraine" which will include the introduction of appropriate sanctions for discrimination on the basis of sex;
- Ensuring the effective functioning of the Expert Council on the consideration of applications for discrimination on the basis of sex;
- A study on the access to justice for women and men who were discriminated or experienced gender-related violence;
- Establishing a system for information disseminating on equal rights and opportunities for women and men and issues related to discrimination.

The Ministry of Social Policy has reported on the meeting of the requirements for the implementation of the Directive mentioned above and, accordingly, on the implementation of the above measures. The Resolution of the Cabinet of Ministers of Ukraine "On Implementation of the Association Agreement between Ukraine and the European Union, the European Atomic Energy Community and their Member States" (October 25, 2017) was adopted.

However, the Action Plan for the implementation of the relevant **agreement**²⁸, which is approved but not fully implemented, shows that the provisions of the Directive are only partially implemented in the current Ukrainian legislation.

²⁸ The plan provided for the support of consideration by the Verkhovna Rada of Ukraine of the draft law on amendments to certain legislative acts of Ukraine on harmonization of legislation in the field of prevention and counteraction of discrimination with the EU law (until March 20, 2018); the functioning of the Expert Council on the consideration of applications for discrimination on the basis of gender; drafting of the State Program for the Guarantee of Equal Rights and Opportunities for

It should be noted that a thorough scientific analysis of the implementation of the above mentioned Directive hasn't been conducted yet, which, in turn, increases the relevance of this study.

During the gender analysis, it was discovered that Ukrainian legislation paid more attention to regulating business issues and guaranteeing economic freedoms, fair competition, equal access to markets, etc., than consumer rights in these areas.

There were outlined certain regulatory acts concerning the deregulation of the goods and services market as well as the narrowing of the functions of the state related to the regulation of prices and tariffs. These documents declare that the policy of de-bureaucratization / deregulation in the area of pricing is carried out in order to reduce administrative pressure on business, eliminate excessive state interference in economic processes and the development of competition. Such deregulation might create risks of manifestation of both direct and indirect discrimination of certain groups of consumers.

In general, legislative regulation of access to goods and services should not restrict the freedom of economic activity, but at the same time provide for effective mechanisms of protection against discrimination of certain groups of consumers of women and men. In this context, it is necessary to carry out a more detailed gender legal analysis of the content of provisions of the 57 regulatory acts.

Priority measures necessary for the implementation of Directive 2004/113 / EU should include:

- Eliminating terminological incompliance between the current Ukrainian legislation and the provisions of the Directive through the definition of the term "harassment" in the Law of Ukraine "On the Guarantee of Equal Rights and Opportunities for Women and Men". Also the definition of "sexual harassment" should be given in the new edition, which would comply with the provisions of the Directive;

- Increasing the application of the provisions of the Directive on the inadmissibility of discrimination on the basis of gender or on other grounds, in normative legal acts, so that it wouldn't be limited to only so-called "profile" laws;

- The application of the principle of equal treatment in the field of education. The norm, according to which women are not admitted to educational institutions for training the professions listed in the list of heavy work and work with harmful working conditions, which prohibits the use of women's work, should be abolished. The current legislation (including the Law of Ukraine "On Occupation Health and Safety Act") is brought into compliance with the requirements of the Directive;

- Adoption of the draft Law of Ukraine № 3501, which provides for the Verkhovna Rada of Ukraine commissioner's powers extension. There is currently no valid effective mechanism for protecting the legitimate rights and interests of citizens who have been discriminated against;

- Reanimation of the Expert Council work on addressing cases of discrimination based on gender, created under the Ministry of Social Policy of Ukraine, as well as the Expert Council on Non-Discrimination and Gender Equality under the Commissioner of the Verkhovna Rada of Ukraine on Human Rights;

- Strengthening the guarantees of effective judicial protection for the person who was discriminated against. In particular, this concerns the division of the burden of proof in cases of **discrimination**²⁹. The norm of similar content should also be envisaged in the Code of Administrative Procedure and the Commercial Procedural Code;

- Analysis of the provision to state bodies of opportunities to ensure equal access to goods and services for certain categories of the population, as well as to prevent discrimination in this area;

- Extension the list of collaborators. Currently, in the implementation plan of Council Directive 2004/113/EU it is stated that the main responsible for the organization of work and implementation of this plan is the Ministry of Social Policy. However, it is recommended to consider the

Women and Men by 2021; elaboration of the project program with EU experts; submission of a draft act to the Cabinet of Ministers of Ukraine on approval of the Program for consideration by the Cabinet of Ministers of Ukraine.

