GENDER–BASED ANALYSIS OF EXISTING LEGISLATION AND JUDICIAL PRACTICE IN LABOR SPHERE

2012
Women's Information Center

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INTRODUCTION

Experts, non-governmental and international organizations working in the field of labor, based on research conducted, believe, that, the provisions of the Labor Code does not contain the characteristic signs of discrimination, but their implementation in practice carries the character of indirect discrimination against infected workers and it is fit on the interests of Employers, which, in many cases, restricts the rights of women in the labor and becomes the basis for unequal treatment.

We believe that it is necessary to further analyse labor legislation and court practice. After this it will be possible to develop new recommendations for the change of labor code. All these actions are necessary for protection women's labor rights de-jure and de-facto. Also all the recommendations must be reflected in alternative report and sent to the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW).

Women's Information Centre is grateful to the National Democratic Institute (NDI) for the support and also to the expert of the Women's Information Centre, Judge of the Supreme Court, Natia Tskepladze for rendered work.

We are glad that this research became the basis of public and television debates. We hope that the recommendations will be considered also at the political level.

Elene Rusetskaia
Director of the Women's Information Center

FOREWORD

Research analysis concerns the international and national normative order in regard to the existing labor equity and labor relations in Georgia.

Gender, as one of the important forms of guarantees for the protection of freedoms and human rights receives great attention globally in the course of legal development. It is problematic for various kinds of law, among them for the Constitutional Law, in terms of regulation, , as the main principles of gender equality that are imbedded in the foundation of various fields find expression foremost in the constitutional norms.[1]

In many countries, chief principles of women's rights protection and gender equality are part of constitutional regulation sphere. Constitutional norms that are relevant to women are divided in several categories:

1. Gender Equality;
2. Labor Rights of Women;
3. Women's Electoral Rights;
4. Mothers' Rights;
5. Rights of the Pregnant Women.

Gender equality is an internationally recognized principle and it is imbedded in the Constitutions of practically all countries[2]. Nonetheless, in some countries this principle is supported by the tools for practical application, and in others gender equality principle is only a formality.

Gender equality principle can be found in so-called old Constitutions of countries such as Austria (Article 7), and in the Constitutions of the post-world war countries, such as Germany (Article 3), as well as in so-called "New Wave" Constitutions, for instance Czech Republic (Article 31), and the principle is recognized in the countries with constitutional republic form of governance, as well as the countries with constitutional monarchy.

From the countries with constitutional monarchy, Spain (Article 14), Lichtenstein (Article 31.2), and the Netherlands (Article 1) serve as good examples. Gender equality principle is also recognized beyond Europe, in the countries of other continents, such as Mexico (Article 1) and India (Article 15).

Gender principle has also been recognized by the countries of the former Soviet Union.

According to Article 8 of the Constitution in Switzerland, the law guarantees legal and factual equality among men and women, especially in the family, during the periods of education and employment.

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1 "Constitutional Aspects of Gender Equality", V. Gonashvili, 2008;

2 "Constitutions of Foreign Countries", Chief Editor: V. Gonashvili. Tbilisi 2004-2007. Volume 5.

Article 3 of the Constitution in Germany, along with the principle of gender equality, emphasizes state's role in actively promoting men's and women's equality and taking the measures to improve existing defaults.

According to Article 10 of the Constitution in Turkey the state and administrative bodies must exercise their rights according to the principle of equal rights. Besides the gender equality principle, other forms of women's rights protection are part of so-called "New Wave" Constitutions of the post 1990s.

Additional guarantees for women's rights exist in the Czech Republic[3]: women, minors and the persons with health issues enjoy special rights in labor process and they may exercise these rights to health care and improve demand better labor conditions. (Article 29.1, Charter on Fundamental Rights and Freedoms).

Through Serbia's Constitution, women, minors and the persons with disabilities are entitled with privileges to special labor conditions and the protection through legislation (Article 60).

According to the Constitution of Ireland, "The state shall endeavor to ensure that the strength and health of workers, men and women, and the tender age of children shall not be abused and that citizens shall not be forced by economic necessity to enter avocations unsuited to their sex, age or strength" (Article 45.4.2).

Under the Constitution of the Slovak Republic, women, minors and the persons with disabilities are provided with privileges in health care benefits and special working conditions (Article 38.1).

According to the Constitution of Tajikistan, women and minors are not allowed to conduct heavy, underground labor, as well as labor under hazardous work conditions (Article 35). Special legal protection rights are guaranteed to the mothers through the Constitution.

Through Bulgaria's Constitution, a mother is a subject to special protection, for whom the state provides paid leave of absence before and after childbirth, obstetric assistance, alleviated labor conditions and other types of social services (Article 47.2).

The Constitution in Macedonia provides protection to mothers, children, and minors. Minors and children may exercise special rights and privileges.

According to the Constitution in Latvia, working mothers are entitled to the maternity leave before and after childbirth. Mothers have special privileges and other benefits (Article 39).

In India, according to Article 42 of India's Constitution, state takes special measures for ensuring equal human conditions for working mothers.

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3 Charter on protection of human rights and freedoms in the Czech Republic, Article 29.1.

It is worth mentioning that the special protection norms for pregnant women are part of some countries' constitutions, only. For example, according to Article 32.2 of the Charter on Fundamental Rights and Freedoms, in the Czech Republic women are guaranteed with special care, protection at labor and corresponding labor conditions; In the Constitution of Albania it is noted that women should be granted special privileges from the state (Article 54); According to the Constitution of Serbia, unless women are supported by other legislative acts, the state provides healthcare to pregnant women who are on a maternity leave (Article 68); In Portugal women can exercise special protection rights during the pregnancy and the period after pregnancy. Women may also take a leave and simultaneously keep their income and other privileges (Article 68.3 of the Constitution).

INTERNATIONAL NORMATIVE ACTS

According to Article 6 of the Constitution of Georgia:

1. The Constitution is the first law of the state. All other legal acts shall be issued in accordance with the Constitution.

2. The legislation of Georgia corresponds with universally recognized norms and principles of international law. International treaties or agreements concluded with and by Georgia, if they are not in contradiction to the Constitution of Georgia, have prior legal force over internal normative acts.

Convention of 1951 on "Men's and Women's Equal Pay for Equal Work"[4]

Convention of 1953 on "Political Rights of Women"[5]

Convention of 1979 on "Eliminating all Forms of Discrimination Against Women" [6]

Convention of June 4, 1958[7] on "Discrimination in Labor and Employment" [8]

Convention of June 5, 1957 on "Elimination of Forced Labor"

Convention of July 9, 1964 on "Employment Politics"[9]

European Social Charter[10] (corrected), May 3, 1996, was ratified by the parliament through the resolution N 1876-RS of July 1, 2005. According to Chapter 1 of the charter, sides recognize the provision of such conditions which enable the effective implementation of the following principles: 1) Right to work 2) Right to just conditions of work; 3) Right to safe and healthy working conditions; 4) Right to a fair remuneration; 8) Right of a woman to request special rights privileges during childbirth 9) Right to vocational guidance, etc.

According to Article 4.3 Charter requires the recognition of women's and men's rights to equal pay for equal labor.

According to Articles 3, 4 and 5 of Chapter 8 the Constitution should provide the opportunity for nursing mothers to exercise special rights during the period of

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4 Enforced in Georgia on May 29, 1996 by the resolution N153 of the Parliament of Georgia;

5 Georgia joined the convention on June 16, 2005, following the resolution N1652 of the Parliament of Georgia;

6 Enforced on June 15, 1960, Departments of the Parliament of Georgia 1994-1995 N27-30. P. 134;

7 "Departments of the Parliament of Georgia", 1994, N20, Tbilisi, p. 68;

8 "Departments of the Parliament of Georgia", June 19, 1996. N15, p. 39;

9 Same. P. 41.

10 European Social Charter (corrected), Strasburg, May 3, 1996; https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=1392164;

employment;[11] Regulate the night time employment of nursing mothers or the mothers in care of infants; Prohibit the employment of nursing mothers and the mothers in care of infants in underground, mining and other types of employment which are hazardous to their condition due to safety, hygiene or heavy workload issues; Take appropriate measures to protect the employment rights of those women.

According to Paragraph 14 of the ratified Social Integration Strategy[12], approved by the European Ministers' Council on March 31, 2004 – the equality between women and men, as one of the fundamental responsibilities of the European Council, is directly related to the Social Integration Strategy. There was special emphasis placed on the strategic intervention not to affect negatively gender equality and for gender to become an integral element of the work in this sphere.

It is important to understand the European Union Constitution Project in the context of women's rights. The project places emphasis on gender equality. In the defining Articles1 and 2 about the values of the European Union it is noted that the European Union is founded on the values of human dignity, liberty, democracy, equality and the respect for rule of law. These values are universal for the European Union country members that value pluralism, nondiscrimination, tolerance, justice, solidarity and equality between women and men. Articles 1 and 3 guarantee social justice and protection, equality between women and men, solidarity between different generations and the protection of the rights of the child.

Protection of gender equality implies that European legislative acts set the measures to ensure the equal enforcement of gender equality principle in relation to women and men in employment, in regard to the principles of equal pay and equal work ethic. According to chapter 4, while the aim of the equal treatment principle is to exercise the equality principle between women and men, the same principle does not prohibit either member countries to keep and introduce new measures for priorities in order to make the implementation of the professional activity according to gender easier or to prohibit or reimburse for the losses in a professional activity.

Modern European approach:

"Protection of human rights and freedoms requires the establishment of legal systems on national, international, and religious levels, which will enable the individuals to have the opportunity to appeal and argue for the violation of their rights".[13]

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11 Unfortunately, range of crucial paragraphs that concern social protection in given articles are not compulsory in Georgia;

12 Social Integration Strategy (corrected) was approved by the European Ministers' Council on March 31, 2004.
http://gi2gi.ucoz.com/socialuri-integraciis-axali-strategia.pdf

13 The statement by Ms. Arbon, Human Rights Commissioner at NATO, at the working group meeting. January 14, 2005.

On June 25, 1994 Vienna Declaration and Program of Action (VDPA) was adopted by consensus at the World Conference on Human Rights. Within the framework of the working plan[14] it was stated that, social, economic and cultural rights are as important as civil and political rights. Nation states are required to provide all rights at maximum level.

In the last decades, the regionally and internationally developed legislative and court practice implies that it is possible to appeal for economic, social and cultural rights. However, the appeal process can only take place indirectly, through widening the scope of civic and political rights.

The most recent precedent justice of the European Court of Human Rights shows that almost all, economic, social and cultural rights can find place within the scope of specific regulations. For instance, the right to healthcare and healthy environment has been incorporated into the right to life, into the norm of prohibiting the discriminatory behavior.[15] Labor rights are always closely connected with slavery and prohibiting forced labor, promises of the trade unions, their membership and active role, which is guaranteed by gatherings and rights to manifestations, etc.

