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REVISED EUROPEAN SOCIAL CHARTER

3rd report on the implementation of
the Revised European Social Charter

submitted by

THE GOVERNMENT OF GEORGIA

(Articles 2, 4, 5, 6, 26 and 29
for the period 01/10/2005 – 31/12/2008)

Report registered at the Secretariat on 30 November 2009

CYCLE 2010

EUROPEAN SOCIAL CHARTER (revised)

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CYCLE 2009

Ministry of Labour, Health and Social Affairs of Georgia

**Third report
of Georgia for the implementation of Articles 2, 4, 5, 6, 26 and 29 of
the European Social Charter (revised)**

Tbilisi

For the period **1 October 2005** to **31 December 2008** made by the Government of Georgia in accordance with Article C of the Revised European Social Charter and Article 21 of the European Social Charter, on the measures taken to give effect to the accepted provisions of the Revised European Social Charter, the instrument of ratification or approval of which was deposited on **01 July 2005**.

In accordance with Article C of the Revised European Social Charter copies of this report have been communicated to the:

- Georgian Trade Unions Confederation
- Georgian Employers Association

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Article 2 – All workers have the right to just conditions of work

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;
2. to provide for public holidays with pay;
3. to provide for a minimum of four weeks' annual holiday with pay;
4. to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;
5. to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;
6. to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;
7. to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

Information to be submitted

Article 2§1

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

GoG response

Workers' right to reasonable limits on daily and weekly working hours, including overtime is guaranteed through national legislation and collective agreements. Georgian Labour Code and Georgian Law on Public Service define limits of working hours.

According to the article 14 of Labour Code:

“1. Unless otherwise provided by the contract of employment, duration of the working day determined by the employer during which the employee performs assigned work shall not exceed forty one hours per week. Break and leave is not included in the work time.

2. Duration of leave between working days (shifts) shall not be less than 12 hours.”

Article 14 of Georgian Labour Code, states and defines limitations of working hours, both weekly and daily. The duration of rest time between working days (shifts) shall not be less than 12 hours which implies that the Code sets the daily limits on working time.

Georgian Labour Code gives the parties opportunity to determine overtime work conditions by labor agreement. According to the Article 17 of the Labour Code, fulfilling the work by the employee within the timeframe the duration of which exceeds the working time defined by the employment agreement is considered overtime work. If the employment agreement does not

specify the working time, fulfilling the work within the period of time whose duration does not exceed 41 hours a week or the working time defined by the employer within the limits of 41 hours in accordance with part 1, article 14 of the present Code, is considered as overtime work. Conditions for overtimes can be determined by agreement between parties. It should be emphasized, that overtime employment of a pregnant woman or a woman in the post-natal period shall be inadmissible without her consent.

According to the above-mentioned, Labour Code specifies the limitation of weekly and daily working time and gives the parties the opportunity to agree on the longevity of overtime work on the basis of their interests and due to the agreement of them.

Article 40 of Georgian Law on Public Service defines that public servant is working 5 days in a week and weekly hours must not exceed 40 hours.

In General working times in Georgia is determined by individual contracts or collective agreement but not exceeds 41 hours (40 hours in public sector). Georgian labour legislation gives equal rights to employees and employers to agreed on working hours take into consideration the worker rights and business conditions.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

GoG response

Issues related to the limitation of daily and weekly working hours are fully implemented. Every labour agreement must be in conformity with labour legislation, otherwise labour agreement will be considered as valid. Accordingly, this issue is implemented in practice.

3) Please provide pertinent figures, statistics or factual information, in particular: average working hours in practice for each major professional category; any measures permitting derogations from legislation regarding working time.

GoG response

Government of Georgia does not have sector statistics related to this issue, but these issues are protected in absolute majority of the cases.

Article 2§2

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

GoG response

As it was mentioned above, working time is determined by the Article 14 paragraph 1 of the Georgian Labour Code according to which working time does not include a break and leave (rest) time. The Paragraph 1 of Article 20 defines a list of public holidays.

Georgian Labour Code defines public holidays with pay (Article 20). There are following public holidays in Georgia:

1. January 1st, 2nd – New Year Holidays;
2. January 7 – Christmas;
3. January 19 – Epiphany;
4. March 3 – Mother’s Day;
5. March 8 – International Women’s day;
6. April 9 – The Day of National Unity, Civil Consent and Commemorate of Citizens who Died for the Country;
7. Eastern Holydays – Big Friday, Big Saturday, Eastern, Deceased Persons’ Commemorate, second day from Eastern – Monday (changing dates);
8. May 9 – Victory Day;
9. May 12 – Commemoration Day of Saint Andrea Mediator;
10. May 26 – The Day of Independence of Georgia;
11. August 28 – Assumption of the Virgin Mary;
12. October 14 – “Mtskheta”;
13. November 23 – Saint George’s Day.

The employee is authorized to request other days-off instead of days-off specified by the law based on e.g. religious beliefs, which should be specified by the employment agreement.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

GoG response

Issue related to public holidays with pay is fully implemented. Every labour agreement must be in conformity with labour legislation, otherwise labour agreement will be considered as valid. Accordingly, this issue is implemented in practice.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

GoG response

Government of Georgia does not have statistics related to this issue, but this issue is protected in absolute majority of the cases.

