



**LABOR RELATIONS AND
SOCIAL PROTECTION DURING THE PANDEMIC**

Report on Georgia

EMC

Labor Relations and Social Protection During the Pandemic

Human Rights Education and Monitoring Center
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INTRODUCTION

INTRODUCTION

The first case of COVID 19 in Georgia was detected on February 26. In about a month, on March 21, a state of emergency was declared throughout Georgia which lasted until the end of May. Economic restrictions were imposed, traffic between cities was suspended, and state borders were closed along with the declaration of the state of emergency.

According to the decree of the Government of Georgia of March 23, 2020, a number of economic activities have been restricted throughout the country during the state of emergency. The supply/sale of any goods/products was suspended with exceptions specified in the same decree, which were related to the retail sale of food, electricity, water, and natural gas, and the sale of medical products. Economic constraints have affected cultural institutions - theaters, cinemas, sporting events - and tourism-related sectors. The activities of restaurants, food service and entertainment establishments were also limited and only the so-called “Drive-Through” service was allowed. The amendment on March 30th allowed the banking and microfinance sectors to engage in economic activity. Agricultural work, tax system operators, and other economic activities important to the country were also cleared to reopen. The largest mining companies, industrial enterprises in Rustavi, garment factories, and telecommunication companies were allowed to continue working seamlessly. Under the same amendment, economic activities related to heating and cooling, customs warehouses, reclamation and irrigation systems and other maintenance activities were allowed to operate across the country.

Due to the imposed restrictions, the number of customers was meaningfully reduced, especially in places of high employment like the tourism and service sectors. Most employers faced the crisis completely unprepared with scarce material resources and weak communication channels with employees.¹ The government provided fragmented and inconsistent state aid in lieu of a clear plan to save the economy. A large number of companies were unable to retain employees due to lack of means; while another part laid off employees en masse, reduced wages, or refused to pay wages in order to save money. The government found itself without effective instruments to protect essential workers during the ongoing crisis. Labor rights violations, as established by the Georgian labor laws, became widespread.

1 The representative of the Employers' Association, Shalva Tskhakaia.

Informally employed workers also found themselves in a difficult situation. Their particular vulnerability was due to both the lack of labor legislation and social protection guarantees. In addition, the crisis has made it even clearer how important it is for the state to have information on the number of informal workers and their challenges in order to more effectively develop government anti-crisis measures and to neutralize disadvantages.

The population of Georgia was gravely unprepared for the economic crisis caused by the pandemic. Government policies and institutions were unprepared to provide systematic social support to affected individuals and families during the pandemic. Even the anti-crisis social policy developed at the government level was not enough to provide social protection for people with significantly reduced incomes or no incomes at all. Consequently, the challenges posed by the pandemic have once again highlighted the need for an in-depth analysis of the fundamental shortcomings of labor and social protection policies in Georgia.

The report is divided into five chapters. The first chapter presents the main findings of the report. The second chapter deals with the impact of the crisis on formally employed workers and analyzes the widespread practices of rights violations and the failures of labor legislation, institutions, and policies in the context of massive rights violations. Chapter three surveys the structure of informal employment in Georgia, the social and economic vulnerability of informal workers, and the resulting dire consequences of negligence by the state for years.

The fourth chapter assesses the anti-crisis measures taken by the state in regards to social protection and analyzes the shortcomings of the existing social protection system in light of the crisis, which, on the one hand, led to unpreparedness and insecurity of the population in the first place, and on the other hand, left the government without any effective instruments to ensure vital social protection. The last and fifth chapter is devoted to general recommendations on legislative and institutional reforms.

METHODOLOGY

METHODOLOGY

1.1 The goal of the report

This report aims to examine the impact of the COVID-19 pandemic crisis on formally and informally employed workers and to analyze labor policies, legislation, and institutions in this context. The purpose of the report is also to analyze and evaluate the government's social protection system, as well as the effectiveness of the government's emergency anti-crisis measure on the background of the increased needs due to the pandemic.

The report discusses the forms and causes of violations of the rights of employees in the formal sector during the pandemic and provides a legal assessment of these violations. The report also addresses the specific challenges faced by informally employed people beyond social and labor protection. Finally, the report reviews the reasons why the Georgian population has been gravely unprepared for the pandemic crisis, and why the government has not found the respective instruments for labor policy and social protection to respond effectively to the current crisis.

