

NEEDS ASSESSMENT - DISCRIMINATION OF MINORITY WOMEN IN LABOUR RELATIONS



Project funded
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DISCRIMINATION OF MINORITY
WOMEN IN LABOUR RELATIONS**

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INTRODUCTION

*“A Batwa woman is raped by a non-Batwa man because he believed a local myth that sex with a Batwa woman cures backache; a Roma woman complains to the authorities about domestic violence she suffered and is criticized by Roma men for giving the authorities another reason to attack the community; a pregnant Dalit woman is forced to give birth in the street because the doctors refused to admit a Dalit to hospital ...”*¹ This list can be extended endlessly and it clearly shows the attitudes that exist towards women in general and towards woman belonging to various vulnerable groups.

In order to overcome the problems and challenges, that woman belonging to various vulnerable groups are facing, mechanisms of protecting their rights should be identified and studied, taking into consideration their specific needs and peculiarities. Often there is a threat of losing this peculiarity, when it comes to women labour rights in general and the needs of minority women are not considered. This kind of attitude will not allow us to consider the problems that these women face at their work place.

This survey is dedicated to the study of needs of women belonging to various vulnerable groups in labour relations. The survey was focused on the following marginalized groups: single mothers, women with disabilities, ethnic and religious minorities and representatives of LBT groups.

The main goal of the survey is to identify the factors that cause discrimination of single mothers, women with disabilities, ethnic and religious minorities and LBT groups at the place of employment, discuss the main gaps of the national legislation on this issue and develop recommendations.

I. THE URGENCY OF PROBLEM

There are many challenges to protection of women’s labour rights. We face the facts of discrimination during pre-contractual period, job announcement and interviews, contractual relations – in terms of equal

¹ Ramsay K. „Why Focus on minority and indigenous women?”, State of the World’s Minorities and Indigenous Peoples, 2011, p. 15; <http://www.minorityrights.org/download.php?id=1013>, Last seen: 13.11.2014

remuneration for work of equal value, issuing bonuses, promotions and sexual harassment. The situation gets even worse when it comes to women belonging to any vulnerable groups.

Georgia has implemented a number of important steps towards protection of women's labour rights, e.g. developing guarantees for protection of women's rights on a legislative level that is considered as an important tool regarding the safeguarding rights of women belonging to various vulnerable groups.

The parliament of Georgia adopted the Law on "Gender equality" in 2010, amendments were made to the Organic Law Georgian Labour Code, the Law on Elimination of forms of Discrimination was adopted in 2014, and the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) was signed on June 20, 2014. The convention on "Eliminating all forms of women discrimination" is in force in Georgia since September 22, 1994.² Georgia ratified ILO Convention 100³ on Equal remuneration for men and women for work of equal value and Convention 111⁴ on Discrimination in the sphere of labour and employment. Georgia also is a party to European Social Charter⁵.

Despite all this, the rights of women belonging to various vulnerable groups are often violated; this is caused hand by gaps in national legislation on one hand and in improper implementation of these regulations in real life, on the other hand.

Single mothers, women with disabilities, women belonging to ethnic and religious minorities and LBT women often face special difficulties and double discrimination as the representatives of different marginalized groups.⁶

IDPs, disabled persons, eco migrants, representatives of ethnic and religious minorities represent one of the most unprotected groups

² Ratified by the resolution 561 of the Parliament of Georgia

³ In force in Georgia since May 29, 1996

⁴ In force in Georgia since May 4, 1995

⁵ Ratified by the resolutions of the Parliament #1876, of July1, 2005

⁶ Human right Council, Forum on Minority Issues, Forth Session, Geneva, 29-30 November, 2011, Note by the independent expert on minority issues, Rita Izsak, on guaranteeing the rights of minority women, page 2, paragraph 2, A/HRC/FMI/2011/2

in Georgia. The disabled persons are particularly at risk of exclusion. They are facing serious obstacles in terms of access to education.⁷

According to census in 2002, ethnic minorities represent 16% of the population.

The problem of full participation of ethnic minorities in social, political and cultural life is still unsolved in regards of civic integration and minority rights. The representatives of ethnic and religious minorities are represented in small numbers on government level and also in different parties. Mutual alienation and overcoming negative stereotypes between majority and minority groups is still problematic and actual.⁸

Access to education for national minorities is named as of particular concern in the Public Defender's 2013 report. Particularly, for the schools where teaching is conducted on the languages of national minorities there is no qualified translation of Georgian books. Training of new generation of the teachers is also an acute problem that is caused by lack of universities training teachers for schools where teaching is conducted on the languages of national minorities.

The facts of discrimination of LGBT persons are also frequent when exercising labour, health, social and economic rights. The job, friends, family – these are the places where they have to hide their identity. UN Committee on Elimination all forms of discrimination against women (CEDAW) in its summary⁹ of two reports concerning Georgia, pays particular attention to harassment and violence that lesbian, bisexual or transsexual women face and calls Georgia for taking effective measures in this direction.

Problem of accessibility to environment places one of the insuperable obstacles on the way to solving the problems of rights of labour and employment of disabled persons.

Women participation in decision-making process is low. 18 out of 150 members of parliament elected in 2012 are female. There are three

⁷ EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia Thomas Hammarberg, report on Human Rights, 2013, p 59

⁸ Report on the conditions of protecting Human rights and freedom in Georgia, 2013, p 318

⁹ Committee on the Elimination of Discrimination against Women, Concluding observations on the combined fourth and fifth periodic reports of Georgia, 24 July, 2014, CEDAW/C/GEO/CO/4 -5, p. 10, paragraph 34-35;

ethnic Azerbaijanis and one ethnic Ossetian in Parliament, but not any representative of the ethnic minorities is represented in the Government.¹⁰

Economic activity of Women and their participation in country's economic life is low according to data of 2013. According to "gender inequality global index"¹¹ data, Georgia is on the 64th place among 146 countries. According to the same data Georgia has moved backwards instead of progressing, according to 2012 data Georgia was 157th and in 2011 54th. According to the same data, Georgia occupies 14th place with data concerning equal remuneration for equal work; with men and women annual remuneration ratio – 114. Also the ratio of salary average rate differs between men and women. The estimated income of a woman is equal to 3442 and a man – 8660 USD.

According to Public Defender's report of 2013 the issues of women promotion, equal remuneration for economic development and for work of equal value is still actual. Despite the fact that nowadays relatively more number of females are employed, the average rate of their remuneration is different from that of male employees; that is stipulated by the fact that women work on underpaid jobs and also by "glass ceiling" on employment site, that hinders career advancement.¹²

Therefore, despite the positive steps taken by Georgia on legislative level towards fighting against discrimination of women belonging to various vulnerable groups in labour relations, we still face the facts of discrimination on place of employment against single mothers, disabled, representatives of ethnic and religious minorities and LBT groups.

II. METHODOLOGY OF SURVEY

1. Object of survey

The objective of the survey is to assess the existing protective mechanisms against obvious and covert discrimination towards women be-

¹⁰ EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia Thomas Hammarberg, report on Human Rights, 2013, p 58

¹¹ <http://www.weforum.org/reports/global-gender-gap-report-2013>

¹² Report on the conditions of protecting Human rights and freedom in Georgia, 2013, p 495

longing to various vulnerable groups (single mothers, disabled, women representatives of ethnic and religious minorities and LTB groups) in Georgian legislation and develop recommendations for their improvement.

2. Methodology of Survey

The survey was conducted by using qualitative research methods that consist of two parts: desk research and face to face, in-depth interviews.

In depth interviews were conducted in format of semi-structured interviews and consisted of two phases: pre-interview and the interview itself. During the pre-interview the respondents were informed about the survey objectives, the importance of their participation and the sphere where the survey results would be utilized. During the interview the respondents answered to pre-prepared questions.

During the desk research the main problems were outlined on the basis of reports of the Public Defender and the existing researches on discrimination of women belonging to various vulnerable groups that became benchmarks when developing survey questions of in-depth interviews. Georgian legislation and international regulations, recommendations and directives concerning concern women discrimination issues on the place of employment, women labour rights and peculiarities of labour rights of women belonging to various vulnerable groups were also reviewed.

3. Survey topics

The survey topics were divided into 4 parts: the questions of the first part included the gaps of the legislation and the problems that cause the discrimination against women belonging to various vulnerable groups. The next three blocks of general part were dedicated to re-contractual, contractual and contract termination phases and included specific questions concerning each phase and cases of discrimination that could be attributed to each of them.

4. Criteria of Selection of Respondents

Total 14 respondents were interviewed within the framework of the research. The criteria for selection of respondents were: practical experience in working on women labour rights and in of working with and researching on different minorities, awareness of international standards concerning labour rights.

Besides NGOs and IOs, representatives of different government agencies and judiciary were interviewed.