Article 2§5

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

GoG response

According to current Georgian Labour Code, any week day can be defined as a day off work by the labour agreement between employer and employee according to the preferences of the parties of the agreement. It depends on the interests of parties and Sunday isn’t obligatory to be a weekend.

According to the Georgian Law on Public Service, the working days of public servants are defined as 5 days per week and Saturday and Sunday are considered as days off work. It should be emphasized, that in educational institutions (public as well as private) Saturday and Sunday are considered as days off work.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

GoG response

Every labour agreement must be in conformity with labour legislation, otherwise labour agreement will be considered as valid. Accordingly, this issue is implemented in practice.

3) Please provide pertinent figures, statistics or any other relevant information, in particular: circumstances under which the postponement of the weekly rest period is provided.

GoG response

Government of Georgia does not have statistics related to this issue, but Saturday and Sunday are considered as days off work in absolute majority of the cases.

Article 2§7

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

GoG response

According to Georgian Labour Code the night work is defined from 22.00 to 6.00 (Article 18).

It shall be impermissible to employ a minor, a pregnant woman, a woman in a postnatal period, a breastfeeding woman or a person with limited capabilities, on a night work. A baby sitter who takes care of a child under age of three and/or a person with limited capabilities can be employed on a night job only with consent of her/his person.

According to Georgian Labour Code (article 54) Ministry of Labour, Health and Social Affairs approved in 2007 (Ministerial Order # 215) cases and rules of periodical mandatory medical checkups of employees at the expense of the employer. The order specifies workers (including night workers) which must be provided regular medical examinations.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

GoG response

Every labour agreement must be in conformity with labour legislation, otherwise labour agreement will be considered as valid. Accordingly, this issue is implemented in practice.

3) Please provide pertinent figures, statistics or any other relevant information, in particular: the hours to which the term 'night work' applies.

GoG response

Government of Georgia does not have statistics related to this issue, but this issue is protected in absolute majority of the cases.

Article 4 – The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake:

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

The exercise of this right shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

Appendix to Article 4§4

This provision shall be so understood as not to prohibit immediate dismissal for any serious offence.

Appendix to Article 4§5

It is understood that a Contracting Party may give the undertaking required in this paragraph if the great majority of workers are not permitted to suffer deductions from wages either by law or through collective agreements or arbitration awards, the exception being those persons not so covered.

Information to be submitted

Article 4§2

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

GoG response

As it was mentioned above, Georgian Labour Code gives the parties opportunity to determine overtime work conditions by labor agreement. According to the Article 17 of the Labour Code, fulfilling the work by the employee within the timeframe the duration of which exceeds the working time defined by the employment agreement is considered overtime work. If the employment agreement does not specify the working time, fulfilling the work within the period of

time whose duration does not exceed 41 hours a week or the working time defined by the employer within the limits of 41 hours in accordance with part 1, article 14 of the present Code, is considered as overtime work. Conditions for overtimes can be determined by agreement between parties. It should be emphasized, that overtime employment of a pregnant woman or a woman in the post-natal period shall be inadmissible without her consent.

According to the above-mentioned, Labour Code specifies the limitation of weekly and daily working time and gives the parties the opportunity to agree on the longevity of overtime work on the basis of their interests and due to the agreement of them.

Mostly in Georgia the conditions of overtimes applied through collective agreements and depends on regional and sectoral development.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

GoG response

Issue related overtime is fully implemented. Every labour agreement must be in conformity with labour legislation, otherwise labour agreement will be considered as invalid. Accordingly, this issue is implemented in practice.

3) Please provide pertinent figures, statistics (estimates, if necessary) or any other relevant information, in particular: methods used to calculate the increased rates of remuneration; impact of flexible working time arrangements on remuneration for overtime hours; special cases when exceptions to the rules on remuneration for overtime work are made.

GoG response

Government of Georgia does not have statistics related to this issue.

Article 4§3

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

GoG response

Gender equality is guaranteed by Georgian legislation and it protects them from any kind of discrimination.

According to the **Article 14** of **Georgian Constitution**, everyone is free by birth and is equal before law regardless of race, color, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence.

Article 2, Paragraph 3 of **Labour Code** stipulates that **discrimination of any kind as to** race, color, language, ethnic and social belonging, nationality, origin, property and position, residence, age, **gender**, sexual orientation, limited capability, membership of religious or any other union, marital

status, political or other opinions are **prohibited in employment relationship**. Paragraph 4 of the same Article stipulates that **direct or indirect oppression of a person, aimed at or causing creation of intimidating, hostile, degrading, humiliating or insulting environment, or creation of such conditions which directly or indirectly impair his/her state compared with other persons being in the similar conditions shall be deemed as discrimination**.

According to the **Georgian law on General Education Article 13**, any kind of **discrimination is prohibited** during the entry into schools.

According to the **Law of Georgia on Higher Education, Article 3**: one of the main goals of higher education in Georgia is to prohibit **all kind of discrimination in the educational system**.

According to the **Georgian Law on Broadcasting, Public Broadcaster shall reflect** ethnic, cultural, linguistic, religious, age and **gender** diversity in programs.

According to the Georgian Law on Police, the police shall protect human rights and freedoms regardless of nationality, property, race, social and ethnic belonging, **gender**, age, education, language and religion, political or other opinions.