The analysis of the precedent justice of the European Court proves that the court monitoring applies to the protection of health, living and labor rights. These rights are purely economic and social by nature and thus they are crucial for each person. Subsequently, the protection of those rights by the court is the predicament for the effective implementation of those rights.[16]

On November 24, 2005, in its general statement, the Committee on Economic, Social and Cultural Rights came up with the resolution on state's partial responsibilities in relation to the provision of the labor rights.[17] According to the statement, the privatization of labor rights is implemented with the prohibition of forced and required labor, as well as, the provision of equal access to each employee. The requirement of its protection implies that the state is required to implement legislation or other initiatives, which will provide equal access for equal labor, and it will also ensure that the privatization process does not violate workers' rights. The right to labor does not provide a person with guaranteed employment, but instead it provides an employee with the right not to be dismissed unfairly and without a legitimate reason.[18]

The need to implement labor rights assumes state's responsibility in formulating labor politics and trainings, and for the state in executing the effective politics on combating unemployment.

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14 http://www.unhchr.ch/huridocda/huridoca.nsf/(symbol)/a.conf.157.23.en

15 Assembly and systematization of normative acts, without amendments. http://www.nplg.gov.ge/gwdict/index.php?a=term&d=3&t=16416

16 Human Rights Protection European and National systems, list of Articles, 2007. Tbilisi, pages 23-25.

17 35th Meeting of the Economic, Social and Cultural Rights Committee, Geneva, 2005. 7-25 November, point 1.

18 Convention N158 "Dismissing from Labor", International Labor Organization;

Labor rights are closely connected with Article 4 of the European Union convention on Prohibiting Slavery and Forced Labor.[19]

Through its practice, European Court also guarantees the prohibition of discrimination in the employment relations.[20]

(We will review the cases in detail later in the document.)

Individual's right – not to be discriminated – is recognized by numerous international legal acts. Among them are the Universal Human Rights Declaration, International Pact on Civil and Political Rights, International Pact on Economic, Social and Cultural rights, Convention on the Elimination of All Forms of Discrimination, and Convention of the International Labor Organization on Labor and Employment Discrimination, and the UNESCO Convention Against Discrimination in Education. Antidiscrimination regulations of the European Convention on Human Rights solidified even more with the introduction and the implementation of report 2 on April 1, 2005.[21]

In 1997 the member countries of the European Union signed the Amsterdam Treaty,[22] after which the founding agreement of the European Union and the agreement of the European Union were amended, among them Article 13.[23] The amendment of Article 13 concerned the issue of discrimination on more than single reason. It now includes the list of 8 reasons based on which the European Union can make a decision.

Article 13 became the very important basis for receiving the recommendation on eradicating discrimination at work place.

The goal of the recommendation is to provide the equal rights security through professional education, employment conditions and memberships in professional organizations to the non-member states of the European Union. This directive places responsibility on states to take measures in order to ensure that all individuals have the right to protect themselves legally from a potential discrimination, even after the end of their employment.[24]

Today, there are important reforms, along with legislative amendments, being passed in the sphere of governance. In the interest of maintaining the stability of the systems it is important to pay attention to the fundamental principles of the human rights law. While Georgia's priority in the development process is to remain closely aligned with Europe,

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19 Case – Siliadin v. France judgment of July 26th, 2005, The European Court of Human Rights;

20 Case – Siliadin v. Germany judgment of July 18th, 1999, The European Court of Human Rights;

21 Designated report provides the individual with the right to equal treatment;

22 Enforced in 1999;

23 This Article was amended based on the Nice Agreement.

24 The responsibility of Europe – to protect the principle of eliminating discrimination – was reflected in the Charter of Fundamental Rights of the European Union, which was proclaimed on December 7th in 2000. (Charter has an advisory purpose, although it is part of the European Constitution Project.)

it is important to acquaint ourselves with the decisions of the constitutional courts in Western, as we well Eastern Europe, on problematic issues such as age-based equality.[25]

Example: the decision of Belgian Constitution on January 20, 1999.

Resume: the pension of the self-employed citizens decreased by 25% (for persons who chose to retire at age 60), when at the same time, the pension of women at age 60 was not affected. This issue had to do with the transition period, which undermined the equitable management of pensions issue for women and men. With this purpose, in 1997 the new law was enforced which guarantees the equal rights for both, female and male pensioners with the self-employment background.

According to the court resolution, it should have been taken into account that during the last several decades the careers among the self-employed women and men differed – the fact that can justify the difference with which women and men are being treated during their retirement. The European Union also took into consideration the difference in pension scheme for women and men of the EU member-countries and over the time it expressed the need for eliminating this disparity.

The Court believes that keeping the pension scheme should not have justified the different ways it applies to women and men – especially when the de-facto discrimination of women at workplace has gradually decreased.

In Germany, following the decision of the Constitutional Law of January 24, 1995 it was decided to review the issue of the mandatory service in the firefighter brigades and the necessity of setting the quota for male candidates, based on the elimination of gender-based discrimination. The court stated that the existing regulations violate the law, and it referenced its own precedential law, which states that the different approach to women and men is acceptable if it is impossible to avoid the difference for regulating matters that by their nature influence either gender, and that there are not enough good reasons to eliminate women from work in firefighter brigades because of their physical constitution. This was based on social and medical data. Discrimination against men in the firefighters' case cannot be justified by compensating women's vulnerable position, since its aim is not to overcome the social differentiation among two genders but rather its establishment in a specific sphere.

[25] Latvia, May 20, 2003. Decision about "Higher Education Law", Article 27.4 and the text from Article 28.2 about "Before a person reaches 65 years" and accordance of the article 29.5 of the law on "scientific activities" with the constitution of Georgia.
Court resolution: "A person may receive higher education and professional skills, when the decisive criteria for professional and academic position is person's age and not his professional ability". This limit opposes Article 106 of the Constitution.

The constitutional Tribunal of Poland discussed the unconstitutionality of the regulations, which set younger retirement age requirement for female teachers than for male teachers.[26]

Due to this approach, the employment relations end with female teachers 5 years earlier than they end with male teachers. Accordingly, the regulation violates the norms of equality and social justice. The tribunal noted that powerful regulations should not set differing legal environment for women and men if the differences are not based on intelligible constitutional requirements. If they are not based on such requirements then any difference shall be viewed as discrimination, as it contradicts the constitutional order on equality.

It was highlighted at the tribunal that the Constitution does not allow inter alia norms, which differentiate the rights according to the employment and promotion, and that teacher's status provides continued employment. According to the disputable arguments, the law requires a female teacher to end the employment activity 5 years earlier than a male teacher is required to end it, as a male teacher is guaranteed by a continued employment for additional 5 years.

On July 23, 1996 the Constitutional Court of Spain discussed the issue of gender discrimination cases (Article 14 of the Constitution in Spain) not being limited to gender-based unfair treatment against employees. It was said at the court hearing that the discrimination also applies with the combination of reasons and circumstances associated with gender, when the employer claims that a formal discriminatory dismissal took place, which is covered by ending the contract agreement and by so doing violating the basic freedom of an employee. The employer is required in such case to prove that the dismissal was based on legitimate reasons, which are not related to the violation of basic rights.

An appellant who believed that she was dismissed unfairly, due to repetitive and unjustifiable absence and tardiness at work, considered herself a victim of discrimination based on the principle of equal treatment.

The Constitutional Court stated that an unfair treatment against a pregnant female employee constitutes a gender-based discrimination, as such discrimination can only affect women. Covered by the formal discriminatory layover, which is masked by ending the contract agreement and violates the employee's basic right, it is not enough to claim that the layover was discriminatory. The actuality of this fact must be proved by indirect evidence, which should cause doubt in favor of such statement. Only when such indirect evidence exists is an employer required to prove that the reasons for ending the contract had legal basis. Consequently, this basis can be justifiably considered as facts, which may have no connection to the violation of basic rights.

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26 Based on mediation by the Ombudsman.

Considering the circumstances, the court acknowledged that an employee failed to present a medical statement from a doctor explaining the reasons for being late at work and the fact that she did not notify her employer immediately about not feeling well indisputably served as sufficient evidence which proved that the reason for dismissal was not her pregnancy, and that the violation of basic rights and the exercise of disciplinary sanction took place solely for protecting the interests of the enterprise.[27]

[27] The publication of the Georgian Young Lawyers Association (GYLA): "Extracts from the decisions of the highest authorities of the European Constitutional Control about Human Rights and Fundamental Freedoms", Tbilisi, 2005.

Constitution of Georgia – Article 6

1. The Constitution of Georgia shall be the supreme law of the state. All other legal acts shall correspond to the Constitution.
2. The legislation of Georgia shall correspond to universally recognized principles and rules of the international law. An international treaty or agreement of Georgia, unless it contradicts the Constitution of Georgia, shall take precedence over domestic normative acts.

Constitution of Georgia – Article 14

Everyone is free by birth and equal before law regardless of race, color, language, sex, religion, political and other opinion, ethnic and social belonging, property and title, place of residence.

The Constitution references women's rights, in general, however, it does not set any guarantees for the protection of those rights, and the regulation of the rights is part of the legal framework.

Article 30.4

"The protection of labor rights, fair remuneration of labor and safe, healthy working conditions and the working conditions of minors and women shall be determined by law."

Article 36.3

"The rights of the mother and the child shall be protected by law."

The analysis of the Constitutions of other democratic states show that the protection of women's rights are guaranteed by the Constitution itself, based on the declaration of which is regulated by the corresponding legislation. It is important for Georgia not to be an exception in this regard and to practice the protection of women and pregnant women's rights on the basis of the Constitution. Unfortunately, Georgian legislation does not emphasize the importance of gender issues.

It is interesting to note that the provisions of Georgia as a democratic state do not include normative acts on guarantees of the gender equality protection.

The normative acts of the years 1918-1921 do not include a normative act on gender. However, part 13 of the Constitution in the year 1921 is utmost interesting. For instance, according to Article 113, the state is responsible for ensuring citizens' noble existence; Article 117: labor is the foundation for the existence of the state and its provision is state's special responsibility; Article 118: according to the legislations of the state, local governance is required to establish labor market, intermediary office and other such

establishments, which will eliminate unemployment and act as an intermediary in finding the employment for a job seeker; Article 119: unemployed citizens will be provided with the assistance in finding the employment or in the form of a subsidy; Article 24: labor is prohibited for minors under 16 years of age; For minors and women labor during night is prohibited. Article 125: it is state's responsibility to define the minimum wage and favorable labor conditions, labor inspection and sanitary monitoring, which should be independent from the employers. Article 126: special law will defend women's labor in the enterprise. It is prohibited for women to work at places that are hazardous for maternity; A woman worker is free from labor for 2 months without losing her salary; An employer is required to provide corresponding conditions for breast-feeding women; Article 128: state and the local self-governance are required to protect and care for women and children.

As we see, Article 126 includes the statement that there existed a special law in charge of protecting women's labor. Unfortunately, only after one century is Georgia able to exercise the legal politics as an independent nation.