5. Data analysis

Data obtained during the research was processed and analysed using content analyses. The phase of coding was expressed by procedure of “encrypting” information, giving specific symbols, codes thus enabling to identify thematic block and elements in the narratives of interviewers. Numbers were used for processing empiric social information.

III. MAIN FINDINGS

In case of women with disabilities the main factor causing discrimination is the issue of access to environment;

The main factor causing discrimination of transgender persons is lack of legal definition of sex in national legislation.

In case of women belonging to ethnic and religious minorities, the right to education is violated this is later reflected in the quality of their employment;

One of the factors causing discrimination of LTB women is negative attitude existing in the society.

Single mothers are facing discrimination at places of employment that is caused by the fact that there is no definition of a single mother (parent) in the Georgian legislation and despite this, employers refrain from hiring them to avoid redundant responsibilities.

Facts of discriminations are observed when announcing job vacancies and these facts mostly are revealed against women belonging to various vulnerable groups.

Among the factors causing discrimination of women in labour relations, stereotypes existing in the society still constitute a strong factor causing discrimination of women in labour relations among other factors. Such discrimination affects substantially the issue of employment of various vulnerable groups.

Women face discrimination during interviews in pre-contractual relations. The national legislation does not regulate acceptable and unacceptable questions.

The main factor that causes discrimination in labour relations is the lack of obligation of employer to explain the reason of refusal for hiring.

There is no legal definition of sexual harassment in the Georgian legislation that would have entailed proper administrative or criminal responsibility in case of sexual harassment.

The national legislation does not define and regulate principles of equal remuneration for work of equal value.

In case of women with family responsibilities, the main problem regarding professional success and promotion is lack of retraining courses after returning from maternity leave.

Impact of prejudices in society in favour of men is still strong in the process of promoting women at work place. Women employed in private sector are discriminated in comparison with women employed in public sector in terms of maternity leave.

The working “objective circumstances” may serve as a factor of discrimination of women in labour relations, specifically while terminating a contract.

IV. CASE STUDY - GENERAL FIELD OF VIOLATING WOMEN'S LABOUR RIGHTS

1. The flaws existing in Georgian legislation

The majority of respondents noted that during last 2 years the changes were made to the Georgian legislation that could be considered as important mechanism for fighting against discrimination of women. Despite the changes, the respondents consider that there still are too

many gaps and the national legislation should be in line with international standards:

„Of course we see the gaps of legislation. These types of gaps were especially noticeable in the Labour Code of 2006, that has gone through several changes and last year entered into force with several succeeded steps towards preventing the discrimination. But I cannot say that this is what it should be and it is not in line with international standards”- United Trade Unions.

„I think this problem is not on legislative level, in any case the changes that we have made during last two years, the amendments to the labour code, anti-discriminative law, all this form the basis of having opportunity to react in case if facts take place in real life” – the Member of the Parliament of Georgia,

Despite the fact, that respondents were not noting on serious gaps in terms of legal regulations, several issues were named by them and the lack of regulations makes it difficult to solve this problem in practice and provide proper reaction. Lack of legal regulations concerning sexual harassment promotes discrimination against women in labour relations; respondents stated:

“Although discriminating is inadmissible as stated in Labour Code, there is no administrative or criminal law mechanism to impose responsibility in case of harassment” - Representative of the Public Defender.

On 20 June 2014 Georgia has signed CoE Convention on Prevention and elimination of violence and domestic violence against women.

Article 40 of Istanbul Convention is dedicated to the issue of sexual harassment that should be punished under criminal law or any other sanction of member states; however Georgia has not ratified the convention yet.¹³

Among the gaps on the legislative level, the issue of equal remuneration for work of equal value was named during the interview:

“In terms of prohibition of discrimination there is no regulation that is called the principle of equal remuneration for men and women for work

¹³ Council of Europe „Convention on preventing and combating violence against women and domestic violence”, 2011, 12 April, article 40 <http://www.coe.int/t/dghl/standardsetting/convention-violence/convention/Convention%202010%20English.pdf>

of equal value. The above-mentioned is provided by the ILO Convention, but this is not specified in the national legislation” – the ILO expert.

As the most important problem among the factors causing discrimination in labour relations, the lack of obligation of employer to explain the reason of refusal of hiring was named:

“The most important gap in terms of all types of discrimination is section 2 of article 5 of the Labour Code that provides no obligation for an employer to explain reasons for refusal to hire a person. This applies to pre-contractual period. I do not see the discrimination against minority women. In terms of this issue, it is interesting that there is no limitation regarding the language of the contract e.g there is no obligation that the contract should be concluded in Georgian language and this interest is protected”. – The ILO expert.

Respondents considered that reservations made to many international treaties represents a serious gap; in addition Georgia has not ratified a number of international conventions concerning labour rights of women.

“The fact that the international law is not incorporated in national legislation is also the problem. Georgia has made reservations to a number of treaties or is not a party to many treaties; accordingly such provisions are not legally binding in Georgia” – Judge of the Supreme Court.

According to this research stricter regulations for discrimination or setting additional guarantees for women causes backlashes on the initial stage, when the employer refrains from hiring the person whom the law provides additional obligations towards:

“Generally the more complicated regulations exist in the legislation, i.e. maternity leave, the more incites provoke employer not to hire a woman. If woman is in age when she can get married or get pregnant, the employer may not hire her just because the legislation has increased the maternity leave period. Yes it causes backlashes but it does not mean that we should reduce safeguards for the rights of women” –The ILO expert.

2. Stereotypes as Basis of Discrimination of Minority Women in Labour Relations

When asking what causes discriminatory attitude towards minority women labour relations, respondents talked about stereotypes widespread in society towards women, that aggravate when women also belong to various vulnerable groups:

"Too often low self-estimate affects, in general women and especially minority women. We do absorb the existing stereotypes, and then somebody somewhere reevaluates all this and understands that the problem is not sex but the attitude towards her sex and orientation. When you are usually told that you do not deserve career advancement, when in school you are usually told that you are just hardworking and boy is talented, when you usually are told that the main purpose of the woman is the family, but this is never told to boys. Just look how does the role of the successful women look like, how successful women try to self-exculpate, that of course she is a very good housewife, she spends a lot of time in the family etc. as if it is a crime if a person reaches success in her career" – LBT person.

The respondents consider that the basis of the stereotypes existing in the society is soviet experience and the requirement that the totalitarian system was posing on the society:

"Soviet experience is an important factor. We still are a very close society; we are not exposed to diversity. We still have the fear of diversity and it is considered as threat as the soviet totalitarian ideology and systems have their own rules, they trained people to different relations. Those days, when this diversity was all levelled out, it was considered that everybody should have had the same size hair, wear the same cloths, that nobody should have been distinguished, this collectivism of course created the fear of diversity during all these years" – LBT person.

Respondents noted that the basis of discrimination against women in labour relations is usually stereotyped attitude of society towards choosing different professions, but they also considered that this attitude was slowly changing as a result of technological progress:

"We too often face the situation when there is a difference in salaries of men and women. But nowadays new trends are observed throughout the world when women are working on high positions, in top-management. E.g. in the countries with economic progress, the situation is different as

the level of education has increased. When we talk about labour rights this must be spoken in the context of the education, as it cannot be separated from education. There was widespread opinion that faculty of natural science was in the sphere of interest of men, but new technologies has made it available for women. In this case I don't mean about women representatives of ethnic minorities, as there are different problems" – Gender specialist.

According to the results of this research, the stereotypes exist not only in relation to profession selection but also in respect of employment – when an employer refrains from hiring a woman:

"We usually face the situation when an employer prefers to hire a man. For instance in enterprises, where the work is very hard, mostly man are hired; however, there are positions in such enterprises where women could be employed. But there is stereotyped attitude that women should not work in certain fields" – United Trade Unions.

According to the respondents the stereotypes towards the work of men and women lead us to discriminatory treatment on labour market that is not based on ability to perform work but rather only subsists on stereotypes existed in the society:

"In today's world cognitive skills are more valuable than physical force and where the cognitive skills are more valuable gender does not matter, as men and women have equal mental abilities. In traditional society as ours, when women have to take care of everything and do everything, it is very difficult" – Researcher on Gender issues.

The Convention on the Elimination of All Forms of Discrimination against Women ¹⁴ that represents one of the main instruments of fighting against discrimination of women, provides that all States Parties shall take appropriate measures to eliminate stereotypes existing in the society. Article 5 of the Convention states that states have a positive obligation to eliminate prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

¹⁴ In force for Georgia since September 22, 1994 .