According to the Georgian Law on the Procedures of Execution of Non-imprisonment Sentences and Probation, the employee of the National Service of Probation is obliged to protect human rights and freedoms regardless of nationality, property, race, social and ethnic belonging, **gender**, age, education, language and religion, political or other opinions.

The discrimination due to gender is the violation of the Georgian labour legislation. The Code of Administrative Violations, section 42 punishes violations of labour legislation and labour protection rules by a penalty, namely: the violation of labour legislation and labour protection rules by the authorized official of enterprise, legal entity, organization will result in a penalty in amount of a minimum of 100 times the labour remuneration and the same violation committed within one year following the imposition of an administrative penalty will result in a penalty in amount of a minimum of 200 times the labour remuneration.

According to the Article 142 of the Civil Code, breaking the equality of people because of their race, color, language, **gender**, attitude towards religion, faith, political or other opinions, national, ethnic, social, belonging to any rank or public unions, origin, place of residence or property, having encroached the person's right is punished with penalty or compulsory work for a year or imprisonment for two years.

The same action:

- a) Using the authority;
- b) Causing a hard result, is punished with penalty or imprisonment for three years, taking the right of activity or dismissing for three years or without it.

The Law on Entrepreneurship is gender-neutral. The law does not have specific provisions concerning women's entrepreneurial activities. Women's representation in small businesses (like shops, hotels, beauty shops, food processing industries) is similar to men's, but women are less represented in larger enterprises.

According to the Georgian legislation, women and men are equal before the law with regard to property. Women have the right to independently apply for, and receive financial resources (credit, loans).

The Labor Code stipulates the following principles regarding women rights at work:

- It is prohibited to conclude a contract with an underage, a pregnant woman or a nursing mother, on performance of hard, unhealthy and dangerous work.
- An employer shall ensure the protection of a pregnant woman from a labor that endangers the welfare, physical and psychological health of the woman and fetus.
- Overtime employment of a pregnant woman, a woman in a postnatal period or a person with limited capabilities without the consent of her/his person shall be inadmissible.
- It shall be impermissible to employ a minor, a pregnant woman, a woman in a postnatal period, a breastfeeding woman or a person with limited capabilities, on a night job (22 pm to 6 am). A baby sitter who takes care of a child under age of three and/or a person with limited capabilities can be employed on a night job only with consent of her/his person.
- An employee, upon request, is entitled to a total maternity leave of 477 calendar days to cover pregnancy, delivery and child care. Of pregnancy, maternity and child care leave, 126 calendar days will be paid, while in case of a complicated delivery or if mother gives a birth to two or more infants – 140 calendar days of paid leave will be granted.
- Compensation of pregnancy, maternity or adoption leaves is paid from the State Budget according to the rule set by the legislation. An employer and an employee can reach an agreement regarding an additional compensation paid by an employer.
- During the five years following the birth of a child, the employee, upon her/his request, shall have the right to an additional 12 weeks of unpaid child care leave. Child care leave can be taken either all at once or incrementally, but not less than 2 weeks of leave should be used per year.

Accordingly, equality of gender is guaranteed by the Georgian legislation. The Georgian labour legislation is neutral to sex.

Georgian legislation contains provisions of positive discrimination:

- According the Tax code favourable treatment for personal income tax is granted to the single mothers. The legislation does not envisage any concessions for a single father.
- According Civil Code the court shall be bound to determine which parent shall be awarded the custody of child and although the decision of the court must be gender neutral, in child custody disputes women have been treated more favourably.
- There is a difference between retirement age of men and women. According to the Georgian legislation a retirement age for man is 65 and for woman – 60.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

GoG response

The “Action Plan on Gender Equality” (NAP) for 2007-2009, which was elaborated in cooperation with the Gender Advisory Council was adopted on 26th of September by the decree of the Prime-Minister. The NAP focuses on four major directions:

- 1) Considering Commission: Exchanging information between state agencies on implementation of activities considered by Gender Equality Plan of Action, relevant analysis of activities implemented by inter-ministerial takes place, building the capacity of the representatives of the inter-ministerial group on gender equality issues by trainings in national and international levels.
- 2) Increasing public awareness on gender equality by popularizing gender issues and information spreading; discussing gender issues on TV and radio programs, showing problematic and actual gender issues in newspaper and magazine articles.
- 3) Substituting gender related stereotypes by new gender equality oriented views at various levels of education: incorporating gender issues in educational programs and textbooks by developing educational standards for the Ministry of Education and by developing educational programs for boys and girls with due regard for their differences and equality, integrating a gender education component in the teachers’ lifelong learning system.
- 4) Creation of legal framework for gender equality, elaborating legislation from gender equality point of view, showing gender based differences.

There are several international as well as national organisations active in the field of gender equality and women’s issues in Georgia.