1.2 The research team used the research tools:

- Qualitative analysis of legal aid provided during the pandemic
- Qualitative content analysis of labor legislation and policy and social protection system and anti-crisis measures
- Public information gathering and desk research
- Dissemination of online questionnaires and qualitative analysis of survey results;
- Individual online and telephone interviews using a semi-structured questionnaire
- Planned and spontaneous group interviews during fieldwork
- Expert interviews

Legal Aid

To identify the scale and forms of labor rights violations during the pandemic, the research team used qualitative analysis of the legal consultations with more than 1,000 individuals from March 2020 to August 2020 provided by Human Rights Education and Monitoring Center (EMC), the Georgian Young Lawyers' Association, and Solidarity Network, a health care and service sector union.

Legislation and Policy Research

For the purposes of the report, a qualitative content analysis of the current legislation and existing policies, as well as social protection systems, was made on the following preliminary issues: legislative guarantees for the rights of formal and informal employees; law enforcement mechanisms of labor legislation; Social protection programs; Anti-crisis social assistance, etc.

Public Information Gathering and Desk Research

In order to collect publicly available information, the research team also actively relied on a public information request mechanism. Information requests and their compilation occurred from the relevant central government agencies as well as from local self-government bodies. In addition, topical desk research was conducted to find and process information, based on which secondary data were collected and processed, including international and local reports, statistical data, or sectoral review documents. The main purpose of using this tool was to assess the quantitative and qualitative scale of the social and economic problems caused by the pandemic, as well as to study and analyze the steps taken by the government.

Online Questionnaire and Qualitative Analysis of Results

For the purposes of the report, part of which was to analyze the situation of workers informally employed in pandemic conditions, a semi-structured online questionnaire was prepared, with predetermined blocks and research questions. This questionnaire was disseminated on the Internet using various platforms and social networks. A total of fifteen respondents completed the questionnaire, of which eight respondents matched the predetermined target group of the study.

Individual Online and Telephone Interviews

In addition to the online questionnaire, telephone and online interviews were also planned and conducted using targeted sampling which included a proportion of

respondents registered with the online questionnaire, as well as respondents employed in the formal or informal sectors whose contacts were obtained with the help of employee support organizations and databases shared by the research center. In online and telephone interviews, a semi-structured guide was used which was reconciled with the structure of the online questionnaire.

Planned and Spontaneous Group Interviews

In order to study the research cases and reach the research goals, a field trip was held in the city of Batumi during which planned and spontaneous group meetings were held with street vendors working in the Batumi markets as well as migrant workers employed in Turkey. During the planned and spontaneous interviews, a pre-compiled open guide was used, which was reconciled with the semi-structured prior questionnaires.

Expert interviews

During the preparation of the report, a number of expert interviews were conducted with experts in the field, key actors in the public and political fields, and representatives of research and analytical institutions, including trade unions, business associations, government agencies, human rights organizations, the Office of the Public Defender, an investigative journalist, and with an expert from the economics school of ISET.

1.3 Limits of the Report

The report will examine the impact of the first wave (March through August) of the virus on labor relations and social protection and the appropriate steps taken by the government during this period. As the pandemic continues, these influences and the government's response to them are changing, which is a dynamic and shifting process and may lead to new challenges and new rights violations.

The study does not examine all aspects of labor and social protection policy but rather analyzes specific research topics formulated for research purposes: changes in labor, social and economic conditions of formal and informal workers; gaps in labor policy, institutions, and legislation; the effectiveness of government social protection system and emergency anti-crisis steps. In addition, the chapter on informal employment avoids informal employment represented in agriculture and focuses on employees in urban areas. This is due to various circumstances. The reason for this is

that as a study prepared by EMC has shown,² the agricultural sector is characterized by an inverse trend during crises - instead of decreasing the number of employees in this field, on the contrary, the number of self-employed workers increases, indicating a particular dynamic of this field. A similar trend is shown in the comparison of data from the second quarter of 2019 and 2020. It is important that the needs of informal workers employed in agriculture and the challenges posed by COVID -19 be addressed in a separate study.

2 Labor Market Segmentation and Informal Labor in Crisis, EMC, 2020.



KEY FINDINGS OF THE REPORT

CHAPTER 1.