3. Individual case - stereotypes in labour relations against woman

*"I was a victim of discrimination not as a representative of LTB group but as a woman. In private company, where I was working, there were the head of the division – a man and we, three women - his employees. He was a man, who believed that man knows more than others and that we had to believe him. He was making verbal statements, that a woman does not have enough brains to understand this. He truly believed that he had to control us just because we were women and most likely, we could make mistakes. He was using all his energy and time to control us. We had to be at work site at 9 a.m. when our working hours used to start at 10 am and leave the work at 9 p.m. while everybody would leave at 7 p.m.. If we refused he could have fired us. Also, we were not allowed to have lunch break, as he believed that in this case we could lose our performance and it was a waste of time. I stayed on this job for two months and lost 12 kg."*¹⁵

4. Importance of International tools for protecting women labour rights

ILO Conventions and other international instruments on protection of women labour rights have special importance in fighting against discrimination of minority women in labour relations. Therefore study of the importance of international instruments concerning protection of labour rights of women was an important goal of this research.

According to the results, Georgia has ratified almost all major international documents concerning combating discrimination and protection of labour rights of women. Georgia has also ratified almost all major ILO conventions that form the basis for combating discrimination of women belonging to various vulnerable groups in labour relations.

Despite an important progress in process of ratifying international instruments, Georgia has not yet ratified those major ILO conventions that play an important role in protection of labour rights of women with family responsibility:

"Harmonization with international conventions still remains the main

¹⁵ Reseach „Gender – based discrimination in Labor Relations“, 2014, pg 60.

challenge for our legislation. Ratification of ILO C183 Maternity Protection Convention¹⁶ has not been done yet, neither the process of signing has been initiated. Neither the ratification of C156¹⁷ has been initiated.”
– Representative of Public Defender.

According to the results of this research, it can be concluded that use of binding international conventions in practice is problematic if the requirements of the abovementioned international instruments are not incorporated in the national legislation. The respondents considered lack of proper implementation is especially important in relation to ILO C 111 concerning equal remuneration for work of equal value:

“Georgia has ratified 13 ILO conventions out of which 8 are fundamental. C87 and C 98 concerning freedom of association are more or less reflected in labour legislation, but the issue is how they are implemented in practice. C100 and C111 are fully incorporated. General problem is proper implementation of C100 in practice as it concerns equal remuneration for work of equal value and it explicitly states that this principle may be applied by means of national laws or regulations; however, Georgian legislation does not provide such a requirement” – The ILO Expert.

5. Discrimination during pre-contractual period

The research also focused on the facts of discrimination on pre-contractual stage. Separation of this stage of labour relations were stipulated by its peculiarity and the fact that during pre-contractual stage labour rights of single mothers, women with disabilities or belonging to ethnic and religious minorities or LTB groups may be violated.

Respondents positively assess the amendments made to the Georgian Labour Code in 2013, according to which the discrimination during pre-contractual relations was also prohibited;¹⁸ however they also considered that newly adopted provision cannot fulfil its purpose, as the law does not define employers’ obligation to explain the reason of refusal to hire a person:

“Amendments of 2013 introducing in the Labour Code pre-contractual

¹⁶ ILO C183 Maternity Protection Convention..

¹⁷ ILO 156 Workers with Family Responsibilities Convention.

¹⁸ Organic Law of Georgia “Georgian Labour Code”, article 2, part 3

relations were step forward. *But this is not enough and there are still serious gaps. According to paragraph 2 of the article 5 of the Labour Code the employer is not obliged to explain the reason of refusal. E.g. if we are on pre-contractual stage, testing or interview, we were not employed and another person was selected. In such cases, an employer should have an obligation to explain real grounds for refusal upon applicant's request. Formally we can appeal to court regarding the issues of discrimination during pre-contractual period, but this is just formality as it becomes almost impossible to prove the discrimination. This is the problem exists even in states where the abovementioned issue are regulated by the law and in Georgia country, where we have no regulations, it is almost impossible* – United Trade Unions.

According to the results of this research, the lack of regulation of permissible and impermissible questions during the interviewing stage can be considered as discrimination enabling factor. During the interview, an employer tries to get as much as possible information from a job seeker. On one side, there is his/her own interest, to choose the most acceptable candidate but on the other side there is an interest of protecting applicant's right of private life and other rights. Therefore it is important that the law regulates the permissible and impermissible questions and an employer will have the right to ask only the questions that do not interfere in private life, at the same time the information must be essential for making the decision as regards the employment on the specific job.¹⁹

"The interviewer studies all your data, but it is done in the way that may be hard for the women to understand why is she asked such questions. There is no indication in the law that certain questions are not allowed to be asked" – The representative of the Public Defender.

"The stage of interview is still very problematic, when the employer wants to get as much as possible information from the candidate. However, the legislation does not specify what kind of questions can be asked. There are categories of permissible and impermissible questions. However, there are exceptions, for instance the question about the religious beliefs; in specific cases this question can be very important. As we know, some religions forbid specific manipulations, blood transfusion etc. That is why it is important to ask this question to a doctor but it is unaccept-

¹⁹ Labour Law, Collection of Articles, 2011, p 201

able to ask this question to a lawyer. The lack of regulations as regards to the abovementioned allows employer to ask question that are unacceptable and you cannot argue” – United Trade Unions.

6. Cases of Discrimination during Job Announcement

According to the respondents, the facts of discrimination against women belonging to various vulnerable groups during the job announcements is a specific problem, as they are deprived of employment opportunity, that is reflected in indicating some prohibitions or exclusions in qualification requirements. This problem is especially relevant in relation to ethnic and religious minority women:

“For instance, yesterday I saw the job announcement for a baby sitter that required that an applicant is Orthodox. This was an announcement made by a private company” – The representative of Public Defender.

Second, the most important fact of discrimination in relation to realization of labour rights of women with disabilities is indication of appearance in job announcement:

“The same happens when the job announcements indicate the age 25-30, girl, tall, good looking; the photo must be attached also. Accordingly, this affects the right of woman with disabilities to be employed. In reality you are destroying the possibility for the woman with disabilities to find a job” – The Representative of the Public Defender.

However this does not exclude the possibility that an employer sets certain requirements for a candidate. Such requirements shall not be considered discrimination if taking into account specific requirements of the job it cannot be performed by a woman with disability:

“Although religion is not related to babysitter, disability is not related to the office work, managerial positions” – Representative of the Public Defender.

“I was not hired because of pregnancy by the NGO. When I came to interview, it was clear that I was pregnant. They did not say it directly but it was clear, when I entered the room, they emphasized my belly and they have lost all the motivation to hold an interview. Accordingly, the questions were so inessential, that it was clear from the very beginning they were not going to hire me” – LBT group representative.

According to the respondents, it becomes difficult to prove the facts of discrimination observed during the pre-contractual period, as the employer never indicates the reason why he/she refused the specific person to hire. In addition, they say, that women that are in the age of potential maternity face specific problems.

“Employers do not confesse that they did not hire a woman because she was in fertility age, e.g. when she will give a birth or already has underage children. Employer is thinking, for instance, if I hire a woman that has an under aged child, she will ask for medical bulletin or early leave from the job, will refuse to stay overtime” - Researcher on Gender issues.

Article 3 of the EU Directive on Implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions directly prohibits discriminative indications when developing selection criteria.²⁰

7. Professional retraining

Respondents noted that as long as only women enjoy maternity leave in Georgia the issue of qualification after the leave causes concerns in terms of protection of labour rights of women.:

“When a woman uses maternity leave for 6 months and returns to the job, there is no professional trainings or any other promotion for her. They lose equal chance to be competitive to employed males” - United Trade Unions.

Respondents particularly emphasized the importance of ratification of ILO C183 and C156 for protection labour rights of women with family responsibilities, as these conventions can become important tool to regulate the issue of the professional training of the women after maternity leave and oblige a state to bring national legislation in line with their requirements:

“It is important to ratify the ILO C 183 and C156. These conventions are very important as they contain real safeguards to protect rights of wom-

²⁰ Directive of European Union 76/207/EEC on implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, February 9, 1976.

en who return from the maternity leave from termination of employment. They need some time to return to shape and develop; they must be retrained. We have some protective mechanisms in public sector, i.e. there are some limitations are a parent of a child under 3 years cannot undergo attestation.²¹ This issue is not considered in private sector. Employer should have financial resources to retrain such persons after maternity leave. Furthermore, there are professions which develop so rapidly that a retraining is almost mandatory for a person” – United Trade Unions.

Article 20 of the European Social Charter²² prohibits the discrimination on the grounds of sex. Article identifies specific areas that the State Parties is obliged to fulfil after ratification the Charter.