²⁹ Currently, only an applicable norm has been implemented in the current Civil Procedure Code, which implies the duty of the respondent to prove the absence of discrimination. Instead, the plaintiff should only provide factual evidence to show that discrimination took place.

possibility of involving the Ministry of Economic Development and Trade of Ukraine, Ministry of Information Policy of Ukraine, Ministry of Finance of Ukraine, Ministry of Infrastructure of Ukraine, Ministry of Education and Science of Ukraine, Ministry of Health of Ukraine, The Antimonopoly Committee, and State Statistics Service;

- Carry out activities to raise awareness of the rules of the Directive among politicians, service providers and citizens. Accordingly, the recommended cooperation with organizations which protect the interests of consumers of goods and services for various categories of women is recommended.

Recommendations.

With further work to study the social and legal gender issues and recommendations to legislative, executive authorities and NGOs on finalizing regulations, should take into account the following:

1. To recommend to legislators at all levels when developing, refining, improving the regulatory framework, use a comprehensive gender approach (CGA)³⁰⁶.

2. To investigate the compliance of the current legislative norms of Ukraine with the provisions of Council Directive 2000/43/EU of June 29, 2000 on the implementation of the principle of equal treatment of persons irrespective of racial or ethnic origin; compliance of the current legislative norms of Ukraine with the provisions of Council Directive 2000/78/EU of November 27, 2000 establishing a general framework for the equal treatment of persons with disabilities in the field of employment and occupation; compliance with the current legislation of Ukraine by the provisions of Council Directive 2010/18/EU of March 8, 2010 on the implementation of the revised Framework Agreement on childcare leave repealing Directive 96/34/EU.

3. Promote the adoption of anti-discrimination rules of the Labor Code of Ukraine (the Labor Code / the second reading/ July 24, 2017) with the provisions on gender equality and the prohibition of discrimination in terms of any discrimination in the sphere of labour and occupation, in particular the violation of the principle of equality of rights and opportunities, direct or indirect limitation of workers' rights depending on the following: race, color of skin, political, religious and other beliefs, sex, sexual orientation and gender identity, ethnic, social and foreign background and origin, age, health, pregnancy, disability, suspected or confirmed HIV / AIDS diagnosis, family and property status, family responsibilities, place of residence, membership in a trade union or other association of citizens, participation in a strike, appeal or intent to apply to a court or other bodies for the protection of their rights or to provide support to other employees in the protection of their rights, linguistic or other grounds, not related to the type of work or working conditions. It is the commitment of Ukraine in terms of the implementation of the Action Plan on Visa Liberalization, as well as in accordance with the Association Agreement with the EU and the implementation of Council Directive 2000/78 / EC (November 27, 2000) on the general principle of equality in employment and occupation.

³⁰ In accordance with the Resolution of the Cabinet of Ministers of Ukraine dated April 12, 2006, № 584 "On conducting a gender expertise", all normative acts, which are developed and submitted to the Ministry of Justice of Ukraine, undergo such an examination. The methodical recommendations for this procedure are developed. It states that the gender legal examination of draft legal acts, the mandatory implementation of which is established by part three of Article 4 of the Law of Ukraine "On ensuring equal rights and opportunities for women and men", provides, in accordance with Article 1 of this Law, the analysis of draft normative and legal acts, legal acts, the result of which is to provide an opinion on their compliance with the principle of equal rights and opportunities for women and men, the purpose of gender expertise is to prevent the possible adoption of legislation teaching and executive authorities, and the President of Ukraine of normative legal acts containing prohibited discriminatory norms on the basis of gender, that is, promoting the establishment and protection of human rights and freedoms.

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Grants are available for CSOs from the Eastern Partnership and EU countries. Key areas of support are democracy and human rights, economic integration, environment and energy, contacts between people, social and labour policies.”