Georgian Parliament's "National Conception of Georgia's Gender Equality" of July 24, 2006 includes the norms on basic components of the gender issues protection only on the level of principles.

Labor Code[28] regulates employment relations on Georgian territory, shall these matters are not be regulated differently by the specific normative act or Georgia's international agreement.

Special laws:

Article 1.2 of the Labor Code identifies negative principle in relation to Civil Procedures Code. Labor Code recognizes the following elements for employment relations:

1. Equal rights of the sides;

2. Free expression of will;

3. Agreement.

"Any type of discrimination due to race, color, ethnic and social category, nationality, origin, property and position, residence, age, gender, sexual orientation, limited capability, membership of religious or any other union, family conditions, political or other opinions are prohibited in employment relations." (Article 2)

"Employment capability of a physical person is constituted from 16 years" (Article 4.1)

"It is prohibited to employ a pregnant female or a female who recently gave birth, and the person with limited abilities for overtime work without consent of such person." (Article 14.5)

[28] Article 1, Labor Code of Georgia, May 25, 2006.

"Pre-Contractual Relations and Exchange of Information Prior to Execution of the Agreement." (Article 5)

"Employment of an under-aged person, pregnant woman who is in care of an infant or a breast-feeding female in evening hours (from 22:00 p.m. till 6:00 a.m.), and the employment of a person taking care of a child under three years or of a person with limited capabilities without his/her consent is prohibited." (Article 18)

"Employee being a breast feeding female feeding an infant under twelve months, based on her request shall be given additional break hours no less than one hour per day; Break taken for feeding an infant is included in the regular work hours and is not compensated." (Article 19)

Leave

Chapter 5 of the Labor Code regulates the question of leave, and chapter 6 regulates specifics regarding pregnancy, childbirth, childcare, adoption of a newborn, and additional vacation time.

Above mentioned established legislation states that in cases of pregnancy, childbirth and childcare women can take advantage of additional rights and legal conditions, although, the adequacy of the scale of the privileges and rights under the existing sub-cultural and demographic conditions presents a serious subject of criticism. The norm is regulated by the normative act.[29]

Designated norm is regulated also by the subordinate normative act, namely, by the order N 231/N of August 25, 2006 *"The compensation norm due to pregnancy, childbirth, childcare, adoption of a newborn"* by the Minister of Labor, Health and Social Protection of Georgia.

The legal guarantees of protecting employees in public sector are regulated by the "Law on Public Service"; Paragraph 41 regulates the subject of leave for women working in a public sector.

It is important that employment relations in a public sector are regulated by more than one special legislative or law-subordinate normative act.[30]

For example, the "Law on Police" of July 23, 1993 (with numerous corrections) does not take into consideration any specific legal protection mechanisms for women serving in

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29 "The compensation norm due to pregnancy, childbirth, childcare, adoption of a newborn" Order N 231/N of August 25, 2006 by the Minister of Labor, Health and Social Protection of Georgia.

30 Between the years 2002-2004 an intensive discussion took place among non-governmental civil society circles about the establishment of a unified public labor code, with which the employment rights, responsibilities, social guarantees, etc. of the public sector employees would become part of the standardized and unified legal system.

police and the law does not include negative agreement in relation to other use of legal acts.

The situation is similar in the “Law on the Status of Military Service”.

Comparative analysis of the set standards, which regulate the normative standards of the employment relations in the country:

Private Legal	Public Legal
In the beginning of signing the employment agreement or after it has been signed a woman is entitled to request additional compensation.	Official salary of the previous month serves as a base.
The woman may receive certain compensation during pregnancy and childbirth, as defined by the employment agreement.	Missed hours at work, due to the visits for medical check-up are payable, if an employee presents the supporting documentation as evidence.
	In case of ending the labor a woman may keep her position, benefits or certain compensation. For example, she may request a maternity leave in case of childbirth and childcare, etc.
	If a woman is able to only work part-time, an employment agreement shall be terminated. If a woman has a medical case or an issue of disability, an employment agreement will remain, until these conditions are proved by the supporting documentation.

Legal protection in case of unlawful dismissal from work

In Private Sector	In Public Sector
The review of the dispute case is possible during coordinated procedures, through individual agreements or via the court. The term for appeal is 3 years[31]	To void the dismissal order, to amend the grounds for dismissal, and to pay the liability compensation to the employee for the forced absence.[32] The term for an appeal – one moth from the date when the order was released.

Self-employed person – A woman in business sector and public organizations

In tis regard the law does not establish any regulation, therefore we can not discuss differentiated approach. “Civil Code on Businessmen” does not include any statement on the protection of employees’ rights, especially of the rights of women employees.

- ✓ The comparison of the above mentioned examples makes it apparent that the employment rights, social benefits and guarantees of public workers, including

31 Agreement terms time period, Civil Procedures Code.

32 In June 2011 the right determined by the amendment in law was reduced significantly, the mandatory request is allowed for 3 months only.

women, differ significantly and are greater than the rights of those working in the public sector, which shows the disregard and de-facto existence of the equality principles of the employee. The employment agreement means that the sides' choices coincide, but the perspective of finding a job and being employed stimulates many of the women to agree on the terms which are harmful to them;

- ✓ It is important to acquaint ourselves with those regulations of the Imprisonment Code with help of which the convicts have the right to employment, and are entitled to safety, and health services. The law places preference on pregnant women, nursing mothers, for them to have reasonably better living conditions and nutrition;
- ✓ What is the nature of tendency in securing labor rights? By general summary we can conclude that it is enviable. It requires immediate need to work out the complex approach. There is not a single normative act or a project in place for improving this tendency;
- ✓ Tendency of labor rights violation/humiliation.[33]

The analysis of the experience shows that the study of this tendency is directly related to the study of the tendency of fight for labor rights (the dynamics of the appeal process). Acquaintance with the below mentioned cases convinces us that there is a significant number of appeals with the purpose of labor rights protection submitted in the Court of Appeals and the Supreme Court, the fact which indicates that thousands of citizens approach the court for protection, as they believe that their employment rights have been violated.

[33] The research on the topic must develop with following focus:
1. Downsizing of legal standard
2. Willful and unlawful decisions of the employers' and persons holding positions in public sector. For example: replacing of an administrative person or a person holding a different type of a position automatically causes the dismissal from job of the entire department, the fact that neglects the main principle of public sector – personnel stability, and essentially excludes the establishment of stable, qualified and healthy bureaucracy. This creates danger for hypothetical possibility of establishing Georgia as an equitable nation.
The decision of the Supreme Court on the case LTD "panorama" – against revenues service, where Court of Appeals established standard for the behavior of public worker in relation to tax and taxpayer.

The dynamics of the rights protection

Date of the received and reviewed labour disputes cases in the Appeal Courts during 2006-2010 (Administrative Affairs)

Year	Appeal		Court	
	Reviewed appeal and private appeal complaints	Decrease/Raise % compared to 2006	Tbilisi Appeal Court	Kutaisi Appeal Court
2006	617	100	441	176
2007	602	-2,4	509	93
2008	602	-2,4	570	32
2009	383	-37,9	378	5
2010	512	-17	501	11

Date of the received and reviewed labour disputes cases in the Common Courts during 2006-2010 (Administrative Affairs)

Year	Cassation			
	Received cassation and the private complaint	Reviewed cassation and the private complaint	Decrease/Raise % Compared to 2006	
			Received	Reviewed
2006	306	204	100	100
2007	276	300	-9,8	47,1
2008	490	416	60,1	103,9
2009	369	463	20,6	127
2010	354	321	15,7	57,4

Date of the received and reviewed labour disputes cases in the First Instance Courts during 2006-2010 (Administrative Affairs)

Year	First Instance			
	Received	Reviewed	Decrease/Raise % Compared to 2006	
			Received	Reviewed
2006	1051	1102	100	100
2007	1540	1387	46,5	25,9
2008	1147	1118	9,1	1,5
2009	1077	981	2,5	-11
2010	973	914	-7,4	-17,1

Date of the received and reviewed labour disputes cases in the Common Courts during 2006-2010 (Civil Affairs)

Year	Cassation			
	Received cassation and the private complaint	Reviewed cassation and the private complaint	Received cassation and the private complaint	
			Received	Reviewed
2006	124	125	100	100
2007	115	124	-7,3	-0,8
2008	125	131	0,8	5,6
2009	106	111	-14,5	-15,3
2010	91	97	-26,6	-12,6

Date of the received and reviewed labour disputes cases in the Appeal Courts during 2006-2010 (Civil Affairs)

Year	Appeal		Court	
	Reviewed appeal and private appeal complaints	Decrease/Raise % Compared to 2006	Tbilisi Appeal Court	Kutaisi Appeal Court
2006	280	100	160	120
2007	350	25	174	176
2008	387	10,6	286	101
2009	293	-24,3	237	56
2010	176	-39,9	131	45

Date of the received and reviewed labour disputes cases in the First Instance Courts during 2006-2010 (Administrative Affairs)

Year	First Instance			
	Received	Reviewed	Decrease/Raise % Compared to 2006	
			Received	Reviewed
2006	717	693	100	100
2007	625	601	-12,8	-13,3
2008	533	544	-25,7	-9,5
2009	613	486	-14,5	-10,7
2010	761	588	6,1	21

Date of the received and reviewed labour disputes cases in the Common Courts during 2006-2010 (Administrative Affairs)

Year	First Instance		Appeal	Cassation	
	Received	Reviewed	Reviewed appeal and private appeal complaints	Received cassation and the private complaint	Reviewed cassation and the private complaint
2006	1051	1102	617	306	204
2007	1540	1387	602	276	300
2008	1147	1118	602	490	416
2009	1077	981	383	369	463
2010	973	914	512	354	321

Date of the received and reviewed labour disputes cases in the Common Courts during 2006-2010 (Civil Affairs)

Year	First Instance		Appeal	Cassation	
	Received	Reviewed	Reviewed appeal and private appeal complaints	Received cassation and the private complaint	Reviewed cassation and the private complaint
2006	717	693	280	124	125
2007	625	601	350	115	124
2008	533	544	387	125	131
2009	613	486	293	106	111
2010	761	588	176	91	97

LABOR CULTURE TRADITION AND EXPERIENCE IN GEORGIA

Georgian's legal and historic monuments are limited in numbers for assessing women's labor, because a woman in the past was not considered a juridical subject. Thus legal monuments provide limited information.[34]

However, the interesting source of information is ethnographic material, which provides eminent picture of women's labor rights.[35]

The existing materials clearly show the differentiation of woman's labor based on age, pregnancy, motherhood, childcare, and other aspects. The materials enable us to conclude that the sphere of woman's labor is regarded with sensitivity and defined by special norms.

The interpretation tendency of labor rights regulating law

The study of tens of cases indicate that the tendency in interpretation of labor rights is contradictory to the hierarchical system[36], as well as Constitutional Law and general courts, among them the One Level Court.