These include UNDP Gender and Politics Programme in the South Caucasus. The UN in Georgia is currently also involved in other regional projects, including the “Southern Caucasus Anti-Drug Programme (SCAD)” implemented by UNDP, the regional UNIFEM project on women and peace building,” USAID support through the American Bar Association/ Georgian Young Lawyers Association’s local activities in training and legislative reform and NDI who currently work to increase women’s participation in decision-making by, for example, training of women leaders. They also strengthen women’s NGO’s ties to parliament as well as support cooperation between women MPs and women in the regions. The majority of the projects have a strong women’s focus rather than a gender and development focus. There is a small group of mainly women, within civil society, who are very committed to gender equality and women’s issues in particular. 155 NGOs were registered as working on women’s issues in Georgia in 2001. (Roughly 4 percent of the total number of NGOs those were active in 2001). The majority of the active organisations are working in Tbilisi, even though some have offices in the regions.

In the end of 2007 state program “Vocational Training and Retraining Program” started. During this state program all participants received 200 GEL monthly grant provided by the

Government of Georgia. Women comprised 65% of total participants, that is 7% more than the same indicator in 2006. It is notable, that the share of women in total job-seeker is 45% (2008).

3) Please supply detailed statistics or any other relevant information on pay differentials between men and women not working for the same employer by sector of the economy, and according to level of qualification or any other relevant factor.

GoG response

GoG provides in its this report full statistical information on the average salaries of men and women in the various sectors and occupations. According to the Department of Statistics of Georgia, GoG provides the following statistical information:

The average monthly nominal salary of hired women by the labour activities (2007-2009)									
	GEL								
	2007 I	2007 II	2007 III	2007 IV	2008 I	2008 II	2008 III	2008 IV	2009 I
Total in Georgia	205,7	225,4	241,1	282,8	332,8	372,1	392,0	407,5	377,6
Agriculture, hunting and wood industry	186,7	200,7	188,2	187,0	296,9	313,2	317,7	324,3	350,7
Fish-bridging, fishing	99,4	105,6	123,3	100,6	126,4	382,3	132,7	130,0	230,7
Mining industry	468,4	720,8	724,4	911,3	706,2	929,4	919,3	714,5	600,9
Manufacturing Industry	227,5	249,6	255,9	285,0	322,8	339,0	386,9	388,6	417,5
Production and distribution of electro energy, gas and water	366,4	428,4	516,9	572,5	683,9	695,6	664,6	761,4	687,1
Construction	353,7	364,1	423,8	435,7	403,0	503,2	460,2	456,5	512,5
Trade, repair of cars, domestic products and subjects of personal use	234,1	256,9	271,4	337,0	390,8	424,4	421,4	459,0	436,0
Hotels and restaurants	177,2	210,3	237,8	239,0	254,6	281,3	284,3	361,7	279,3
Transport and communications	346,8	407,9	400,2	454,0	507,3	534,5	585,0	599,5	569,3
Financial activities	749,0	711,3	824,1	857,4	1416,1	1209,8	1107,9	1209,8	1085,9
Operations with real estate, lease and do a service for consumer	270,0	292,4	288,5	381,5	399,8	440,8	459,4	487,5	454,3
State administration	405,7	428,6	460,8	574,2	635,3	689,3	686,2	813,3	709,0
Education	130,5	138,7	132,6	165,7	203,8	228,1	260,6	242,7	242,5
Health protection and social assistance	132,5	153,5	168,2	188,6	248,3	272,6	283,6	321,1	255,7
Communal, social and personal services	196,9	213,3	226,5	268,3	319,1	392,5	356,5	354,1	336,0

The average monthly nominal salary of hired men by the labour activities (2007-2009)

	GEL								
	2007 I	2007 II	2007 III	2007 IV	2008 I	2008 II	2008 III	2008 IV	2009 I
Total in Georgia	423,7	471,9	510,2	600,0	662,9	713,7	703,5	737,4	673,6
Agriculture, hunting and wood industry	194,5	240,2	253,1	402,2	380,4	434,6	401,5	491,6	422,6
Fish-bridging, fishing	107,7	123,2	136,5	155,7	180,3	363,4	171,8	222,3	239,4
Mining industry	439,6	631,1	658,4	735,9	764,6	940,0	925,5	715,3	666,4
Manufacturing Industry	356,8	393,2	446,8	501,6	512,2	553,8	620,5	633,7	514,9
Production and distribution of electro energy, gas and water	523,3	567,4	551,4	648,2	687,8	782,5	762,2	808,7	697,1
Construction	521,4	594,4	658,0	740,9	556,7	700,1	686,3	736,6	595,5
Trade, repair of cars, domestic products and subjects of personal use	356,9	413,5	444,5	530,4	582,7	662,7	628,7	670,2	601,3
Hotels and restaurants	281,9	352,6	343,5	396,7	521,2	686,9	414,2	547,6	459,2
Transport and communications	478,6	531,7	531,7	551,2	722,1	705,4	725,3	771,5	710,7
Financial activities	1032,9	1259,0	1229,1	1391,6	1787,7	1686,6	1409,2	1479,1	1627,2
Operations with real estate, lease and do a service for consumer	389,0	451,9	497,2	657,6	586,8	657,2	679,4	764,0	617,0
State administration	543,4	565,9	611,7	785,0	997,3	997,0	902,0	933,7	900,3
Education	172,6	176,5	173,8	230,7	249,7	280,9	293,5	320,6	297,3
Health protection and social assistance	273,8	296,7	370,3	430,6	419,3	512,9	527,4	569,9	506,0
Communal, social and personal services	295,9	341,6	361,5	391,3	405,1	452,3	498,2	486,1	426,7

Article 4§4

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

GoG response

According to the Labour Code, in case invalidation of the contract of employment by initiative of the employer, employee shall receive **at least a one-month wage**. The main purpose of giving at least one month wages is to allow the person concerned a certain time to look for other work.