8. Promotion at Work

The respondents named unequal conditions of promoting at work as one of the main forms of discrimination during contractual labour relations. According to them, there are no transparent procedures and because of this reason it is impossible to assess their gender sensitivity. Taking into consideration the fact that religious or ethnic minorities are not represented in the Government and out of 150 Parliament members only 4 are the representatives of national and ethnic minority²³, we can even say that the situation gets even worse when it comes to promoting the representative of any vulnerable group. UN Committee on Eliminating all forms of discrimination against women (CEDAW) in its summary conclusion of two reports regarding Georgia of 2014²⁴ states that women with disabilities, women belonging to ethnic or religious minorities are deprived of employment opportunities.

“There are no transparent procedures of job promotion or appointing to a position. E.g. we cannot assess whether these procedures were

²¹ Law of Georgia on “Public service”, article 111, paragraph 2

²² In force in Georgia since 2005

²³ EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia Thomas Hammarberg, report on Human Rights, 2013, p. 58

²⁴ Committee on the Elimination of Discrimination against Women, Concluding observations on the combined fourth and fifth periodic reports of Georgia, 24 July, 2014, CEDAW/C/GEO/CO/4 -5, p. 10, paragraph 34-35;

gender sensitive or not or whether they were oriented on equal gender participation.” – The Researcher on gender issues.

Another problem identified by respondents during the research was the traditional model of allocating the roles in family, where a woman has to do all the work and accordingly they have less chance for job promotion:

“Woman has the family obligations, that are also the obstacles for her to participate in the competitive environment for the career advancement” – Representative of the Public Defender

The research participant, member of the Georgian parliament highlighted the problems that are in the public sector in terms of women employment:

“There is a problem and especially in the public sector. There are exceptional ministries, for instance Ministry of Education and Ministry of Foreign Affairs. In law enforcement agencies, generally in legal entities of public law... unfortunately the choices are usually made in favour of men”.

European Court of Human Rights assessed as discrimination the fact that a specific position was held mostly by man than women: the case of *Zarb Adami v. Malta* the applicant complained that service call of Jurors was equal to discrimination as according to the practice of filling the lists of Jurors, men were more often called than women. According to the statistics, during 5 years 95% of the Jurors were men. European Court of Human Rights held that it was equal to discrimination as women and man were having equal civil obligations.²⁵

One of the participants of the survey, the researcher in gender issues, has noted those specific indicators that clearly demonstrate the obvious inequity of woman and a man in terms of promoting on a job:

“I conducted a research in 2008 that made obvious that women are required more qualification for a job promotion than men. Also as regards to career advancement there were more precedents of promoting a man on 2-3 levels and only a year and a half was enough for it and this was not in correlation with their age, while for a woman 3-4 years were needed for promoting on each level and there was an obvious correlation be-

²⁵ *Zarb Adami v. Malta* № 17209/02

tween their age and promotion, the more aged a woman was the more chances were to promote her. One more important moment is that there are more women employed than men, but it does not mean that women have better conditions. Women are employed on lower qualification jobs, e.g. these are positions that men refused to be employed”.

The respondents noted that in order to change the practice of promotion clearly recognizing priority status of a man, the implementation of transparent and democratic systems is necessary and as a positive example they cited the changes made to the Judiciary system in 1999 that significantly changed ration of men and women in judiciary:

“The serious problem is assigning women on high positions. Our legislation does not set quotes. Situation is the best in the judiciary. But this is not a coincidence. During the judge examination reforms in 1999 the women has proved that they are as clever as men and women passed the exams more successfully than men in the equal environment. There are no female governors, the number of women in government is a dangerous trend, and we have no female Gamgebeli (head of local self-government). Men are more attracted and promoted, woman mostly have the function of executor. Even in the Judiciary system there is not even a single women chairperson of court” – Judge of the Georgian Court of Appeal.

9. Maternity leave

According to the research results, the fact that the majority of women employed in private sector do not use fully the maternity leave, constitutes discrimination as women employed in private sector do not get maternity leave pay save the rare exceptions. Taking into considerations its peculiarity, the aforementioned problem is directly related to enjoying right to vacation by women belonging to various vulnerable groups, especially single mothers. The latter issue is crucial as long as there is no legal definition of a single mother in the Georgian legislation that automatically excludes any social benefits for them:

“Discrimination in terms of vacation of maternity leave is conducted through refusal to give paid vacation or maternity leave. It means that a person cannot use it as salary is needed in Georgia” – Researcher in Gender issues.

The representatives of United Trade Unions note the changes that were

made in 2013 concerning increase of duration maternity leave, but the conditions of women working in the private sector were not improved:

“The issue of paid maternity leave is very important. Woman working in the private sector may be given only 1000 GEL benefit and no other additional amount of money. As regards to public sector workers the law stipulates that the difference between due salary and benefit should be compensated. Accordingly increase of the duration of maternity leave did not result in increase of income. Before amendments legislation provided that maternity leave benefit should not be more than 600 GEL and now it cannot be more than 1000 GEL with the increased duration. Maternity leave used to be 126 days while now it is 183 days. If a person does not receive salary for 6 months he/she has to return to the office as soon as possible. ILO C183²⁶, which should be ratified by Georgia, explicitly requires that amount of maternity leave benefits shall not be less than two-thirds of the woman’s previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits. Thus a woman should not feel any financial problems just because she became a mother. The interests of women can be protected by different models. It can be fully covered by the State or by co-financing. But the final goal is that the woman should lose income and finances. The most important is that being a mother should not be equal to a crime and in case of becoming a mother a woman should not think what to do and how to exist. In addition, regulations on maternity leave are discriminatory as it is not allowed to have differentiated approach to people employed in different sectors.”

10. Equal remuneration

According to the research, the issue of equal remuneration for equal work is one of the most widespread practices of women discrimination in labour relations. This is mostly caused by the lack of legislative guarantees and by the stereotyped attitude towards women’s work in Georgia. The mentioned problem is directly related to the women with disabilities and single mothers. In current conditions when there is no promotion given to their employment, women with disabilities agree to work at any job that may give them chance to go out in soci-

²⁶ C183 - Maternity Protection Convention, 2000, article 6 and Recommendation 191 on Protection of Maternity.

ety. The same problem exists regarding single mothers. According to the results of the survey of the pre-contractual relations, employers refrain from hiring a woman that has an underage child and has family obligations. In this situation, single mother also agrees on any vacant position, where no principle of equal remuneration for equal work will be considered.

„very often statistics show that there is a difference in remuneration of men and women. There is a significant difference between salaries of man and women working on the same position. Quite often women work on low-profile jobs” – United Trade Unions.

According to our respondents, the issue of equal remuneration for the work of equal value is revealed with different specifications. It is caused by the fact that men mostly occupy the high positions:

“There are equal remunerations on the same positions but the difference is in positions. This statistics tool helps us to reveal gender misbalance. Men are mostly working on highly paid positions. We face the same problem here, we cannot prove structural discrimination, and there is no indication in law that a man can be promoted and not a woman. However, the facts of discrimination are obvious, because there is an obvious difference between salaries.

According to the survey results, the problem of equal remuneration is revealed by the fact that women are mostly hired on low profile positions that men usually refuse to work.

According to the survey, the difference between salaries of men and women is about 40%. This difference is mostly caused by misbalance existing in the private sector; in public sector, where the remuneration is planned the system of bonuses favouring men may be the reason causing misbalance:

“There is 40% difference between the salaries of men and women, but it depends on a sector. The important fact is that even in the spheres where mostly women are hired, education, medicine etc. the salaries of women are much lower than men’s. It mostly concerns the private sector. In public sector, the salary is planned and there is no difference if the employee is a man or woman. Still there are some risks as regards to the bonuses in public sector; the law does not regulate it. Mostly it is caused by stereotypes, mentality. Women more often agree on lower salary positions. The main problem is still a “glass ceiling” e.g., what causes the low salaries

in education sphere, when the teachers are paid hourly. There is another factor, that directors, the persons on leading positions are mostly men and not women. The same can be said regarding healthcare sector. There is prohibition of discrimination on the specific grounds but there is nothing said about equal remuneration. In fact, it is covered by the general term of discrimination, but it is not enough. The ILO considers this issue more important, they have discussed this issue earlier; the C 100 proves that is dedicated to the difference between the salaries, and equal remuneration for equal work; this convention was adopted earlier than the C111 that prohibits discrimination in labour relations. Declaring this issue is not enough for effective work on this problem. The existence of the methodology is necessary that will allow us to assess if the work done by a certain person equals to a work done by another one. If we do not develop criteria, this kind of record will not work” – United Trade Unions.