The court practice is not distinguished by uniformity, which is caused, on one side, by a low level of standards in labor rights, and on the other side, by week connection of the Georgian justice mentality with European standards[37]. Although there are interesting precedents that show the examples of providing solid guarantees for the protection of rights. These precedents can be beneficial for the body of lawyers, the action on whose part could potentially cause certain reservation for the employers and the persons in high positions to take illegal and groundless decisions.

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34 It is interesting to refer to the history and review the decision of the king Erekle II of Georgia about employing an orphan child as a servant. As a result of Mamuka Gugulashvili's appeal, king returned the orphan child to the mother, as the king concluded that: "the young boy should return to his mother and live with her until he is 15-16 years or age".

35 a) Mekheil Kekelidze "Custom rights monuments"
b) Sergi Makalatia, "The History and Ethnography of Samegrelo", Tb. 1941, "meskhet-Javakheti", Tb 1938
c) B. Nijaradze "Free topic"
d) Rusudan Kharadze "Large family"
e) Nunu Mindadze "Woman in a transitional time"

36 Various types of courts.

37 Notice: Constantine Korkelia in his Article "The practice of using European standards for human rights in Georgia" concludes that: "The study of Georgia's general court practice revealed the tendency of Georgia's courts being guided by international acts. This tendency touches upon general international agreements and the topic of using the European Human Rights Convention for Implementation of Justice". Journal, the Review of Constitutional Law, March. 2010. N2. P. 26.

Constitutional Control

Georgian constitutional practice and explanatory cases in regard to the Labor Code norms of the Georgian Constitution. Example:

Case #1

Georgian citizen: M.A.-ds's and others against the Parliament and the President of Georgia.

Subject of dispute: Paragraph 3 and 4 of Article 87 of the "Law on Higher Education" about "Defining the plenary powers of a legal person – rector of higher institution and the Dean of the Faculty and announcing President's order as partly invalid". The constitutional relevance of Paragraphs 2, 3 and 4 and Subparagraph "g" of Paragraph 5 from President's order of June 8, 2005 with Paragraph 1 of Article 17, Paragraph 1 and 3 of Article 19, Paragraphs 1 and 4 of Article 24, Paragraphs 1 and 4 of Article 30, Paragraph 1 of Article 34 and Paragraph 2 of Article 35.

Argument of the Constitutional Court: the legal and constitutional strengthening of the labor rights emphasizes Georgian state's essence, as of a nation the primary goal of whom is to guarantee decent labor. The literary understanding of Article 30 and Paragraph 4 of Article 30 diminishes the social character of the labor rights and at the same time violates the principle of lawful state which places the activity of nation's government and legislation in strict constitutional-legal framework. This implies not only that a legislator should formally meet the requirements of the Constitution to guarantee Constitution's requirement to settle labor rights via legislation, but it also implies that from the legal standpoint this law should correspond with the Constitution. Only under these conditions will the Constitutional Court review the appeals.

Paragraph 1 of Article 30 of the Constitution should be defined because of its motives, in relation to the social state, which is one of the fundamental principles of the constitution, and the one, which does not allow for Article 30 to be understood solely as an Article about prohibiting forced labor. The existent constitutional order in the labor sphere rights by the social state implies more than prohibiting forced labor. Paragraph 1 of Article 30 of the Constitution protects any person from forced labor, which is considered to be the infringement of person's dignity.

The Constitution does not only guarantee the protection of right to choose employment, but it also allows the maintenance of/or the dismissal from the employment, the right to be protected from unemployment and from those regulations which directly imply or prohibit unlawful and groundless dismissal from the job. Paragraph 4 of Article 30, which is most closely connected to Paragraph 1, among other issues, emphasizes the

labor rights. The norm, which will contradict Paragraph 4, will also not correspond with Paragraph 1.

Not every task that a person performs can be considered as 'labor' and it is not prone to protection by Article 30 of the Constitution. The definition of the word 'labor' refers to such activities, which serve the creation and maintenance of the fundamentals of person's existence. On one hand, labor is the means for financial security, and on the other hand, it is the means for personal self-realization and development. Professional activity of the humans may include several things, but the activity presents a subject of constitutional protection only then when it provides a lengthy and stable income and when in case of its elimination there would be no continuity of such income-based activity.

Case #2

Georgian citizens: V.T., S.T., X.G. and M Sh. against Parliament of Georgia

Subject of dispute: constitutionality of Subparagraph "d" of part 1 of the Georgian Labor Code in relation to Paragraphs 30 and 40 of the Constitution of Georgia.

Court statement:

1. Article 37 of the Labor Code addresses the question of terminating the employment relations. The title of Article "The basis for ending the employment relations" is also correspondent to its essence. In part 1 of Article 37 there are different grounds listed, among those the termination of the employment relations. When the plaintiff argues against Subparagraph "d" of part 1 of Article 37 of the Constitution, logically, it needs to either present an argument that the termination of the employment agreement is unconstitutional in the context of employment relations, or argue that the institution of terminating the employment agreement itself is unconstitutional.

2. The representatives of the plaintiffs clearly state that they do not consider the termination of the employment agreement unconstitutional. This is manifested in the constitutional action, as well as in the demand for action. The arguments of the plaintiffs are not directed, in general, toward substantiation of the unconstitutionality of the employment agreement termination, and the demand for action is not directed toward recognition of this institute's unconstitutionality.

3. Neither in the constitutional suit, nor at the court hearing did the plaintiff present the grounds for the claim that the termination of the employment agreement, as part of employment relations, is unconstitutional.

4. The constitutional action emphasizes that dispute norm provides the employer with the grounds for dismissing an employee unfairly and unconditionally. According to the opinion of the plaintiff, R. Liparteliani, the norm is unconstitutional because of its content. The board thinks that the standpoint of plaintiff on the content of Subparagraph "d" of the first part of Article 37 in the Constitution is invalid.

5. The appeal norm does not regulate the institution of the employment agreement termination or the conditions and norms of the employment agreement termination. The appeal norm presents the list of reasons for terminating employment relations and it does not serve as a regulating norm for the termination of employment agreement. Hence, it would be inadequate to regard Subparagraph “d” of part 1 of Article 37 of Georgia’s Labor Code as the regulating norm in case of the employment agreement termination by the employer.

6. Plaintiffs’ choice to use Subparagraph “d” of part 1 of Article 37 of Georgia’s Labor Code as an argument is incorrect, because the plaintiffs’ are using the dispute norm for regulating the question of employment agreement termination. The board instructs to the established approach of the Georgian Constitution (sentence N2/3/412, II-9; sentence N2/4/420, II-7; sentence 2/9/450, II-10) and thinks that that the assertions of the plaintiffs which are based on incorrect perception of the appeal norms does not satisfy the requirement of Paragraph “e” of Article 16 of the Georgian law on “Practicing the Constitutional Law”.

Case #3

Subject of dispute: void the employment termination order by the Ministry of Economic Development.

Factual circumstances: plaintiff was on maternity leave and subsequently took an unpaid vacation after a birth of her child.

Grounds for an appeal: during the unpaid vacation it was unacceptable to dismiss an employee from the job.

The court affirmed an appeal.

The motive for an appeal: the court stated that an order was released by harsh violation of Paragraph “a” of Article 89 and Paragraph 108 of Article 3. According to Article 3 of the existent law in the time of dismissal from employment it was unacceptable to dismiss an employee from a job based on Paragraphs “b”, “c”, “d”, and “e” of Article 89, and due to which the dispute order contradicts the law.

The given example shows that the administrative bodies do not regard the imperative prohibition of the law.

Case #4

E. T.'s appeal – Against the Archives Department of the Government of Adjara

Subject of dispute: void the job termination order, reinstate the contract, and pay the liability compensation to the employee for the forced absence.

Circumstances: plaintiff worked as a senior specialist since 2002. In June of 2002 she took a maternity leave. According to the law, the leave was ending on July 12, 2005. On July 8 plaintiff submitted an application with the request to return to work. Her application was denied, as she was informed that the department where she worked no longer existed and the position of a senior specialist ceased to exist.

Factual and legal basis of the argument: an order was released based on violation of Article 3 of the “Law on Public Service”.

The position of a Municipal Court: an appeal was affirmed partially, the dispute order was suspended, person’s position was restored and she returned to work. The reimbursement for the forced leave of absence was denied.

Based on the appeal of the respondent, the Court of Appeals annulled its decision and did not reverse an appeal. The decision of the Supreme Court was annulled and the case was returned for a further review to the same court.

Based on new decision the Court of Appeals annulled the decision regarding the return to work and the reimbursement for the solicitor expanses of the Municipal Court, and did not amend other points of the decision.

Grounds: according to the court the dismissal from work was unlawful, because the archives department was reorganized and did not cease to exist.

The Supreme Court satisfied I. T.'s cassation – the section on renewing the contract, and the responder was given an obligation to publish new act about the employment due to the violation of the "Law on Public Service".

Note: tens of cases were reviewed in which women were dismissed from the jobs during the maternity leave on the premises of closing down the organization, reorganization, annulling of the position or staff reduction.

Case #5

T. S-ds.'s appeal against The Agency of Social Subsidies

Subject of dispute: reimbursement for the maternity leave – 600 GEL.

Circumstances: plaintiff is an artist at the National Music Center Symphony Orchestra. In the year 2005 she gave birth to her first child. In 2006 she gave birth to her second child. She was on a maternity leave, during which, for six months, due to complications following the pregnancy she was unable to address the agency with the request to receive the subsidy.

Tbilisi Municipal Court did not affirm an appeal with the basis of an order issued by the Minister of Health on August 25, 2006. An order concerned the fixed time of 6 months.

Based on the conclusion of the Tbilisi Court of Appeals on May 7, 2008, S. S-ds.'s appeal was not reversed. The Supreme Court affirmed both, an original appeal and the disputed appeal.

Grounds: the Supreme Court provided a different legal assessment of the factual circumstances and concluded that, the application of the plaintiff was submitted to the SSIP agency with the delay and the denial of the plaintiff's application is invalid, since the plaintiff submitted her application on June 11, 2007, the date which fit within the fixed time of six months. The deadline was on June 12 and thus the plaintiff exercised her right within the fixed time of 6 months timeline set by the normative act.

Case #6

The majority of the physical persons (women) against SSEP "saqteleradiomautskebloda"

Subject of dispute: void the job termination order, reinstate the contract, and pay the liability compensation to the employee for the forced absence.

Circumstances: plaintiffs were employed for the unconditional period of time and before their dismissal the administration should have been guided by Article 30 of the Labor Code. An act of June 29, 2004 was used to support an order on dismissal from work and the employees were given a letter explaining the labor conditions and the process of signing the employment agreement, which they declined to sign. According to court's decision of February 7, 2005 an appeal was not affirmed.

The motive for an appeal: plaintiffs criticized the court, which chose not to engage the trade union as a third-party representative.

On January 6, 2006 the Court of Appeals came up with a new decision, although an appeal was still not reversed.