It should be emphasized, that according to the article 6, paragraph 4 of other Labour Code: **an employer is obliged to issue a letter of notification upon the request of an employee indicating duration of a labor contract** as well as other job related information, like data on the job carried out by an employee and his remuneration. **According to article 6, paragraph 5**, the labor contract can specify that internal regulations will be covered in the contract. Internal labor regulations is a written document and it determines the type for work related responsibilities **(including the basis of labour agreement termination)**. In this case, prior to signing a labor contract, an employer must familiarize an employee with all internal regulations (if any exist) and with any modifications regarding these regulations.

In public sector, employment termination is regulated by the Georgian Law on Public Service due to which, employee must be informed about employment termination according to different

reasons 1 month prior to termination and amount of compensation in case of termination of employment is equal 2 month salaries.

2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

GoG response

Every labour agreement must be in conformity with labour legislation, otherwise labour agreement will be considered as valid. Accordingly, this issue is implemented in practice.

Article 5 – The right to organise

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this Article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

Information to be submitted

1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*

GoG response

Georgian legislation stipulates independence and protection of associations including trade unions:

- Article 26 of the Constitution stipulates that **“Everyone shall have the right to form and join civil associations, including trade unions.”**
- According to 51st paragraph of Georgian Law “About the public service”, an employee has a right of joining in the trade unions.
- According to the Article 2, Paragraph 3 of Law on Trade Unions, trade union can be established in any enterprise, establishment, organization and other working place.
- According to Article 11 of Law of Georgia on Trade Unions, **no discrimination** shall be admitted against a employer on the part of an employer by reason of **membership or non-membership to a trade union.**
- **According to Article 5, Paragraph 1 of Law of Georgia on Trade Unions stipulates the independence of trade unions.** Trade unions, coalitions (associations) of professional unions are independent from bodies of state and local government, employers, employers’ unions (unions, associations), political parties and organizations, are not accountable towards them and are not under their control except the cases envisaged by the legislation.
- **According to the Article 22, Paragraph 1 of Law of Georgia on Trade Unions,** trade union, coalition (association) of trade unions, in accordance with their own statute, possess, use and manage the property and financial means accumulated by them. Property and monetary means of the trade union are inviolable. Nobody has the right to use, take away or transfer its

property and financial means without the consent of the collegial (selective) body envisaged by the respective trade union statute, except the cases specified by the legislation.

- **According to the Article 22, Paragraph 6 of Law of Georgia on Trade Unions**, trade union independently determines the rule and directions of utilizing material values and property, specifies salaries and conditions of labor remuneration from monetary means existing under its control in accordance with the legislation.
- **According to the Article 22, Paragraph 11 of Law of Georgia on Trade Unions**, financial activities of the professional union, carried out in accordance with its statute, are not subject to reporting towards state bodies, except the cases envisaged by the legislation .
- **Law on Trade Unions stipulates protection of the rights of the trade union.** The state provides protection of the rights of professional unions in accordance with the legislation. The case on violating the rights granted by the acting legislation for the professional union is discussed by the court.
- According to Article 2, paragraph 3 the Labour Code, **any type of discrimination due to race, color, ethnic and social category, nationality, origin, property and position, residence, age, gender, sexual orientation, limited capability, membership of religious or any other union, family conditions, political or other opinions are prohibited in employment relations.**
- According to Article 142 of the Criminal Code, violations of the equality based on membership of any public association is punishable by imprisonment for a period of up to two years.

Existing legislation (e.g. Constitution, Labour Code, Civil Code, Law on Trade Unions) provides for freedom establishment of **association and membership to any association, including trade unions**.

Under the Georgian legislation, procedures of establishment of an association are simple. **Establishment of an association needs at least 2 members and only registration fee of 26 EUR is to be paid.**

Georgia is characterized with one of the highest association density in the region. At the same time **Georgian legislation does not limit activities of associations unless it violates basic rights and freedoms of others and/or public order.**

The civil association means any type of association including trade union and all the rights of civil association are applicable to the trade unions to full extent.

The discrimination based on membership to any association is a subject of a criminal liability. According to section 142 of the Criminal Code, violations of the equality based on membership of any civil association is punishable by imprisonment for a period of up to two years.

According to the Georgian Law on Trade Unions, peculiarities of establishing professional unions within certain categories employed in law enforcement agencies and prosecutors' offices are determined by the legislation on these bodies.

The Georgian labour legislation has been improved and modernized with regard to the norms of right to strike compared to the soviet laws. Soviet Labour Code adopted in 1973 was replaced by the Georgian Labour Code in 2006. Soviet Labour Code did not provide the right to strike at all. Whereas the old law on the rule of collective labour dispute settlement provided for the exercise of right to strike only in case of occurrence of collective (employees) labour dispute. According to the new Labour Code a progressive change was implemented in this respect: right to strike may be individually exercised in case of violations of both collective and individual agreements.