On the forum dedicated to the minorities UN Human Rights Committee considered that the fact that women have to work on jobs with low salaries constitutes discrimination. “Sex and minority-based discrimination in hiring, promotion and pay also create significant barriers for minority women. Increasingly informal labour markets – a result of globalization – have brought more women into paid work, but often with low pay, excluded from basic labour protection and employed under poor working conditions.”²⁷

11. Sexual harassment

According to the research results, sexual harassment is one of the most outlined problems in terms of woman discrimination. However, taking into consideration the fact that the Georgian legislation does not recognize legal definition of sexual harassment these types of facts are usually unpunished. Women with disabilities are especially under the risk of sexual harassment. Rashida Manjoo, UN special rapporteur on violence against women, states in her report that women with disabilities are twice as much the victims of the family violence than women with no disabilities.²⁸ Also women with disabilities are more under the

²⁷ Human right Council, Forum on Minority Issues, Forth Session, Geneva, 29-30 November, 2011, Note by the independent expert on minority issues, Rita Izsak, on guaranteeing the rights of minority women, page 6, paragraph 19, A/HRC/FMI/2011/2.

²⁸ Report of the Special Rapporteur on violence against women, its causes and consequences, A/67/227, 2012, p.9, paragraph 31.

risk to be dismissed from the job after being the victims of harassment at work place.²⁹

In case of sexual harassment, the problem is also blaming the victim of the sexual harassment because of the stereotyped attitudes of society:

"Women never talk about it loudly because of the same stereotypes, because it is accepted in the society that if a woman was a victim of violence, that means that she said something wrong, was wearing something inappropriate, she gave the cause" – Gender specialist.

In case of sexual harassment at work place, according to the research results, the facts of dismissal of victims that expressed the protest is quite often:

"In our case it was a sexual harassment, it did not come to rape, as the person conducting violence intentionally refused. Accordingly, there was no qualification of the crime. The man left the service with his decision but the woman was also fired as the employees were consummating alcohol during the working hours while this woman was not. Other employees were not fired. There are reasonable grounds to suspect that this woman talked with media about sexual harassment and the office decided to "disgrace" her" – The Representative of the Public Defender.

According to the respondents, the cases of sexual harassment most often are revealed against secretaries that are considered as subordinate:

"Men working on the position of directors generally consider young girls as the object for sexual flirting and as prerequisite to sexual relations, as you are a subordinate and a woman and accordingly sex is allowed with you" - LTБ group representative.

"In case of sexual harassment, I would like to emphasize the condition of secretaries. Just to be a good secretary, you must be able to make a coffee and charm the head of your office, just to maintain your job. As soon as you are not able to do the abovementioned, you will get fired. It often happens that a woman is hired as a fee for something or is a victim of violence. She usually does not want to have this kind of relationship she has to agree on everything to keep the job and runs the risk" – United Trade Unions.

²⁹ Report of the Special Rapporteur on violence against women, its causes and consequences, A/67/227, 2012, p.17, paragraph 67

According to the research, in case of sexual harassment, commonly the problem is to find an appropriate witness. As usually, the employees refrain to be a witness with the fear of losing the job:

"We had a case in Kazreti, a woman wrote to us that the head of her office was abusive to women and specifically to her. She objected and in December 2013, when her contract was not extended upon expiration. However, the situation was very tense and also taking into consideration the strikes, the administration decided to prolong her contract. We presented the evidences to the General Director. However, nobody agreed to be a witness, but still we managed to find several persons, that apart from this case noted that they had conflict with this Head. These were enough evidences in this case" – United Trade Unions.

Harassment is considered as discrimination in EU and European Council legal documents. According to prohibitive directives of EU harassment and sexual harassment are prohibited.³⁰ According to discrimination prohibition directives³¹ harassment is discrimination when there are signs of adverse actions towards protected groups, is conducted to abuse a person or to create insulting, hostile, degrading and abusive environment. Besides, sexual harassment is emphasized separately in Gender equality directives as specific form of discrimination, when adverse "verbal, non-verbal or physical" act is of "sexual" character.

European council speaks about sexual harassment in its recommendation "protecting dignity of men and women at work"³². The above-mentioned recommendation establishes objective/subjective approach of harassment. First, find out if harassment really happened, the perception of the treatment. Second, even if the victim did not really feel the harassment it can be still established if the applicant was a target of the action.

³⁰ EU Gender Equality Law, 2013, pg. 20

³¹ Directive of Racial equality 2000/43/EC, Article 2(3); directive on equal treatment during employment 2000/78/EC, article 2(3)

³² Commission Recommendation 92/131/EEC of 27 November 1991 on the protection of the dignity of women and men at work.

12. Individual case – sexual harassment

“When I graduated from school, I started to work in the café, the manager was a man. Soon this man started flirting with me, touching me, kissing on the cheek and pretended like it was childish, as a parent to a child. Then our relations became tense. There were other girls too, but they had very warm relations with the manager, but I was not, as I does not like this. After this he was trying to find the reason to tell me that I was doing something wrong, I do not like it, etc. I was forced to leave my job. After work, he used to take us – two waiters and one cook – at home and I was the last one to be delivered at home. One night he turned away from the road, took me far away from the road, locked the doors and started to kiss me. To be true I was not frightened. I thought I would start to talk to him in the way that will make him ashamed. I told him, you have a daughter of my age and I do not think you would like if anybody act with her as you do with me. He immediately left me alone. Now I think that I should have called the police.

After this I started to work at the other place and faced the same situation, I left that job too. I think if a person has a power, he wants to “own” his subordinates, especially women. If a person has no other job, she has to bear everything.

I want to tell women to seek the job, where they will not face the fact like this and feel comfortable; they must not bear such attitude. There are too many people in Georgia that are in the same conditions as me, they don’t have any other way and have to bear everything. Many women agree on everything, just to feed their families and they are trying to keep the job”.

13. Termination of Labour contract

According to our respondents, the biggest problem in terms of firing from job is the provision of the Georgian Labour Code allowing dismissing a person based on “objective reasons”.³³ They noted that this provision creates one more additional advantage for the employer to conduct discrimination of women belonging to various vulnerable groups and justification of his/her action in his/her favour.

“The provision on “objective reasons” as a ground to terminate long-term

³³ Organic Law of Georgia “Labour code of Georgia”, article 37, paragraph 1 subparagraph “o”.

and a short-term contract is a problem. It is necessary that the reasons of terminating the contract were exhaustive, not to leave any element that may cause discrimination. "Objective reasons" are estimating concepts, there is no specific decision, and in each case, the court should discuss whether this condition was objective or not. In reality there are the cases when, based on the objective circumstances, the contract was terminated" – United Trade Unions.

During the research, the opportunity of probability of dismissal from a work on discriminative grounds during the short-term contract became evident:

"Despite the fact that there are several restrictions imposed, the short term contracts still are the good opportunities for discrimination. Furthermore during the short contract period the employer does not have obligation to prove why he has not extended the contract" – United Trade Union.

The respondents noted the existing practice as a discriminative attitude towards women when pregnant women are fired from work:

"It is a big problem to fire pregnant woman. The woman can complain to the court and she will be restored. However, in about a month she is again fired from work based on the other reason. Now she is not pregnant, accordingly we cannot appeal to the court" – Representative of the Public Defender.

During collective firing from a work, when the rights of all fired are being violated, women are in a more discriminatory position. The respondents named one specific case in one of self-government institutions, where instead of fired women men were selected:

"There are no prerequisite reasons for firing from a job. If we speak about self-governance, changing the governance causes automatic changes in lower levels. We had one case in one of the ministries, specifically, when the maternity leave dates increased, the employers were taking this into consideration in advance and were trying not to let women utilize their maternity leave and with different forms, e.g. based on reorganization were terminating employment. For instance, they conducted reorganization and terminated the employment before the maternity leave. Accordingly she was not even given compensation either" – United Trade Unions.

“This issue pertains to woman and man equally. For instance, previously women were fired from municipalities and men were assigned on the positions. This is a tendency for us. Tendency what is the vision of the governor. Women attorneys were replaced by men” – The representative of the Public Defender.

14. Burden of Proof of Cases of Discrimination

Respondents noted that there are difficulties in proving cases of discrimination. According to them, the main problem is when there is “invisible” discrimination, as in this case finding proofs is very complicated. It becomes especially difficult to prove the facts of discrimination in terms of women belonging to LBT groups, ethnic or religious minorities, when the employer refuses to hire them during the pre-contractual period or the discriminative questions are being asked during the interview that causes interference in their private life. In case of sexual harassment, the lack of legal definition in national legislation makes it impossible for women representatives of various vulnerable groups to complain as regards the above mentioned facts:

“Discrimination is mostly invisible and accordingly, if finding evidence is totally upon employer, application to the court is quite difficult” – The representative of the Public Defender.