Grounds: according to the letter of the Public Broadcaster of December 22, 2005 the team moved to a new contract system on July 1, 2004. Namely, the employees were now employed on basis of one-month contract.

The Supreme Court declared the decision void and remanded the decision.

Grounds: Court of Appeals was commissioned to obtain new objective evidence, to research and assess the situation, namely, whether the positions from which the employees were dismissed existed in the time of their dismissal and whether there was a possibility to keep the positions form the administration's perspective. According to the law, it is not possible for the employer to set a one-month employment contract. This kind of condition can only exist in the case when a person is employed to execute a specific task for a specific time period (Subparagraph "g" from Article 18 of the Labor Code).

The Court of Appeals was commissioned to investigate and assess whether there were appellants employed with the contract under the unconditional time limit and whether it is acceptable to employ a person on the basis of one-month agreement and whether the conducting of job tasks at a given position requires longer period of time than one month, and if that was to be the case, whether the employer extended a contract on multiple occasions and what were the basis for setting a one-month agreement and setting the rules on extending or not extending the contract.

For the purposes of finding the answers to the above mentioned questions it was also important to review the decision of the Supreme Court in regard to Paragraph 37 of the Labor Code about the need for consent by the trade union.

Case #7

N.A.-ds's appeal against the respondent, General Procurator's Office of Georgia.

Subject of dispute: void the job termination order, reinstate the contract, and pay the liability compensation to the employee for the forced absence.

Circumstances: plaintiff worked as the director at the Lagodekhi Procurator's Office since May 1 2003. On January 24 she took a maternity leave. Although she worked until

this date, she did not receive her 20th and 21st salary in 2004 and one-month salary in 2005. As a result of the reorganization process at the Procurator's Office, in addition with the secretion of the positions, the Procurator's Office of Lagodekhi was incorporated into the procurator's office in Gurjaani. Article 111.2 of the "Law on Public Service" prohibits the dismissal from a job of an employee who is pregnant.

According to the Tbilisi Municipal Court an appeal was not affirmed on June 30, 2005 on the basis of an appeal being out-of-date.

Tbilisi Court of Appeals did not reverse N.A.-ds's appeal on January 18, 2006.

The cassation was satisfied by the Supreme Court, an order was annulled and the case returned to the Court of Appeals for a new review. The Supreme Court defined Paragraph 127.1 of the law regarding the set fixed remoteness in context of Article 58.1 and concluded that a one month fixed time for the appealing process should begin following the official order.

Case #8

S. Ch-va's appeal – against the Society of Technical Partnership of Germany.

Subject of agreement: void the job termination order, reinstate the contract, and pay the liability compensation to the employee for the forced absence and moral damage.

Circumstances: the employment agreement was signed between the sides on September 13, 2002, following Paragraph 1.1, based on which the fixed time was not exhausting until September 30. At the end of the fixed date neither of the sides requested the termination of the contract. On December 28, 2003 the respondent extended the fixed time to December 31, 2005, because of which, according to the plaintiff, an agreement moved to the no-fixed time term, based on Subparagraph "b" of Paragraph 18 and Paragraph 31.

On December 14th 2005 an employee was notified about the termination of the contract with the date of 31.12 and she was also informed that she would receive compensation for 10 vacation days and for the maternity leave.

Plaintiff was appealing with help of Paragraph 43.2 of the Labor Code; According to Paragraph "a" of Article 159.2 plaintiff believed that she was discriminated based on Article 164.3 of the Code.

On June 6, 2006 Tbilisi Municipal Court did not affirm an appeal.

On Jun 26 2007, following the decision of the Supreme Court remanded the decision.

On December 21, 2007, following the decision of the Court of Appeals S. Ch-va's appeal was partly affirmed. Termination of the agreement was deemed illegal. The person was able to renew her contract as a worker of the Social Projects and receive compensation for the forced absence. She was refused compensation for moral damage.

The court confirmed that an employee had been on maternity leave since December 14, 2005 and the grounds for terminating the employment agreement did not exist. Also, the court met the request for renewing the employment agreement based on Article 164.

It is interesting to look at the court's decision regarding the matter of compensation for moral damage. Georgia's legislation did not consider reimbursing for moral damage, however, even if the moral damage proved to have been incurred by the plaintiff, the sick leave report that she presented did not prove the causal relationship between the actions of the employer and the caused damage.

The sides reached an agreement at the Supreme Court, based on which:

The employment agreement set by the employer and the employee shell be considered annulled if the settled agreement terms are met by the sides;

Plaintiff to receive compensation for the compulsory missed time.

Case #9

T. Ts-ds's claim against Semek.

Subject of dispute: reimbursement for the vacation time and bonus salary, including 0.07% of the overdue amount for each delayed day.

Circumstances: T. Ts-ds was dismissed from work on October 1, 2007 based on the application submitted. However, the final calculation did not take place.

On November 26, 2008, Tbilisi Municipal Court did not affirm an appeal.

The court explained that based on Article 22 of the Labor Code plaintiff had the right to request paid vacation during any time of the year. In case when an employee does not exercise this right, s/he may not receive the right to the vacation compensation, because the Labor Code does not include such regulation.

By the decision of the Supreme Court T. Ts-ds's cassation was not satisfied.

The court used Paragraph 6 of June 4, 1936 convention "On Yearly Paid Vacation"[38], which states that an employee who is dismissed from work receives compensation for each vacation day an employee was unable to use. Thus, a dismissed employee may not use vacation, but s/he may request financial compensation.

Case #10

Action against public school of Bolnisi by M-shvili.

Subject of dispute: void the job termination order, reinstate the contract, and pay the liability compensation to the employee for the forced absence.

[38] The convention went into effect on February 22, 1993, by the resolution of the Parliament of Georgia.

It is important to review the specific case in context of defining Article 37 of the Labor Code. The lower division courts concluded that in case of the dismissal from the employment the only requirement the employer has is to reimburse an employee for an unused paid vacation time, and the court does not require an employer to document this.

The Supreme Court returned the case for a second review to the Court of Appeals with the following legal motive:

According to part 6 of Article 2 of the Labor Code, the sides must protect the basic rights set by the legislation of Georgia. Employment relation is a special form of a relationship with the requirement and it is different from a legal agreement in one circumstance: one of the most important principals of private justice is that the balance/equity of the sides depends on employer's will, on his instructions and the conditions set by the employer himself. Subsequently, in these kinds of employment relations the position of the employer is clearly superior in comparison to the vulnerable party, who is an employee, which automatically creates the possibility for the stronger side to exercise its rights in the manner that harms the party who is more vulnerable.

It is this kind of equality and the maintenance of balance that the Labor Code serves and it establishes the standards for the protection of the employees by juxtaposing the international and Georgian acts and norms. The court used several pacts from European Charters, Article 4 about Economic, Social and Cultural Rights, Article 6 about Human Rights and Article 2 of the Universal Declaration, based on which it concluded that the process for setting the requirement for the state for minimal equal labor rights protection does not have an alternative, and it is unacceptable to apply the laws only in favor of the employees.

The court referred to Subparagraph "a" of Paragraph 24 of the European Social Charter, which requires the sides to recognize the rights of each employee, to avoid dismissal from the employment without a valid reason, and for the decision to be based on professional and behavioral issues within the workplace.

The Supreme Court also referred to the Georgian constitutional judgment N2/1/456 of April 7, 2009, with which Subparagraph "d" in part 1 of Article 37 of the Labor Code was deemed unconstitutional.

Case #11

Action of T. M-dze – against the Expertise National Bureau

Subject of dispute: recognizing the dismissal from work as illegal and renewing of the employment agreement.

The Court of Appeals did not affirm an appeal under following grounds: the appellant's position was not considered and she was being discriminated against labor legislation, as she was being placed in an unequal position with other colleagues. Because Articles37 and 38 of the Labor Code place every employee in the same position, the

court concluded that the respondent is free to choose a contractor, subsequently, the dismissal of an employee was not considered by the court as discriminatory. The court noted that the based on Subparagraph “d” of Article 37 of the Labor Code the respondent was not obliged to explain the reasons behind the dismissal, as the Labor Code does not include a set rule which obliges an employee to explain the reasons of the dismissal to an employee.

Following the Supreme Court’s sentence the cassation was partly affirmed. The decision of an appellant was annulled and the appeal was remanded.

Important detail: regarding the discrimination, court explained that the proof of discrimination lies upon the plaintiff and that it is plaintiff’s responsibility to prove that the work was not related to professional reasons. In an opposite case, the dismissal from work may not be considered discriminatory.

Case #12

An appeal of N.G's against the respondent, Ministry of Economic Development

Subject of dispute: void the job termination order, reinstate the contract, and pay the liability compensation to the employee for the forced absence.

Circumstances: N. G-ia worked at different positions, lastly, since 1978 as a Deputy Head of the Staffing Department at the Ministry of Economic Development. During that period she received various types of material and moral support and incentives for good and productive work, and she was being regarded as one of the leading professionals. Based on the order of April 11, 2004 the Minister of Economic Development the plaintiff was dismissed from work on the basis of Article 97 of the “Law on Public Service”.

Factual basis of a appeal: according to N.G, an order of the Minister about the dismissal was illegal, since based on Article 108.1 of the “Law on Public Service” an employee should have been warned about dismissal one month prior the dismissal. Instead, she was notified four months earlier. Moreover, at the time when she was notified she was an employee of the Ministry of Infrastructure and Development and not the employee of the Ministry of Economic Development. Also, the released announcement about the dismissal was identifying the liquidation of the position, instead of staff reduction, as the reason. Plaintiff elucidated further that the announcement was released by a non-plenipotentiary person, as based on Article 93 of the “Law on Public Service”, it was the Minister of Infrastructure Development who had the right and obligation to release the warning, and not the Minister of Economic Development.

Legal reasons for a appeal: according to plaintiff, based on Article 97 of the “Law on Public Service”, regarding the staff reductions, the administration was required to offer to the plaintiff an alternative position. This did not happen. It is also important to note that the plaintiff contacted herself the ministry in written and asked the administration to consider her candidacy in the process of staff reorganization, but the plaintiff did not

receive a response from the ministry. Based on Article 14.2 of the "Law on Public Service" and on Article 36 of the Labor Code, during the time of dismissal the administration should have presented an opportunity to some of the employees to stay at the workplace in different positions. This did not happen, because plaintiff is a single mother, with more qualifications and work experience than other employees and the employer would have to chose her over other employees. Also, plaintiff noted that Article 37.1 of the Labor Code, which dictates that an employee may not be dismissed without notifying the trade union, was also violated, as the trade union was never notified.

On April 7, 2005, Tbilisi Kratsanisi-Mtatsminda regional court satisfied N.G's appeal. A dismissal order was considered annulled and plaintiff was reinstated at the Ministry of Economic Development of Georgia on a similar position she held before the dismissal. The respondent was required to reimburse the plaintiff for the time she was forced to miss.