KEY FINDINGS OF THE REPORT

1.1 Formal employment

- In the event of one-sided termination of employment contracts, employers usually did not explain to the employees the grounds for dismissal, did not comply with the notice period and the obligation to pay severance, did not issue a notice of dismissal and terminated the contract unilaterally even in cases where distance work was possible;
- Facts emerged of employees coerced to resign or to go on unpaid leave and, in some cases, paid leave;
- There were cases where employers unscrupulously used the simplified procedure of terminating probationary contracts;
- The Prime Minister's statement during the presentation of the anti-crisis package that the anti-crisis assistance for informal employees also applied to employees "sent on unpaid leave," should be considered as encouragement of illegal practices by the government;
- In the first phase of the spread of Covid-19, there were cases when employers illegally asked employees to leave self-isolation and quarantine and report to work. No-shows for these reasons was the reason employers refused to pay wages, threatened to terminate employment contracts or actually terminated the contract;
- With the inability to appear at work due to transport restrictions, some employers unilaterally stopped paying their employees wages or terminated their employment contract. During public transport restrictions, employers did not provide employees with transportation;
- A section of the employers fulfilled the obligation to create a safe working environment from the spread of Covid-19 improperly or only partially. In some cases, employees had to purchase personal protective equipment against the spread of the virus at their own expense;

- Employers unilaterally changed the substantive terms and conditions of the contracts, including pay, working hours, and workload
- Due to the high degree of disparity between high-skilled and low-skilled jobs in Georgia and the large and growing market for low-skilled jobs, it was impossible for most employees to move to distance work; where such labor was possible, in order to adapt labor contracts to circumstances, employers did not make reasonable efforts and did not transfer employees to remote work even though they could not provide a safe workplace environment;
- In some cases, employees working remotely were not provided with the technological equipment necessary to perform the job;
- There have been cases of unscrupulous interpretation of remote work when remote work was counted as vacation time for the employees;
- Due to the inability to establish appropriate communication channels between employers and employees over the years, during a pandemic, employers faced particular challenges in terms of realigning the work process, information exchange, or controlling virus spread;
- Despite unprecedented challenges in labor relations, the Tripartite Social Partnership Commission was not convened during the pandemic, reaffirming the ineffectiveness of this mechanism and the need to reform it;
- The pandemic has once again exposed the failures of labor policy, labor law, and in particular, labor law enforcement mechanisms.

1.2 Informal employment

- According to the National Statistics Office of Georgia 2019 data, 34.7% of those employed in the non-agricultural sector are informally employed;
- Labor legislation in Georgia largely neglects issues related to informal employment; The government has not ratified important ILO conventions, the laws do not provide explicit material guarantees for the rights of informal workers while the labor inspectorate does not have a clear mandate to protect the rights of informal workers;
- The decline in domestic consumer demand has been particularly severe for people working in the informal sectors;

- A large proportion of informally employed people have had their incomes cut off or reduced due to the established restrictions;
- The closure of farmers' markets and the restriction on outdoor markets have created problems for the street vendors. The aggressive practice of regulations and fines by the government was considerably problematic;
- Informal workers also face serious health and physical safety risks since this type of work is unable to be transformed into remote work, and often involves frequent mobility, contact with different groups of people, and spending prolonged time outdoors where there is little or no control over physical distance or safety;
- Under the pandemic restrictions, the situation of informally employed women became particularly distressing. Informal women workers increased their risks of impoverishment and unemployment. Also, in their case, the opportunities to return to the labor market will be particularly difficult;
- Informal employees were often deprived of the opportunity to receive assistance provided by the government anti-crisis package because the required proof of work or bank deposit document was not available to them. The government did not provide informal workers with information about social assistance. Employees did not know from whom to get the appropriate documents. There were problems dealing with technical procedures related to finding and opening relevant websites of the Ministry of Health, digitizing the documents, and uploading information.

1.3 Social protection

- Restrictions imposed by the pandemic have led to economic crises in all countries of the world, although due to the economic structure and the current socio-economic situation, instability has been stronger in some countries than in others. In Georgia, due to income being dependent on tourism, the service sector, and foreign remittances, the crisis was felt with particular severity by a large part of the population;
- In the second quarter of 2020, GDP per capita decreased by 5.5% compared to the first quarter. During the same period, real GDP growth fell by -12.3%. The average monthly nominal wage of employees in the second quarter of 2020 has also been reduced by 12.8% compared to the fourth quarter of 2019, and by 2.5% compared to the second quarter of the same period in 2019;