According to the respondents, to prove discrimination pre-contractual period is especially difficult. They stated that discrimination is manifest if discriminative qualification requirements are announced that mostly influence employment of woman belonging to various vulnerable groups. However discrimination is difficult to prove during interview process:

“You are close to investigation when you start to prove the cases of discrimination. You should pay attention to every detail: factual conditions that can be proved, telephone records, how many times have you called, the duration of your calls, the witness testimonies. But what can be the policy? The policy can be encouraging women, to reveal more information, when the processes are going in a wrong way and they feel discomfort, they should share this with others via email. These are preliminarily developed evidence, but it describes the situation and later you may have an opportunity to print out this email” – Representative of LBT group.

The representatives of the United Trade Unions speak about the prob-

lems concerning proofing facts of discrimination that is not in line with international practice, as, the burden of proof lays upon an employer only in cases of contract termination and is not applicable to pre-contractual and contractual relations.

“International practice clearly provides that burden of proof lies upon the employer in all cases concerning discrimination. We did not have similar regulation in the legislation. Some limitations were introduced now in cases when they believe that a contract was terminated on the grounds of discrimination.. But this limitation should not concern only contract termination cases but should be applied to pre-contractual or contractual relations” – United Trade Unions.

In respect of shifting burden of proof to employer in discrimination cases Directive of European Council of November 27, 2000 is relevant. Article 10 of this Directive provides that member states shall take all appropriate measures that in cases when a person claims that she/he was subjected to improper treatment that could be raise doubts on direct or indirect discrimination, a respondent state is bound to prove that right of equality was not violated.³⁴

V. THEMATIC SURVEY – DISCRIMINATION OF WOMEN BELONGING TO VULNERABLE GROUPS IN LABOUR RELATIONS

1. Women with disabilities

The research identified special problem with regard employment of women with disabilities. Despite the problems that exist in terms of realization of employment and labour rights by women, we can say that women with disabilities are under double discriminative conditions.

According to the research data, there are several obstacles to employment of women with disabilities that automatically cause discrimination and inability to realize employment rights even if quota system is introduced meaning that employer is obliged to employ 4-5% of persons with disabilities.

As this research identified, access to infrastructure is the main obstacle for employment of women with disabilities:

³⁴ Directive of European Council of November 27, 2000 (2000/78/EC).

“Now there are some talks about legislative changes, according to which 4-5% of persons with disabilities shall be employed and now I have a question and what about transport? If a person spends the whole salary on taxes... The problem of access to buildings is not solved yet. Employment does not mean just employment. The employment also means feeding during employment” – The representative of the Public Defender.

“The obstacle is the fact that there is no adapted environment e.g. the head of certain company may have desire to hire somebody with disabilities, but as long as there is no adapted environment and its creation will cost a lot, she/he obviously will refrain” – Member of the Parliament of Georgia.

Second main problem is the lack of availability of transport and failure of citizens to obey to the existing regulations on parking concerning people with disabilities:

“People cannot get on buses in Georgia. There are parking lots for them but somebody always parks on that place” – Member of the Parliament of Georgia.

The respondents also mentioned certain cases when women with disabilities were dismissed from work, despite the fact that they could fulfil their contractual obligations.:

“One of the organizations conducted reorganization and the woman with disabilities who worked there for 15 years, was dismissed and her reaction on it was: - now what, should I die? She was performing her job that did not require any special skills, she was packing letters” – The representative of the Ministry of Labour, Health and Social affairs.

“There was a case in Georgian Post office, when a woman with disabilities had some problems on her work. As she stated the problem was her disability, she had problems with moving. They tried to terminate her employment and the reason was the results of the attestation. We helped this woman twice and she could keep her job but, a year ago, she got fired once again. In this case, the reason was the expiration of contract, as they had short-term contracts. Finally it was determined that the implementation of new technologies was needed that this woman could not perform” - The United Trade Unions.

During the last one year legislative amendments were introduced concerning access to buildings and transport. However these regulations

are not implemented in practice that is negatively reflected on employment of women with disabilities.

On December 26, 2013 Georgia ratified the UN convention on Rights of Persons with Disabilities (CRPD). Article 5 of CRPD safeguards equality and non-discrimination of people with disabilities; article 6 is dedicated to the issues of women that are under risk of discrimination on different grounds and it binds State Parties to take all appropriate measures to ensure development, success and independence for women; article 9 of CRPD defines the availability of the persons with disabilities to fully participate in all areas of life. Article 27 specifies labour rights of the disabled persons based on equality principle.

The Government of Georgia adopted Resolution #41 on January 6, 2014 on “Approval of Technical Regulations on arrangement of space for persons with disabilities and planning elements”. Article 2 provides that this regulation is binding for any organization that works on planning and construction plans or implements such plans, or in any way processes project documentation.

The Government of Georgia adopted Resolution #76 on January 20, 2014 on “Approval of Action Plan on Provision of Equal Opportunities to Persons with Disabilities” that provides access to environment, labour and employment.

2. Representatives of LBT groups

The needs assessment focused on one of the most vulnerable group in Georgia – LBT persons. The main findings was that they are intimidated at work place and therefore they have to live double life and hide their orientation in order to keep job:

“I have my own private life. Comes out that I have to hide my own life. That means that my girlfriend cannot come to my place, or if we have a party on the work I cannot invite her. I have to hide the biggest part of my life and play role that is not my and this results in being confined, Double life causes difficulties. When you cannot reveal yourself affects the psyche and is reflected in stress that results in distress. That constantly will make you forget what it is like to feel good. Accordingly, the quality of the life is very low” – LTB group representative.

According to the LTB group representatives, the reason why they hide

their orientation is that in other case they will be dismissed from the job:

"They have to live double life. They cannot identify their orientation at workplace as this will by all means become the reason for their discrimination or unequal attitude or dismissal from work."

The representative of NGO working on L(G)BT rights named certain cases when a person was fired from a job as that person participated in the demonstration against Homophobia on May 17, 2013:

"I can recall one case when a woman was fired from her work just because she was lesbian. Nobody tells you directly that you are being fired because of this reason. The reason of firing this woman was the fact that she participated in the demonstration on 17th of May. On 19th, she came to her work place, the café, where she was told that she was fired. She even was not allowed to enter the building. When she asked for the reason she was told that she was noticed on the demonstration on 17th of May."

The representative of the NGO working on L(G)BT rights noted that firing lesbian and bisexual women from work does not happen directly, but they are forced to leave the job themselves:

"Before that she was hiding, but they found out. As she was saying she was forced to leave the job, not directly, she was not fired. But the problem was that she was not greeted any more, nobody was talking to her and the situation was intolerable, she was forced to leave the job".

The fact that the representatives of LTB groups are avoiding revealing their orientation, according to the representative of NGO working on this issue, is a serious obstacle for creation cases of precedential judicial decisions; however this unwillingness to disclose their orientation is caused by the reality that the people live in:

"It is very difficult to create a precedential case, as bringing such a case to the court means "coming out", e.g. this person will be forced to reveal sexual orientation and more people will be aware of it. This creates a major obstacle from their side, as this openness and publicity can be more harmful for them than this specific incident."

3. Transgender Persons

A special chapter is dedicated to the problems of transgender persons as they face difficulties that are peculiar resulting in discrimination in labour relations:

“In some cases an employer does not mind to employ a transgender person, however they face other problems. For example, in one case, women objected that a transgender person used their restroom; an employer does not know what to do in such cases and how to create an environment that would not be degrading for a transgender employee” – Organization working on rights of L(G)BT persons.

NGOs working on rights of LGBT persons stated that problems that LG-BTs face in labour relations are caused by the issue of legal recognition of sex rather than by the labour legislation. Georgian legislation does not clearly regulate when a transgender person may change documents. Paragraph “g” of article 78 of the Law of Georgia on Civil Status Acts provides that “gender reassignment, provided a person wants to change first name and last name due to gender reassignment” is a ground for amendments in civil status documents.

However the Law does not define the meaning of gender reassignment. Order #18 dated January 31, 2012 of the Minister of Justice on Approval of Rules on Registration of Civil Status Acts regulates registration of civil status acts that are listed in the Law on Civil Status Acts. Yet the mentioned Order does not provide the list of documents and define the procedure for amending civil act registration based on gender reassignment. According to the established practice, registration shall be amended only after irreversible sterilization, hormonal treatment and preliminary surgical procedures.

The situation is aggravated by the fact that legislation does not regulate the sequence of mandatory medical procedures for gender reassignment. In addition, surgical procedures, as well as gender reassignment procedures implicate substantive financial costs (that is not covered neither by a state nor by insurance); transgender persons cannot afford these costs. The process of transition normally lasts 2 years. Accordingly, transgender persons in transition process face difficulties in employment, education, qualitative healthcare and enjoyment of other services. Even more so, they try to avoid organizations where they need to submit documents.