Following the decision of the Court of Appeals on December 9, 2005 the appeal of the Ministry of Economic Development was affirmed. Subsequently, the decision of April 7, 2005 of the Tbilisi Krtsanisi-Mtatsminda regional court was annulled.

The Supreme Court only partly affirmed an appeal. Thus, the decision of December 9, 2005 of the Chamber of Administrative Cases of Tbilisi Court of Appeals was remanded under following grounds:

Based on Article 4.4 of the European Social Charter (ratified following the resolution of the Parliament of Georgia of July 1, 2005) the Supreme Court elucidated (in Georgia it is mandatory to execute the requirements of the European Social Charter) that in case of dismissal from work each employee is entitled to a prior warning. Based on Article 108.1 of the "Law on Public Service", before dismissing an employee from work s/he should be notified one month earlier.

An order N01/03-01/513 about the dismissal of N.G. from work has to do with the dismissal from the ministry of infrastructure for the reasons of liquidation, thus, an order about prior warning does not apply to the dismissal from the Ministry of Economic Development. The Ministry of Economic Development should have warned N.G. (as someone being a staff member of the Ministry of Economic Development) about the dismissal from work one month prior the dismissal, according to Article 108.1 of the law. The Court of Appeals did not investigate whether the warning took place and did not provide subsequent assessment of the situation.

The Supreme Court considered that during the Court of Appeals the court should investigate thoroughly the circumstances: whether N.G. should have been notified about the dismissal (due to the reorganization and staff reduction) one moth prior the dismissal, based on part one of Article 97 of the "Law on Public Service" and whether N.G. was offered another position, as based on Article 97.2 of the "Law on Public Service", should she have accepted another position she should not have been dismissed from work. Existing material does not help prove that the Ministry of Economic Development took into consideration the position of the employee and that she was offered a new position.

Based on Article 97.2 of the "Law on Public Service" the Supreme Court should explain that the indicated norm carries a prohibiting character and considers it unacceptable to dismiss an employee if an employee is willing to take over other position. Accepting a new position, preconditioned by the need of offering a position, is one of the set guarantees of its kind for employees at the public sector.

The Supreme Court considered that this section of the case requires further investigation, namely, the Court of Appeals should review the factual circumstances and investigate what percentage of the unit was kept during the staff reduction process in the Ministry of Economic Development, whether the administration was guided by the requirements (the primary right of an employee to remain at job) of Article 36 of the "Law on Labor Codes" and the requirements of Article 96.3 of the "Law on Public Service" which makes the employer responsible to take into consideration employer's credentials/certification during the reorganization and/or staff reduction.

Case #13

N.B's appeal against the Ministry of Economic Development of Georgia.

Subject of dispute: Compensation of 0.07% of the overdue amount for each delayed day.

Circumstances: plaintiff was dismissed from the position of the Senior Deputy Head of Mtatsminda-Krtsanisi regional department by the order N24 of December 7, 2004 of Tbilisi National Statistics Administration at the Ministry of Economic Development of Georgia.

Factual grounds for an appeal: plaintiff was arguing to receive the liability compensation of 694.68 GEL and 0.07 percent of the overdue amount for each delayed day. In spite of plaintiff's multiple requests, the calculation between N. Bolqvadze and the defendant did not take place.

Position of the defendant: the representative of the Statistics Department, a subordinate administration of the Ministry of Economic Development of Georgia did not attend the court hearing nor did they respond in writing to the appeal presented by the N.B.

On February 20, 2007, following the decision of the Municipal Court N.B's appeal was satisfied. The Municipal Court required the respondent, the Statistics Department, the subordinate administration of the Ministry of Economic Development of Georgia to pay the liability compensation of 694.68 GEL and 0.07 percent of the overdue amount for each delayed day, starting on July 5, 2006. Following argumentation was presented:

Plaintiff N.B. worked at the Tbilisi Municipal Administration of the National Statistics Department of the Ministry of Economic Development of Georgia. With the order N24 of December 7, 2004 due to reorganization and staff reduction, the plaintiff was dismissed from work. According to the announcement N1-16/4 of Tbilisi municipal administration of

the National Statistics Department of the Ministry of Economic Development of Georgia the liability compensation that was due toward N.B. consisted of 694.68 GEL. The responded confirmed the existence of the liability payment.

The Municipal Court used Article 37 of the "Law on Public Service" and explained that based on this norm, "...the compensation for the labor (salary) consists of official benefits, additional benefits, bonuses considered by Georgian legislation". According to the same Article, an employee has the right to receive compensation from the first day until the day of dismissal. According to Article 14.1 of the law, Georgian Labor Code applies to the employees with specificities, and according to part 2 of the same Article, "employment relations which can be regulated following the law should be regulated by the legislation. Subsequently, based on court's resolution, the Labor Code applies to employment relations, despite of the day of its origin. Based on Article 31.3 of the Code, an employer is required to provide the 0.07% of the overdue amount for each delayed day from the day of the decision.

Based on the above, the Municipal Court considered that in a given situation, the delayed liability payment of the plaintiff fell under Article 31.3 of the Georgian Labor Code, and that the respondent had to pay 0.07% of the overdue amount for each delayed day from the day of the decision, July 5, 2006.

The statistics department, the sub-administration of the Ministry of Economic Development of Georgia appealed against the part of the decision, which required them to pay 0.07 of the salary for each delayed day and it requested from the Municipal Court to annul the decision on following grounds:

Plaintiff increased the request before the completion of the appeal without department's consent. According to Article 83.3 of the Municipal Civil Procedural Code of Georgia, the alteration of the grounds or the subject of dispute after the preparation of the appeal for the court review, is only allowed with the respondent's consent.

Following the decision of the Court of Appeals an appeal of the Ministry of Economic Development was affirmed; Decision was taken based on which the court did not affirm a section of the appeal regarding the compensation of 0.07% of the overdue amount for each delayed day. The other parts were left unchanged and the Court of Appeals provided following argumentation:

The Court of Appeals did not share the Court's assessment, regarding the use of Article 31.3 of the Labor Code about regulation of the argument, and it explained that this norm was enforced on July 5, 2006. According to Article 53 of the same Code the rules apply to the employment relations regardless of the date of its origin, the reason why the Chamber of Appeals considered it impossible to use the rules in this situation.

Natela Bolqvadze appealed against the decision of the Court of Appeals via cassation norms and requested its' annulling.

The motive for cassation:

The Supreme Court interpreted the law incorrectly by not sharing the decision of the Municipal Court regarding the use of Article 31 of the Georgian Labor Code, since the law was enforced on July 5, 2006 and according to Article 53 it can apply to the existing employment relations.

The appellant claimed that the Court of Appeals did not take into consideration Article 14.1 of the "Law on Public Service", according to which the labor legislation of Georgia applies to the employees considering the specifics of the law. The Code that regulates the employment relations for the employment in public sector is regulated with corresponding legislation. According to an Article 37.1 of the law an employee has the right to receive compensation, bonuses and other benefits from the first until the last day of employment.

According to the appellant the Court of Appeals misinterpreted an Article 53 of the Labor Code, as based on Article 31 of the Code the employer is required to reimburse an employee with the 0.07 percent of the overdue amount for each delayed day. The existing norm is a new edition to the sphere of employment relations. Such norm did not exist as part of the Labor Code of Georgia that was active up to May 25, 2006.

With the decision of November 13, 2007 of the Supreme Court N.B.'s appeal was considered as an acceptable/absolute cassation based on part "a" of Article 34.3.

The Supreme Court did not affirm N.B.'s appeal, thus the decision of June 12, 2007 by the appeals chamber of administration affairs of Tbilisi Court of Appeals was left unchanged under following grounds:

In agreeing with the decision of the Municipal Court, the Supreme Court did not take into consideration the motive that the law regarding the correct application of Article 31 of the Labor Code was interpreted incorrectly and that it was enforced on July 5, 2006, and based on Article 53 it applied on the employment relations. Article 53 of the same Code applies to the employment relations regardless of the date issued – something that was perceived and used by the appeals chamber in opposite manner.

The Court of Appeals did not share the court's assessment – decision to use Article 31.3 of Georgia's Labor Code for regulating the relations and it explained that the specific norm was enforced on July 5, 2006. Article 53 of the same Code applies to the employment relations regardless of the date issued, due to which the Appeals Chamber decided that the given fact was not allowing the use of this norm.

Natela Bolqvadze decided to appeal at the Supreme Court against the decision of the Court of Appeals and asked for annulling the order.

Grounds for the cassation:

Court of Appeals interpreted the law incorrectly and it did not take into consideration the Municipal Court's decision regarding the use of Article 31 from the Labor Code of Georgia

for settling this case, as it is indicated in Article 53 of the Code that it applies to the employment relations.

An appellant thought that the Court of Appeals did not take into consideration an Article 14 of the work in public sector based on which the Labor Code of Georgia applies with special considerations to the relationship between the employers and the employees, which is regulated by the Code and certain legislation. Based on Article 37.1 of the "Law on Public Service" an employee has the right to receive compensation from day one to the last day of employment, which includes bonuses and also other benefits considered by the law.

An appellant explained that the Court of Appeals did not define Article 53 of the Labor Code correctly, since based on Article 31 the employer is required to pay 0.07% of the overdue amount for each delayed day.

According to the order of the Supreme Court on November 13, 2007 the cassation of N.B. was considered acceptable/absolute cassation based on part "1" of Article 34.3 of the administrative procedures Code.

The Supreme Court did not satisfy N.B.'s cassation appeal, thus the decision of the appeals chamber of the administrative affairs of June 12, 2007 was left unchanged under following grounds:

The Supreme Court did not consider the fact that the Court of Appeals interpreted the law incorrectly when it agreed with the Municipal Court about the use of Article 31 of the Labor Code of Georgia, since the law was enforced on July 5, 2006 and it was indicated there according to Article 53 it applies to the existing employment relations.

Based on Article 14.1 of the "Law on Public Service" the Supreme Court explained that the Georgian Labor legislation applies to the employees with special conditions. Based on part 2 of the same law, the relationship which is not regulated by this law is regulated by corresponding legislation.

The Labor Code of Georgia was passed on May 25, 2006, promulgated on June 16, 2006 and enacted on 15th day after its promulgation, on July 5, 2006. According to Article 31.3 of chapter 7 the Code regulates labor compensation matter, which, in case of delay of any compensation or settlement, obliges employer to pay 0.07% of the overdue amount for each delayed day.

Based on the content of the above-mentioned norms the Supreme Court defined that by passing of the Labor Code in 2006 was a legislative innovation, which foresaw the employer's responsibility during the delayed compensations with reimbursing the employee with 0.07% of the overdue amount for each delayed day. The Labor Code also ascertains that it applies to the employment relations, regardless of the time of its origin.

Assessment of the Supreme Court:

In the specific case, the employment relations between N.B. and the national statistics department of the Ministry of Economic Development terminated in 2004. The fact that

there was compensation dept issue between the plaintiff and the administrative body does not imply that the employment relations continued – the circumstance which allows the application of the Labor Code which was implemented in 2006.