Consequently, the new Labour Code provides a better regulation of exercising right to strike by an employee in case of any kind of agreement. **Moreover, in difference to the legislations of other countries, Georgian legislation does not limit the number of strike members.**

Georgian legislation stipulates the rights to strike, in case of individual and collective labour disputes.

As for the concern related to the solidarity strikes, the legislation ensures rights for solidarity and protest manifestations and gatherings:

- Georgian Labour Code does not stipulate that only directly affected person has the right to strike. Therefore, it permits any employee to use the right to strike on the basis of solidarity or protest. The right to strike can be used individually, by any employee (article 49), in case of violation of both collective and individual agreement.
- According to article 47, paragraph 3: grounds of dispute in the employment relations may be violation of human rights, freedoms provided by legislation of Georgia and labour agreement and/or employment conditions.
- Georgian Law on Trade Unions ensures the rights of trade unions to participate in the discussions and settlements of individual and collective labour disputes related to the violation of labour legislation and conditions of collective agreements. Article 13 of the above-mentioned law stipulates the organization of strikes, demonstrations and other manifestations by the trade unions in order to protect the labour and social-economic rights of the employees.
- The Law on Gatherings and Manifestations stipulates the organization of citizens “gatherings”, “manifestations” for the protest and solidarity manifestations and gatherings. The initiator of such gathering may be the political party, association (including trade union), enterprise, organization.
- The impediment of legitimate strikes is punished as a criminal liability. According to the Georgian Criminal Code, the action, which impedes or infringes the right to strike is punishable by the fine, or probation for the period up to 1 year or imprisonment for the period up to 2 years.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

GoG response

According to the above-mentioned, employees in Georgia use their right to strike without any limitation. This argument is supported not only by the legislation itself, but more importantly by practice. No empirical cases of limitation of right to strike by employers were observed. As a recent evidence, in April, 2009, the strike organized by taxi-drivers working on the particular route took place, which was supported by other taxi-drivers on the basis of solidarity.

As an other recent example, in August, 2009, the strike organized by mini-bus drivers in Kutaisi. The purpose of strike was related to the decision of The City Hall of Kutaisi, according to which new original scheme of transportation would be elaborated. Pursuant to the new scheme of transportation, a number of minibuses would decrease twice, while a number of buses would increase. The City Hall of Kutaisi planed to implement this new scheme from the September, 2009.

Mini-bus drivers organized strike, because they thought that reduction of a number of mini-buses would cause job losses. The main requirement of drivers was to postpone implementation of the above-mentioned transportation scheme for 2 years.

There was established special commission to study the existing situation. The commission was chaired by the Head of Georgian Trade Unions Confederation (GTUC). In the process of study the existing process and bargaining the following sides were involved: representatives of Government of Georgia, City Hall of Kutaisi as an employer, GTUC.

The problem was solved and the parties agreed. Mayor of Kutaisi sent written notification to the chairman of the special commission, pursuant to which mini-bus drivers will be employed as a bus drivers. By September in spite of elaboration of new transportation scheme, no-one will be disappointed because mini-bus drivers will be employed as new bus drivers and no-one could be dismissed.

Trade unions may be created in the enterprises, organizations, etc, where the quantity of members of the trade union is less than 15. This argument is supported not only by legislation itself – *de jure*, but by practice – *de facto*. There are numerous of primary trade unions in Georgia with membership lower than 100. Here we bring just few examples:

- Ministry of Culture, Monument Protection and Sport – 80 trade union members
- Ministry of Justice – 40 trade union members
- Ministry of Economic Development - 80 trade union members
- JSC Bank of Georgia – 80 trade union members

3. *Please provide pertinent figures, statistics or any other relevant information, if appropriate.*

GoG response

Government of Georgia does not have such statistics.

Article 6 – The right of workers to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake

1. to promote joint consultation between workers and employers;
2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes; and recognise
4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

Appendix to Article 6§4

It is understood that each Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article G.

Information to be submitted

Article 6§1

1) *Please describe the general legal framework applicable to the private as well as the public sector. Please specify the nature of, reasons for and extent of any reforms.*

GoG Response

Government pays vital attention to the process of strengthening of the Social Dialog formats. Government of Georgia decided to hold more active social dialogue with all the interested parties to cooperate with them and study Georgian legal basis of labour relations in depth. The new format of the regular meetings of the representative of Trade Unions, Employers' Associations and the Ministry of Labour, Health and Social Affairs was established in 2008 on the recommendation of the ILO, in order to ensure good communication, platform for exchange of views on labour legislation issues.

Prime Minister of Georgia issued a decree that formalized and institutionalized a National Social Dialogue Commission (Decree #335, November 12, 2009).

2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

GoG response

In December 2008 a memorandum was signed between the Ministry of Labour, Health and Social Affairs (MoHLSA), the Georgian Trade Union Confederation (GTUC) and the Georgian Employers Association (GEA) that established provisions to start a social dialogue process in Georgia. This process was facilitated by the ILO expert consultant who participated in most of the meetings held by the parties and streamlined the process in general.

Social partners have been holding sessions regularly since December 2008, at least once a month (in some cases several times a month) to discuss issues concerning the labour legislation and other issues of labour relations. The group has put the emphasis on the issues of compliance of Georgian legislation to ILO Conventions 87 and 98 and has designed a framework for future tripartite cooperation.