“Cases of discrimination that are not related to labour legislation and are associated with legal recognition of gender reassignment of transgender persons are quite frequent in the employment stage of labour relations. Legal recognition of gender reassignment is not properly regulated; even though there is no legal provision, judicial practice was developed that gender reassignment in passport will be allowed only after all surgeries are finalized. Thus a person may change sex in the passport only after all surgical procedures are finished. However this approach does not take into consideration the duration of the process and the fact that sometimes a person cannot afford quite expensive surgeries that are not covered by insurance; it neither considers the possibility that a transgender person may not wish to change sex using surgeries and may prefer to continue live in his biological body. However, social environment really matters to him/her. Even if she/he would like to change sex the process is very long and is related to many factors – preparing lots of papers, visits to psychologists, sexologist, undertake examinations. Very often they need hormonal treatments. In the transitional period a person looks like a man while the passport registration is “women” or vice versa. In such situations they may face obstacles in employment” – Organization working on the rights of L(G)BT persons.

Recommendation of Council of Europe CV 2010(5)³⁵ established that legal procedures for change of gender in official documentation should be “quick, transparent and accessible”. “In addition, prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements “.

European Court of Human Rights in one of its decisions concerning a person who changed gender using surgery, undertook hormone treatment and was rejected by private medical company to reimburse costs, taking into account the nature of gender identity and gravity of irreversible surgical treatment, held violation of Article 8 of ECHR on Private life.³⁶ It is noteworthy that Court of Appeal of Germany considered that an applicant was not entitled to reimbursement as medical treatment was not necessary.

³⁵ Recommendation CM/Rec (2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, 31 March, 2010.

³⁶ Van kuck v.Germany № 35968/97.

A representative of NGO working on the rights of L(G)BT persons referred to three cases when a transgender person was fired. In the first case a person was fired only after he/she disclosed his/her identity publicly and the employer preferred to follow perception on transgender persons and fired him/her with a fear that he could lose customers:

“A transgender person was working at Café. It is noteworthy that even though everybody knew about his orientation he was not subjected to homophobic treatment. Once she/he was interviewed by a magazine as she/he did not hide his orientation; this interview was the reason of dismissal. The employer explained that he did not have anything against but visitors had different feelings and asked “friendly” to employ her/him further and she/he was forced to leave”.

“I recall two cases when transgender women were fired in private sector. Both of them were undergoing hormone treatment and looked like men. When an employer learned they were biological women they were fired.”

1966 International Covenant on Civil and Political Rights, as well as International Covenant on Economic, Social and Cultural Rights bind Member States “to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. Even though the Covenants do not refer expressly to gender identity, in 1994 Human Rights Committee stated that discrimination of LGBT persons should be interpreted as discrimination on the ground of sex under 1966 Covenant on Civil and Political Rights³⁷. Accordingly modern human rights law is applicable to transgender persons equally to other groups.³⁸

During the research a problem related to LGBT sex-workers was also identified:

“In the majority of cases they have left families after the conflict. They have no income. In Georgia there is no shelter for LGBT persons. When

³⁷ Toonen v. Australia, UN Human Rights Committee, 1994.

³⁸ Research “International standards and best practices on legal requirements for recognition of gender of transgender persons”, Identoba, 2012.

there is a need to separate from families we do not know where to take them” – Organization working on rights of L(G)BT persons.

4. Ethnic and National Minority Women

Discrimination of ethnic and national minority women is caused by several factors while access to education and traditions are most problematic. According to interviewers, guaranteeing access to education in regions inhabited by ethnic and national minorities is a duty of a State and should be implemented through very specific actions:

“We do not teach them state language and accordingly they cannot be employed in public sector. Knowledge of state language is a prerequisite for employment in public service. It is also very important for employment in private sector as Georgian is a working language. The role of a State is essential. Minorities should speak and write in state language and a State has to create all appropriate conditions. Only changes in the law will not make any difference to minorities; if they do not understand provisions of the law, or do not participate in legislative process, including provisions of Labour Code or antidiscrimination legislation, they lack the ability to protect themselves, including to whom to apply in cases of violation” – Member of the Parliament.

In 2005 National Concept for Tolerance and Civic Integration was adopted. The document was developed on the basis of presidential Decree #639 dated August 8 2005 and European Framework Convention.³⁹

The Concept aims at providing “every citizen of Georgia equal opportunities to avail of civil, political, economic and social rights regardless of ethnic, cultural, linguistic or religious belonging” and “equal access of minorities to every level of education, and the right to receive education and communicate in their native language.”

A researcher on gender issues stated that main obstacle for employment of ethnic and national minority women is perception of their families on education:

“How can we discuss employment when they have no even basic education? The reason for that is the fact girls either married in early age or a fiancé prohibited to go to school. Discrimination in labour relations is

³⁹ Ratified by the Parliament of Georgia in 2005.

often caused by religions factors. First of all, the reason is families with many children and lack of education. If we really mean gender equality, we should discuss education that is real and not functional."

"This problem is not related to legislation, it is an issue of real life. Stereotypes, religious beliefs, perceptions, traditions, customs may prevent education of girls – they do not go to schools or are not allowed to graduate" – member of the Parliament.

According to 2013 Report of Public defender⁴⁰ in areas inhabited with minorities, especially in the region of Kvemo Kartli, there is a dearth of pre-school education institutions, school inventory, curricula and manuals. The use of bilingual textbooks in the schools teaching in national minorities' languages still remains problematic. The use of bilingual textbooks in the schools teaching in national minorities' languages still remains problematic. Considering the concept of bilingual study, 30% of the material in the manuals is available in Georgian, and the remaining 70% is given in the respective language of a national minority. However, not only the minority schoolchildren but most of the teachers also fail to understand the Georgian part of the manuals.

During the research the problem of ethnic minority women residing in Marneuli was identified. Due to lack of appropriate environment they cannot be employed. They face a dilemma – work or raise their children. There is no system of kindergartens in Marneuli. There is only one kindergarten in Marneuli that operates till 4 pm.

"They conditions limit their competition ability that may be the basis for discrimination"- Member of the Parliament.

5. Individual Case – discrimination on the basis of colour

"In Georgian-American School a woman was teaching, everybody was happy with her work; she even received appraisal for good conduct of teaching process. She was oppressed only after one of the managers saw her black husband. After that fact she was subjected to oppression, they even wanted to fire her. Initially they could not fire her but refused to enter the class and run lessons. If there were gatherings or an excursion was organized, she was not invited. The family was very unhappy

⁴⁰ <http://www.ombudsman.ge/uploads/other/1/1563.pdf>

because of such treatment; the husband was unemployed by that time and the wife could not leave the job – she was working in unbearable conditions for 400 GEL per month. However we did not submit the case to the court, as the woman withdrew; in such situations people are re-traumatized”.

6. Single Mothers

According to GeoStat in Georgia in 2000-2013 30,000 children were registered without indication of father’s name. These children are brought up by their mothers while in Georgia there is no legislation regulating status of single parents; accordingly, it is impossible to receive any social benefit or enjoy relevant advantages in labour relations. In 2014 NGO “National Network for Protection from Violence” submitted a bill on status of single parents to the parliament of Georgia and proposed relevant amendments to Georgian legislation.

The research identified that a number of problems are directly related to the need to define single mother. Respondents stated that as the Georgian legislation does not define “single mother” the Labour Code cannot provide privileges for them:

“If Georgian legislation defines single mothers it will be possible to amend labour legislation and introduce special regulations for business leave, extra hours work, use of holidays by single mothers” – PDO representative stated.

Respondents mentioned the problems that single mothers systematically face at their workplace. This problem is especially critical for those single mothers who have to work at shifts and they cannot leave a child with relatives:

“There is a serious problem in enterprises where women work at shifts at different installations. She could be a single mother who cannot leave a child with anybody or has to take a child to kindergarten. There is only one possibility – she negotiates with her direct supervisor. It is necessary to regulate working hours for such women alternatively. Otherwise they have to ask permanently neighbours or relatives to take a child to or from the kindergarten. The legislation gives possibility that an employer considers that as long as the enterprise is his/her property and an employee may leave whenever wishes” – representative of United Trade Unions.

VI. EFFECTIVE MEASURES/REMEDIES

To reduce the number of discrimination of women belonging to various vulnerable groups the respondents proposed specific measures that could address these problems. They consider that the following should be planned: short-term and long-term measures, gender-sensitive statistics should be conducted, introduction of transparent systems, creation of additional safeguards for women with family obligations and awareness raising campaign:

“Change of culture is a long-term perspective. In a short-term perspective legal measures and advocacy are more efficient. Introduction of fiscal fines could be also efficient” – representative of LGBT group.

Respondents attached a great importance to collection of statistical data that will give possibility to discuss individual violations:

“The cases of discrimination could be identified only based on statistical instruments that is statistics, empiric researches and interviews of population” – gender researcher.