The Supreme Court considered that the regulated legislative norm of the Labor Code did not apply to this case, because the norm should apply to the rights which can be obtained through the collected juridical facts and which continue to exist under the law, in the time when those rights were obtained.

The Supreme Court explained that the employment relations in this case are apparent, since the employment relations between the employer and the employee continued and never ceased to exist, the fact that speaks of the correct application of the Labor Code. However, if the employment relations ended in 2004 – before the enactment of the Labor Code of Georgia – the Code cannot be applied to the dispute case. The fact that the respondent had a dept remains part of the dispute, since this circumstance does not imply that there were lengthy employment relations, due to the following:

Based on Article 31.3 of the Labor Code, the Supreme Court explained that for the process of regulating the employment relations, the legislation set the mandatory monetary compensation, which requires the employer to pay 0.07% of the overdue amount for each delayed day, in case of the delay of compensation or settlement. According to the conclusion of the Supreme Court, it is not the employment relations which presented a problem in discussing the dispute, but it is the section on financial requirement of the employment relations. In a given case, neither in the beginning of the employment relations, nor in the end could the norm of the financial requirement be applied. As such, the compensation dept issue does not mean the continuing of the employment relations and the above-mentioned norm cannot be applied.

The Supreme Court concluded that it is correct to apply the Labor Law of 2006, as instructed in Article 47.2, in the case of continuing employment relations.

Case #14

Following the decision of the Vake-Saburtalo Regional Court on February 25, 2005 the appeal was not satisfied, since there were only four adolescent family members at plaintiff’s family.

On July 11, 2005 the Court of Appeals left the case unchanged.

The Supreme Court annulled the decision and returned the case for a review to the Court of Appeals with further grounds:

The court ceases a certain legal relationship on the grounds of law and defines this law thoroughly. The defining of the law becomes somewhat difficult when terms of the norm are not clear in its sense and its application come in contradiction with the aim of the law, something that does not help reach fair and correct resolution of the certain legal relationship.

The jurisprudence no longer interprets the law literally and in a manner that is narrow. When the literary definition of the norm contradicts the aim of the law the court has to decide whether there is a need to define the law differently, and whether the action should follow from the standpoint of he objective law which stems from the existing constitutional law and order.

In a given case it is debatable how Subparagraph "e" of part 3 from Article II of the "Law on Georgia's National Budget of 2004" should be interpreted. Whether the persons considered for a social benefits (35 GEL per month) should be those with seven or more children under the age of 18 and if the plaintiff can use this law in this case.

Subparagraph "e" of part 3 from Article II of the "Law on Georgia's National Budget of 2004" dictates: "In 2004 the amount for social and financial assistance shall be defined for the families in need – for the families with seven or more children, who are under the age of 18 to be supported by 35 GEL".

The Supreme Court believes that the literary interpretation of the dispute norm contradicts the aim of the law and does not support correct practice of social and economic politics. The aim of the dispute norm established by the legislation in a specific case is to stimulate large families, thus, to improve nation's demographic situation and strengthen social protection mechanisms. The given conclusion is released by the Supreme Court considering that dispute norm is part of the yearly national budget law, which based on Articles1 and 5 of the "Law on Budget Systems and Budget Requirements" regulates the integral part of country's economic political part of the basic national financial plan, such as the actualization of main focal points of financial-budgetary (financing) politics.

Based on Article 11 of the dispute "Law on Georgia's National Budget of 2004" it is clear that one of the nation's economic political priorities is to finance social programs with the purpose of promoting large families. On one hand, this viewpoint comes in accordance with the purpose of Georgia's Constitution to guarantee social and legal growth and wellbeing. For this reason the Supreme Court thinks that the literary interpretation of the dispute norm contradicts the aim of the law and does not guarantee correct practice of social and economic politics. It is unacceptable to leave such large families (with seven or more children) with six underage children without social welfare, and it is unacceptable for such family not to be part of the social-economic priority of the nation. At the same time, it is unrealistic in today's society to have families with seven underage children. It can only be possible due to mother's physical capabilities. And the purpose of the legislation that defines the law should not be the promotion and stimulation of unrealistic and impossible situations, because it would cause the nation's unrealistic demographic stimulation.

The Supreme Court thinks that in the interest of reaching the goals of legislation, the dispute norm should be interpreted in the context that will allow the large families with seven or more children, with underage children among them, to benefit from financial assistance. The Supreme Court is limited in the right to define/interpret the dispute norm, since it is the legislator that gives direction in terms of assistance for large families.

The Court of Appeals defined that the plaintiff Ts.F. has ten children, out of which four children are under 18. Subsequently, the Supreme Court cannot agree with the decision of the Court of Appeals that the plaintiff's family does not meet the condition to receive the social benefit. At the same time, the Supreme Court cannot share the appellant's opinion that based on Subparagraph "e" of part 3 from Article 2 of the Labor Code each underage child, and not the family itself, receives an amount 35 GEL". Based on the requirement of the law, which is indicated in first Paragraph of Article 3, the direct receivers of the assistance are the families in general, and not the specific family members.

Case #15 (Cassation Court definition on the case #14)

Subject of dispute: receiving social assistance

The Supreme Court affirmed an appeal of a legal person, the agency of social subsidies, it annulled the May 24, 2007 decision of the Administrative Affairs Chamber of Tbilisi Court of Appeals and came up with the new resolution. Ts.F's appeal was not reverse under following grounds:

According to part 2 of Article 407-e of the Municipal Procedural Code the Supreme Court considered it established that at the time, by the December 16, 2004 plaintiff had ten children, among them four children under 18. Before submitting a appeal to the court the family approached the social services department of Terjola, in response to which the family received a denial on the grounds of Subparagraph "e" of part II of the "Law on Georgia's National Budget of 2004", according to which the assistance is provided to large families who have more than seven underage children. And in the family of Ts.F.'s there were only four underage children.

The assistance applies to large families, who have seven or more underage children. However, F's family had four underage children. The same is noted in the letter N13/13-3252 of December 2, 2004 by Healthcare and Social Protection Ministry Social Programs, which also denied social assistance to the plaintiff.

The Supreme Court noted that the Common Courts regulate justice based on part 2 of Article 83 of Georgian Constitution. By "justice implementation" it is implied that court should provide correct interpretation/explanation of the legislative norms, in relation to the one or another legal relationship and come up with the decision based on evidence. The correct interpretation of the legal norm implies the exact disposition of the code of conduct, in accordance with the actual will of the legislative body and its empowerment.

The Supreme Court defined that the existence of the phrase "a child under 18" in a given legal norm hypothesis implies that according to the norm the social assistance should be given to those families only, who have seven or more children under the age 18. If the legislation's goal was to help large families with seven or more children (including, but not limited to the underage children) the phrase should not be used. It would be sufficient to stress the point that social assistance should be given to the families who have seven

or more children. A sentence “seven and more adolescents” versus “seven and more children” proves that the motive is not genuine, since the “child” is someone who has not reached the age of 18.

The Supreme Court noted that the court is required to define the legal law and execute it according to the exact content and the legislature’s will. The given principle is strengthened by the second part of Article 4 of the Civil Code, which states that the court may not refuse to apply the law on the grounds that in its’ opinion the norm of a law is unjust or immoral. In a given case, it is clear that the legislature’s goal is not the assistance of large families, but of specific categories of families, who have seven and more underage children. Thus, the various interpretation of a sub-part “e” of part 3 of Article 2 of the “Law on Georgia’s National Budget of 2004” should be considered as incorrect interpretation. Subsequently, the incorrect interpretation of the law based on which the court decision was made should serve as grounds for annulling the decision.

The Supreme Court does not consider Ts.F. eligible for social assistance, set by sub-part “e” of part 3 of Article 2 of the “Law on Georgia’s National Budget of 2004”, since at the time when the plaintiff submitted a appeal she had ten children, only four among them under the age of 18.

case #16

M.Sh’s appeal to the respondent – Government of Batumi, Adjara.

Subject of Dispute: void the employment termination order, reinstate the contract, and pay the liability compensation to the employee for the forced absence.

Factual Circumstances: according to the order N02-12-10 of Batumi City Hall on January 31, 2006, M.S. was dismissed from the position of a main specialist of Batumi local self-governance juridical chamber. Plaintiff explained that she was not warned one month prior about the dismal, as required by the law. In the order N154 of December 26, 2005 plaintiff was informed about the potential reorganization at the local chamber of Batumi and about the potential dismissal of the staff from public work. There was nothing said in the administrative act about the dismissal of the employers.

Part 1 of the resolution order foresees the staff reduction and not the warning about the dismissal. Also, M.S. was dismissed from work on January 31, 2006, but the order was released on December 26, 2005. Subsequently, the dismissal was not executed on the day when order release, as required by the law, and it was only enacted on day six.

According to the plaintiff, the administration did not take into consideration Article 36 of the Labor Code about the primary right to remain at work. Plaintiff had the primary right to remain at her position, since she completed her studies with highest honor, had strong qualifications, long-term experience, and conducted work with great efficiency and decency. Also, she supported her family members, two underage children and parents with health issues.

Legal grounds for the appeal: by dismissing the plaintiff, Batumi City Hall violated Article 108 of the "Law on Public Service", since it did not inform the plaintiff about the dismissal one month prior. If the resolution of December 25, 1005 by the City Hall of Batumi is deemed as a warning, then the administration has committed one more violation. It violated part 3 of Article 97 of the "Law on Public Service" by not dismissing the plaintiff the day after the warning was issued.

The administration also violated part 1 and the subpart "a" of part 2 of the Labor Code of Georgia, since in the process of staff reduction the respondent did not research and consider the group of people who had the primary right to remain at their positions.

M.S. presented an application to the City Court by which it requested the suspension of the orders N56 (31 January, 2006), N53 (October 6, 2005) and N36 (August 22, 2005) of the Batumi City Hall and subsequently the suspension of the dismissal order and the reimbursement for the time plaintiff was forced to miss from work.

With the decision of Batumi Municipal Court on April 3, 2006 the appeal of M.S. was satisfied partially. The decision about the dismissal N2-12-10 of January 31, 2006 by the Batumi City Hall was suspended and the plaintiff was brought back to work as the main specialist of the legal service at the Batumi local self-governance chamber. The respondent was made responsible to reimbursing the plaintiff for the forced missed time (180 GEL for February and 240 GEL for March). The process of suspending the orders N56 (31 January, 2006), N53 (October 6, 2005) and N36 (August 22, 2005) was not pursued further and the following grounds were presented:

The court decided that in the process of staff reduction the administration did not analyze thoroughly and did not discuss the primary right to remain at their positions. According to Article 36 of the Labor Code, plaintiff had the primary right to remain at her position. The court also ascertained that in the time of dismissing M.S. the Batumi local self-governance chamber consisted of the trade union, which never provided consent about the dismissal.