An ILO Tripartite Roundtable was held in Tbilisi, Georgia on October 21-22. An ILO high level delegation, representatives of the Government of Georgia (GoG), the Georgian Trade Unions Confederation (GTUC) and the Georgian Employers Association (GEA) attended the Roundtable. Each party to the Roundtable was represented by 6 persons.

The following issues were discussed:

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Current status of labour legislation in Georgia
- Promotion of tripartism in Georgia
- Contemporary issues and solutions in the application of C.87 and C.98 in Europe

- Building consensus, tripartite discussion

3) *Please provide pertinent figures, statistics or any other relevant information, if appropriate.*

GoG response

Government of Georgia does not have such statistics. **There is no legal barrier for social dialogue.** In case an interested party initiates to cooperate with other social partners on any labour issue, there is no legal barrier for such initiative.

As it was mentioned above, social partners have been holding sessions regularly since December 2008, at least once a month (in some cases several times a month) to discuss issues concerning the labour legislation and other issues of labour relations. There was established special commission to study the existing situation. As it was described above, in mini bus drivers case special commission was established to study the existing situation. The commission was chaired by the Head of Georgian Trade Unions Confederation (GTUC). In the process of study the existing process and bargaining the following sides were involved: representatives of Government of Georgia, City Hall of Kutaisi as an employer, GTUC.

Article 6§2

1) *Please describe the general legal framework applicable to the private as well as the public sector. Please specify the nature of, reasons for and extent of any reforms.*

GoG response

According to the Georgian Law on Trade Unions, Employers, coalitions of employers (unions, associations), bodies of executive authority **are obliged to carry out bargaining** with primary trade unions, trade unions, associations of trade unions on labour, social-economic issues if primary trade unions, associations of trade unions **appear with such an initiative** and in case of a mutual agreement to conclude collective agreements.

The Georgian legislation clearly stipulates minimal working conditions that are in compliance with the ILO core conventions. It is prohibited to worsen the minimal working conditions envisaged by the Labour Code. Employer shall take into account the minimal working conditions envisaged by the Labour Legislation in case he/she is elaborating operation rules (internal labour charter). If not, it is violation of the Labour Legislation and is punished by law. In case when working conditions are regulated by labour agreement (either individual, or collective), labour agreement prevails over internal operation rules.

According to the Georgian labour legislation, labour agreement (including collective agreement) prevails over internal operation rules. The preference to the operation rules (internal labour charter) is given only in case when working conditions are not regulated by labour agreement (either individual, or collective). Even in this case, working conditions defined by employer must be in full compliance with the requirements of the Labour Code, which stipulates minimal working conditions in compliance with the ILO core conventions.

Accordingly, The employer is authorized to introduce internal operation rules if working conditions are not regulated by labour agreement (either individual, or collective). **Working conditions could be regulated by the individual and/or collective agreement. If working conditions are regulated by labour agreement, labour agreement prevails over any other internal operation rules.**

2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

GoG response

Issue related to collective bargaining is fully implemented.

3) *Please provide pertinent figures, statistics or any other relevant information, in particular on collective agreements concluded in the private and public sector at national and regional or sectoral level, as appropriate.*

GoG response

GoG does not have specific statistics, but can provide information on some cases. The most of Georgian state organizations have collective agreements with trade unions and rules of working conditions are subject of these collective agreements. Based on these collective agreements, trade unions use the property of these organizations and deduct 1% membership fee from employees' salaries.

Several Cases of Collective Agreements in State Organizations

Body	Number of Trade Union member in Organization	Total Number of Employees in Organization
Ministry of Labour, Health and Social Security	402	4492
Ministry of Culture, Monument Protection and Sport	80	137
Ministry of Justice	40	325

It is notable, that the biggest companies have collective agreements with trade unions, namely:

- The number of employees in LTD Tbilisi Metro is 2 705, from which 1 975 workers are the members of the trade union and equals to 71,4% of company's employees. Among them are high level managers, including Technical Director, Exploitation Director and other trade union members employed on the high managing position.

- The 80 employees of JSC Bank of Georgia are trade union members.
- The number of employees in LTD Georgian Railway is 15 000, and all 15 000 workers are the members of the trade union and equals to 100% of company's employees.
- The number of employees in JSC Madneuli is 1 429, from which 1 375 workers are the members of the trade union and equals to 96% of company's employees.
- The majority of LTD Georgian State Electrosystem current employees – 85,5% (898 employees) are the members of the company trade union. Currently 35 trade union members hold high level positions in the company management.

It is notable, that LTD Tbilisi Metro is 100 % owned by Tbilisi municipality, LTD Georgian Railway and LTD Georgian State Elactrosystem are 100% state-owned. Accordingly, Government of Georgia promotes collective agreements in practice.

Article 6§3

For the purposes of rapid response to possible labour disputes and preventive measures of such disputes, the parties have agreed to create a mediator service. Until this institution is established (the ILO has expressed the interest to provide necessary funding), the mediation functions will be incorporated into the Tripartite Social Dialogue Commission.

Article 6§4

Georgian legislation stipulates the rights to strike, in case of individual and collective labour disputes.