Committee on the Elimination of Discrimination against Women in its General Recommendation No. 28 stated that States parties have an obligation to create and continuously improve statistical databases and the analysis of all forms of discrimination against women in general and against women belonging to specific vulnerable groups in particular.⁴¹

United trade unions consider that mediation, collective agreements and judicial decisions play an important role in protection of rights in labour relations:

“Mediation is a very effective method as it solves dispute between employee and employer without resort to court. In many cases signing of collective agreements could be very effective as they give possibility to provide additional articles safeguarding women’s rights; if there is misunderstanding the parties may discuss and persuade each other.”

Representatives of united trade unions attached special importance to creation of social advertisements focusing on achieved success and

⁴¹ General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, pg. 3, paragraph 10

will promote other employees to follow the example:

“The role of social advertisements is very important. However it is important that they focus on achieved success thus spreading the information to other employees.”

1. Body Responsible to Study Discrimination in Labour Relations

The research results showed that representatives of public sector, NGOs and trade unions considered crucial introduction of labour inspection office. They believed that labour inspector may play a crucial role in prevention of discrimination. ILO expert also mentioned importance of labour inspector:

“Even though ILO conventions do not refer explicitly they indirectly state that these conventions should be implemented efficiently and effective sanctions should also be introduced. It means that a supervisory body should exist. Accordingly there should be a body that will supervise enforcement of labour conditions, including discrimination cases, at workplace. The only existing remedy is court however it is hardly accessible and requires lengthy proceedings and mainly focuses on cases involving firing from office and not on protection of employment conditions.”

Respondents stated that inspector should have real leverages for implementation of his/her mandate and should not focus only on study of work safety:

“Without such mandate the creation of inspector’s office will not be efficient. Inspector should be entitled both to check labour conditions and protection of rights of employees” - representative of PDO.

According to the research results, the role of labour inspector could be identified based on internal regulations and monitoring of large companies:

“There are many monopolist companies which pay high salaries and employees are ready to work hard and stand all difficulties. To avoid such cases a state has to regulate internal regulations somehow. A state should be more active in this respect and should create an instrument to conduct monitoring in these structures. Individuals cannot handle such situations themselves as they can be sacked and therefore are greatly dependent on awareness/perceptions of their bosses” - representative of LGBT group.

Article 3 paragraph “d” of 1958 ILO C 111 Convention on Discrimination (Employment and Occupation)⁴² states that Each Member for which this Convention is in force undertakes, by methods appropriate to national conditions and practice to pursue the policy in respect of employment under the direct control of a national authority.

ECHR stated that “the right under Article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States ... without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.”⁴³

VII. CONCLUSION

The researched identified that gender-based discrimination in labour relations in Georgia still constitutes a serious challenge despite the adopted changes to legislation. Discrimination of women belonging to various vulnerable groups (single mothers, PwDs, representatives of ethnic and religious minorities and LBT groups) is especially crucial.

Even though progressive developments were made in legislation to eliminate discrimination of women in labour relations it is important to ensure further compliance with international standards through ratification of international instruments.

The research identified major measures that will be a step forward for elimination of discrimination of women belonging to various vulnerable groups.

Recommendations were developed based on interviews and reflect the views of interviewers concerning elimination of discrimination of women belonging to vulnerable groups in labour relations.

VIII. RECOMMENDATIONS

- ✓ Renew second wave of amendments to the Labour Code of Georgia;
- ✓ Ensure efficiency of planning and implementation of second wave of amendments establish a working groups composed of

⁴² Ratified on May 4 1995.

⁴³ Thlimmenos v. Greece № 34369/97; Pretty v. the United Kingdom № 2346/02.

representatives from different public institutions, academia, NGOs, trade unions, PDO and experts;

- ✓ Ratify of ILO Conventions C 183 and C156;
- ✓ Develop regulations of promotion and career development and introduce transparent procedures;
- ✓ Increase control on pre-contractual relations and avoid discrimination of women on the stage of job announcement with special emphasis of minority women;
- ✓ Legal regulations of questions admissible and non-admissible during pre-contractual stage;
- ✓ Amendments to legislation binding employers to explain reasons for not recruiting;
- ✓ Ministry of justice has to regulate rules of legal recognition of gender reassignment; so called “transitional period” should be treated especially;
- ✓ Training of practicing lawyers in running the cases related to discrimination in labour relations;
- ✓ Elaborate efficient measures to teach Georgian language to ethnic and religious minorities;
- ✓ Further promote participation of minorities in social, economic and cultural life of the country. It is important to increase representation of minorities in elective bodies and public sector and promotion of their participation in political life of the country;
- ✓ Introduce of gender-based budget planning;
- ✓ Establish a government body responsible for labour safety and antidiscrimination;
- ✓ Introduce legal definition of sexual abuse and create effective mechanisms for fight against sexual abuse;
- ✓ Ratify Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)
- ✓ Elaborate methodology for review of the same remuneration for the same work;
- ✓ Speed up discussion of legislative initiatives concerning definition of the status of single parents and elaborate special social guarantees for single parents.

IX. ANNEXES

1. Annex I – research Issues

a) General questions

- What are gaps of Georgian legislation resulting in discrimination of women belonging to vulnerable groups in labour relations?
- Identify general factors resulting in discrimination of women belonging to vulnerable groups;
- Please indicate effective remedy of discrimination in labour relations;
- Should an independent body responsible for review of discrimination cases exist?
- What positive measures should be implemented by states to decrease discrimination of women belonging to various vulnerable groups?
- Who should have burden of proof in cases of discrimination in labour relations?
- Does discrimination of women belonging to various vulnerable groups occur more often in private or public sectors?
- Is Georgian legislation in line with international standards and norms?
- What types of dual discrimination are common in Georgia?
- What measures are planned by Gender Equality Council and how is the monitoring of Action Plan conducted?
- What is the number of applications on gender equality violations and out of these cases how many deal with discrimination of women belonging to various vulnerable groups in labour relations? What is the judicial practice on gender-based discrimination of women belonging to various vulnerable groups?
- What type of advocacy would be more relevant to decrease discrimination of women belonging to various vulnerable groups in labour relations?
- What recommendations would you give to government to ensure

that policy and implemented measures are sensitive to decrease discrimination of women belonging to various vulnerable groups in labour relations?

b) Pre-contractual relations

- What forms of discrimination are common in pre-contractual relations; are any challenges specific to women belonging to various vulnerable groups?
- Is discrimination common during job announcement stage, interviews? What is the practice concerning women various vulnerable groups?

c) Contractual relations

- What forms of discrimination are common in relation of women various vulnerable groups in labour relations?
- What are gaps in concerning same remuneration? What should be the methodology?
- Are there different approaches concerning holidays and bonuses in relation to women various vulnerable groups?
- What is the practice of promoting of women various vulnerable groups? What type of discrimination is common in this respect?
- Is sexual abuse common at workplace? Does it differ in relation to women various vulnerable groups?

d) Termination of Contract

- What forms of discrimination are common on the stage of termination of contract in relation to women various vulnerable groups?
- Are women dismissed from their jobs during pregnancy, maternity leave, upon completion of maternity leave, during caring for a child and what is the practice in relation to women various vulnerable groups?
- Can you recall a case when a woman various vulnerable groups was dismissed because she refused sexual proposal?

2. Annex II – meetings during the research

Eka Skhiladze	Public defender's Office of Georgia	Head of Gender Equality Department	13.09.2014
Manana Kobakhidze	Parliament of Georgia	Vice Chairperson, head of gender Equality Council	12.09.2014
David Ivanidze	Ministry of Labour, Health and Social Affairs of Georgia	Acting Head of Labour and Employment	19.09.2014
Eka Sepashvili	Tbilisi State University	Professor, Researcher on gender issues	16.09.2014
Charita Jashi		Researcher on gender issues	12.09.2014
Maia Bakradze	Court of Appeals of Tbilisi	Judge	18.09.2014
Natia Tskepladze	Supreme Court of Georgia	Judge	28.10.2014
Raisa Liparteliani	Trade Unions of Georgia	Chief Lawyer	24.09.2014
Nna Pertenava	Trade Unions of Georgia	Lawyer	24.09.2014
Marina Kurtanidze	Trade Unions of Georgia	Chairperson of Builders and Forest workers trade unions	24.09.2014
Tamaz Dolaberidze	Trade Unions of Georgia	Chairman of Trade Unions of Metallurgists, mining and chemicals industry	24.09.2014
Vitali Giorgadze	Trade Unions of Georgia	Chairman of independent trade unions of railway employees	24.09.2014
Nino Bolkvadze	NGO "Identoba"	Laywer	16.09.2014
Zakarai Shvelidze	ILO	Expert	17.10.2014
Ekaterine Agdgomelashvili	Support Group to Women's Initiatives	Director	20.10.2014