By the decision of the Chamber of Administrative Affairs of Qutaisi Court of Appeals on July 27, 2006 the appeal of the Batumi City Hall was not satisfied. The decision of the Municipal Court also did not change and the following was offered as the grounds for refusal:

According to the court resolution, since M.S. was dismissed from work following Article 97 of the law on the grounds of staff reduction, the administration should have followed the requirements of the Labor Code. The court resolution states that in the process of dismissing M.S. the administration violated the requirements of Article 36 of the Code, since in comparison with other employees plaintiff had the primary right to remain at the job. The court also stated that during the dismissal of M.S. the administration did not have trade union's consent. Moreover, the administration did not offer another position to the plaintiff, which it was required to do according to Article 422 of the Labor Code. Therefore, the court considered an appeal groundless and left the decision of the Municipal Court unchanged.

According to the decision of the Supreme Court the appeal of the Municipal Court was affirmed partially. Subsequently, the resolution of July 27, 2006 of the administration chamber of Kutaisi Court of Appeals was reversed and the Court of Appeals came up with a new resolution. M.S.'s appeal was affirmed partially and the order N02-12-10 of January 31 by the Batumi Municipal Court about the dismissal was suspended. The administrative body was commissioned to work out a new administrative act and reimburse the plaintiff for the forced absent time, until the issuance of the new individual administrative act, under the following grounds:

The Supreme Court shared the factual circumstances set by the court, since those were set without the violation of the process norms and it did not share the legal assessment of the court. Namely, that the Batumi City Hall had not discussed the issue of staff reduction as a result of reorganization and it did not clarify for itself the question of who had the right to remain at work. In the process of issuing the individual administrative-legal act, the administrative body violated the general requirements set by the administrative Code for the use of administrative processes. Namely, according to Article 96.1, the Code defines clearly the administrative requirement: the administration should look at all important circumstances that are relevant to the given case and make a decision only after the assessment of the circumstances. According to part 2 of the same Article it is unacceptable for the administrative body to use the circumstance/fact as the grounds that have not been investigated by the norm set by the court.

In the specific case, the Batumi City Hall ignored the regulations of the legislations in the process of releasing the dispute order, as the administrative body was required to investigate whether there were legal grounds for dismissing the plaintiff. No such investigation was conducted and happened to be part of an order.

The Supreme Court stated that the decision to dismiss M.S.'s from the job was illegitimate, namely, according to the "Law on Public Service" of October 31, 1997 the legislation applies to the public service employees taking into consideration the specifics of the law. At the time when M.S. was dismissed Article 421.2 of the Labor Code, which guarantees the rights of the employee was the applicable law. The law states, that: a) an employee should be provided with an offer for a different position in the same firm, institution or the organization b) an employee should be provided by an offer for a position in a different institution, considering employees personal will and the needs of the those entities c) an employee should be given an opportunity to adopt a new profession/specialty along with the new position.

Existing facts ascertained that according to Article 421.2 of the Labor Code of Batumi City Hall, an employee was not offered another position when she was dismissed from the position she held. Based on the above, Supreme Court stated that, the existing norm forbids dismissing an employee if an employee agrees to accept a new position. The indispensable condition for such acceptance would be an offer for a new position by an employer. This condition is one of the guarantees for the employee, which is mandated by the law and obligatory for the administrative body. Accordingly, the administrative

body was required to offer a different position at the time of dismissal. Negligence of this imperative requirement of Article 421.2 of the Labor Code presents a violation, which serves as the grounds for annulling an order about dismissal and returning an employee back to work.

At the time when the dispute order was issued the point on the requirement of offering another position was eliminated from the “Law on Public Service”, however, this norm was set by the norm in the Labor Code and it applies to the employees of the public sector in a form of a regulation of Article 36, which provides primary right to the employee to remain at job.

The Supreme Court decided that the Court of Appeals made a right choice in applying the specific norm, but that it did not provide its correct interpretation.

The Supreme Court did not share appellant’s standpoint on denying the use of the Labor Code of June 28, 1973 and it stated that according to Article 53 of the Labor Code of May 24, 2006 the Code applies to the continuing employment relations, which were formed before enactment of the Code and applies to the employment relations after the enactment, as well. Accordingly, the Code of May 24, 2006 cannot be applied to previous employment relations, because the employment relations between M.S. and Batumi City Hall were terminated on May 24, 2006, before the May Labor Code was enacted.

The requirement of Article 36 of the Labor Code was also violated in regard to the plaintiff, which makes plaintiff eligible for the reenactment at work. Thus, the choice of the position that should be offered to the plaintiff is fully under the discretion of the administrative body, and the court will not be included in the process. The issue of the primary right of the plaintiff to remain at work is also the subject of discussion, since for the process of staff reduction an Article 36 of the Labor Code states that the primary right to remain at work can only be exercised by those employees who have high qualifications and those who have excelled in their positions at work. The Supreme Court states that in the specific case the administrative body did not discuss the process of formulating an individual administrative-legal act. Because of the above-mentioned violations the dispute act should be announced as annulled and the respondent for issuing a new act should be made responsible to discuss all relevant circumstances, including the regulations stated in the Labor Code. The resolution of this issue does not fall under the competency of the court.

Based on the above, the Supreme Court did not share the decision of the Court of Appeals and the decision about the primary right to remain at work, and Article 6 of the General Administrative Code regulates the norm of dismissing an employee from work, namely, if an administrative agency enjoys discretionary power to solve any matter, it shall exercise discretionary power in compliance with the law.

In the process of exercising its power, the administrative body is limited by the law principle, namely, by the principle of the law agreement, which is asserted by the principles of democracy, of the state based on rule-of-law and basic human rights.

The discretionary rights given to the administrative body in the process of issuing the administrative-legal act limits the court in terms of the verification process. The court does not have the right to verify the expediency and the fairness of the administrative body. A person can appeal against the administrative body and argue against the discretionary legality of the rights. And the court has the authority to inspect whether there are mistakes in exercising the discretionary rights.

In the specific case, the Court of Appeals decided to use the discretionary rights it had provided to the administrative body and considered the dismissal of M.S. from the job unfair. The Supreme Court noted that the dismissal notice did not contain evidence on any sort of discussion around an offer of a new position to the plaintiff. In spite of the fact that it is administrative body's responsibility to discuss the issue and the court simply monitors its legitimacy and evidentiality, in a given case, the question of the primary right to remain at work was discussed by the court and not the administrative body. The evidence shows clearly that in the decision making process the administrative body did not discuss the following. It only started talking about it post-factum, in the process of the court dispute, which shows the harsh violation of Article 5.1 of the General Administrative Code about the "Exercise of Authority Pursuant to Law". In a given case, the "Law on Public Service" of October 31, 1997 and the regulations of the labor laws define the strict procedure that should be followed by the administration and which was ignored completely in this specific dispute case.

Thus, it was decided by the Supreme Court that in the process of issuing the dispute act, the Batumi City Hall violated not only the imperative norm of the law, but also the format in which it was issued. The administration was required to offer a new position to the plaintiff, and the absence of such offer signifies the violation of the requirement outlined by the law. In addition, based on the point 5 and Article 96.2 of the General Administrative Code an administrative agency shall investigate all the important case-related circumstances and render the decision through the evaluation and comparison of those circumstances.

Administrative body may not issue an administrative act based on the circumstances or facts that were not investigated, and the application regarding the matter that falls within its jurisdiction shall not be denied without thorough investigation and the analysis of substantial justification. Therefore, in a specific case, we are dealing with the procedural grounds of Article 32.4 of the General Administrative Code, as the plaintiff was dismissed as the result of the staff reduction, caused by the reorganization, and the administration did not discuss the cases of those employees who had the primary right to remain at job.

Based on the above, the dispute case should be made apparent, and in the event of issuing the new act the administrative body is required to discuss the issue of those employees who have the primary right to remain at job, since the resolution of this issue is outside of court's competency. Therefore, there are no legal and factual grounds for affirming an appeal fully.

The Supreme Court considered that M.S.'s appeal should be affirmed in the issue of reimbursing the plaintiff for the missed time, based on Article 207.1 of the Labor Code, since, on the grounds of Article 601.1 of the General Administrative Code the court considered an order about the dismissal of the plaintiff to be contradictory to the law. The court obliged the respondent body to issue an administrative-legal act, to reinstate the plaintiff at work and to reimburse the plaintiff for the missed time, from the moment of the issuance of a new administrative-legal act.

RECOMMENDATIONS

Within the scope of labor politics:

1. Political consensus must be formed regarding the establishment of the labor-legal culture, which will be based on international, as well as traditional-Georgian (modernized) experience and scientific research, among the unified conception and the goals set for long-term perspective by the legislators, psychologists, ethnographers, economists, and sociologists.
2. The implementation of the directive on legislative level of the standards for fighting discrimination in regards to the employment and professional matters.
3. Ensure age-based equality on legislative level in employment relations.

Within the scope of legal provisions:

1. Country's legislation must reflect the accepted conception and the application mechanisms of the conception must be effective.
2. Certain guarantees of women's rights must be defined by the Constitution itself, the declaration of which will serve as grounds for the corresponding legislation. It is important for Georgia not to be the exception and for the basic rights of women and children to be included in the Constitution.
3. There must be a special body created with the mediation function for reviewing the labor dispute cases.
4. Bring down to minimum level, at least for some time intervals, Articles of the European Social Charter.
5. Come up with a unified/common Public Labor Code.
6. The law about entrepreneurs does not include, at least on declaration level, any statement about women's rights.
7. The women's, labor-legal, social rights and guarantees of the public servants should be equal to the rights of public sector employees based on the protection of the principle of Equality.
8. In case of labor rights violation, it would be advisable to allow the compensation for moral harm.
9. To expand the court jurisprudence for the process of reviewing the conflicts.

Practical recommendations

1. Start the campaign for establishing the labor-legal culture: mobilize the surveys, discussions, research studies, and mobilize the progressive societal point of view and establish it as a doctrine.
2. Organize regular seminars for the lawyers and the judges to come up with the effective systems for women's right protection.
3. Raise the role and emphasize the importance of professional connections at the level of national politics.
4. Establish municipal programs and liberalize insurance for large families and mothers.
5. Create special programs for single mothers.

CONCLUSION

Reviewed fragments from the court practice make it apparent that the application and interpretation of labor legislative norms varies greatly among the courts. This points not only to the problems of the justice system, but also to the need for regulating the legislation system of the employment relations.

Georgia's society must establish new standards of employment relations that will respond adequately to the current times and will serve as the grounds for economic wealth in the country. Labor cannot simply remain the means for existence, but it must also fulfill and stimulate the individual and the entire society. Protected rights of the employees by law will serve as the predicament for continual growth, motivation of the employees for professional development and for the professionalism in general.

Despite of the difficulties, we saw that in case of principle questions court tries to define the norms on the grounds of international standards and provide the individuals with the protection of their rights. This practice should serve as the manual for both, public and private sectors, since any kind of violation of the rights returns as a boomerang back to the society.

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