As for the concern related to the solidarity strikes, the legislation ensures rights for solidarity and protest manifestations and gatherings:

- Georgian Labour Code does not stipulate that only directly affected person has the right to strike. Therefore, it permits any employee to use the right to strike on the basis of solidarity or protest. The right to strike can be used individually, by any employee (article 49), in case of violation of both collective and individual agreement.
- According to article 47, paragraph 3: grounds of dispute in the employment relations may be violation of human rights, freedoms provided by legislation of Georgia and labour agreement and/or employment conditions.
- Georgian Law on Trade Unions ensures the rights of trade unions to participate in the discussions and settlements of individual and collective labour disputes related to the violation of labour legislation and conditions of collective agreements. Article 13 of the above-mentioned law stipulates the organization of strikes, demonstrations and other manifestations by the trade unions in order to protect the labour and social-economic rights of the employees.
- The Law on Gatherings and Manifestations stipulates the organization of citizens “gatherings”, “manifestations” for the protest and solidarity manifestations and gatherings. The initiator of such gathering may be the political party, association (including trade union), enterprise, organization.
- The impediment of legitimate strikes is punished as a criminal liability. According to the Georgian Criminal Code, the action, which impedes or infringes the right to strike is punishable by the fine, or probation for the period up to 1 year or imprisonment for the period up to 2 years.

According to the above-mentioned, employees in Georgia use their right to strike without any limitation. This argument is supported not only by the legislation itself, but more importantly by practice.

Article 26 – The right to dignity at work

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organisations:

1. to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;
2. to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

Appendix to Article 26

It is understood that this article does not require that legislation be enacted by the Parties.

It is understood that paragraph 2 does not cover sexual harassment.

Information to be submitted

Article 26§1

Georgian legislation forbids the sexual harassment. Privately, according to 142nd paragraph of Georgian Criminal Code, breaking the people's equality because of their race, color, language, gender, attitude towards religion, faith, political or other opinions, national, ethnic, social, belonging to any rank or public unions, origin, place of residence or property, having encroached the person's right is punished with penalty or compulsory work for a year or imprisonment for two years. The same action: a) using the authority; b) Causing a hard result, is punished with penalty or imprisonment for three years, taking the right of activity or dismissing for three years or without it".

According to 139th paragraph of Criminal Law Code "Making the sexual connection, gayness, Lesbians or other kind of contact, by threatening to announce the secret or property damage or using material, work and other kind of attitude is punished with penalty or compulsory work for a year or imprisonment for two years".

Article 26§2

According to Georgian Labour Code "In labour relation any kind of discrimination is forbidden because of race, color, language, ethnic and social belonging, nationality, origin, property and rank situation, place of residence, age, gender, sexual orientation, limited possibilities, religious or belonging to any unions, marital status, political and other opinions" (article 2§3). According to Georgian Labour Code "Direct or indirect oppression of a person that aims to or causes the creation of a frightening, hostile, disgraceful, dishonorable and insulting environment is considered to be discrimination. Creation of conditions that directly or indirectly worsens a person's condition

in comparison to other person in the same conditions is also considered to be discrimination.” (article 2§4) According to the same code “While the labour relation parties must protect the main rights and freedoms of a human being determined by Georgian Legislation” (article 2§6). Labour code is spread on the private sector. Questions, which are not regulated by the public service Law, are under the labour code norms. Foreigners and persons without citizenship, legally being on the territory of Georgia, are secured with the same guarantees, as citizens of Georgia (Georgian Law “About the Legal status of foreigners”).

Article 29 – The right to information and consultation in collective redundancy procedures

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers’ representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.

Appendix to Articles 28 and 29

For the purpose of the application of this article, the term “workers’ representatives” means persons who are recognised as such under national legislation or practice.

Information to be submitted

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

GoG response

According to the Georgian Law on Trade Unions, employers, coalitions of employers (unions, associations) provide respective trade unions **at least two months in advance with the information** about temporary termination of liquidation, reorganization or operation of enterprises, establishments and organizations, which will lead to reduction of working places or conditions to provide protection of rights and interests defined by the legislation, collective agreements (treaties) for the employees. The trade union has the right to submit proposals for the discussion of respective bodies of state authority on extending the terms of measures related with mass freeing of employees or temporary termination.

In public sector, when the reorganization of the establishment is accompanied by staff reduction, the servants should be notified one month before about the dismissal from the job due to the liquidation of the establishment, reduction of the position, unsatisfactory results of the attestation or the age.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

GoG response

Issue on ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies is usually regulated under the collective agreements. In times of financial crisis, the employers effectively ensured the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies.

According to the Labour Code, in case of invalidation of the contract of employment by initiative of the employer, employee shall receive **at least a one-month wage**. In times of financial crisis, fired employees got compensations, which equaled to three-month wage (for example, in banking sector). In addition, a number of big companies have list of reservation of fired workers, which is aimed at the redeployment.

It should be mentioned, that according to the Georgian Law on Trade Unions, employers, coalitions of employers, bodies of executive authority are obliged to carry out negotiation with trade union, coalitions of trade unions appear with such an initiative and in case of a mutual agreement to conclude collective agreements. Accordingly, in case of collective redundancies, trade unions appear with an initiative on collective bargaining on this issue, the employers are obliged to carry out bargaining.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

GoG response

Government of Georgia does not have such statistics.