- In the second quarter of 2020, compared to the second quarter of 2019, the number of unemployed increased by 15,600 people, which means a 0.9% increase in unemployment (the practice of sending employees on unpaid leave which reduces the number of employment contract terminations should be considered here). According to the ILO, by the end of 2020, about 284,000-360,000 people were left unemployed in Georgia, and by 2021, this figure will reach 363.8 thousand people. The ILO estimates that by 2021, 100,000 self-employed people will lose their jobs and, consequently, their income;
- According to a UNICEF study, pandemics in Georgia are expected to increase the poverty rate (166 GEL per adult per month) from 21.7 percent to 24 percent in the case of low shock, 26 percent in the case of moderate shock, and 30.9 percent in the case of severe shock;
- One of the major reasons for the social vulnerability identified during the pandemic was the absence of an adequate minimum wage. The current minimum wage which is equal to 20 GEL per month leaves a large part of the population without savings since 400,000 people have less than 300 GEL per month (88% of the population did not have financial savings before the pandemic).
- The crisis was met by a government unprepared for the lack of such important social protection tools as unemployment insurance and/or unemployment benefits;
- The social assistance system has not been found to be effective and flexible enough to protect a large proportion of people left without income; The number of recipients of social assistance increased by 14% in 2020, however, since the methodology for calculating social assistance need does not count people left without income, it is likely that many people will find themselves left out of this program;
- The government's active labor market policy is flawed and provides little support for retaining jobs and finding new jobs for the unemployed (the two main tools of the active labor market, in total, help employ only a few thousand people a year);
- Anti-crisis assistance programs to the private sector were not aimed at maintaining jobs and wages, as such aid did not contain relevant terms, criteria, or reservations;

- The only exception was the income tax exemption, which applied to those whose salary did not exceed GEL 1,500, with a maximum salary of GEL 750. More than 400,000 employees were in this program that has helped them retain their jobs;
- A large proportion of informal workers depended on cooperation with their employers in order to get assistance which put employees in a vulnerable position and, in many cases, created insurmountable obstacles to receiving assistance;
- The grave and systemic failures in the field of informal employment have become a reflection of the difficulties encountered in administering aid, which has once again highlighted the need for appropriate legislative and institutional reform for the well-being of those involved in informal employment;
- 250,000 informally employed and more than 160,000 formally employed workers who were left without income ended up benefiting from the anti-crisis package of a one-time payment of GEL 300. 850,000 children received a one-time 200 GEL assistance payment.



**FORMAL
LABOR RELATIONS**

CHAPTER 2.

FORMAL LABOR RELATIONS

2.1 Introduction

Even before the pandemic, labor rights abuses were widespread throughout the country, in almost all sectors.³ The legislation did not (and still does not) provide for significant labor guarantees - particularly for the regulation of working hours and overtime - and the labor inspection mandate largely covered labor safety issues⁴ and left out the monitoring and enforcement of other important aspects of labor rights. The overwhelmed courts and labor dispute cases delays created problems, which had a direct impact on the low rate of labor lawsuits. In addition, employee vulnerability in relation to their employers was exacerbated by the weakness of workers' mobilizations and trade unions, the lack of communication channels between employers and employees, as well as the flawed social protection system unable to provide any protection in case of unemployment.

Systemic failures in labor policy, legislation, and institutions have left employees without effective tools for protection in the face of a pandemic-induced, unprecedented scale of rights violations.

This chapter is based on the analysis of Georgian legislation; Public information requests; Qualitative analysis of legal aid provided during the pandemic and verified information disseminated through the media; In addition, online and telephone interviews with employees (Tkibuli miner, nurse, social worker, social agent), representative of the employers' association, representatives of trade unions (Social Workers' Union, New Railway Trade Union, Health and Service Trade Union- Solidarity Network), investigative journalist, and the head of the labor inspection.

3 "Evaluation of the Labor Inspection Mechanism and the Situation of Employees' Labor Rights in Georgia" EMC, 2017; "Not a single year without deaths", Human Rights Watch, 2019

4 The Labor Inspectorate will function with a limited mandate until January 2021, see 2.7

2.2 Termination Without Grounds For Dismissal

The negative effects of the pandemic particularly affect those employees who lost their jobs during the pandemic. In May and April, the dismissal of employees without a legal basis, on the pretext of economic problems caused by the imposed restrictions, reached a massive scale. Often, employers did not explain to employees the grounds for dismissal, did not comply with the notice period or compensation obligations (see Appendix 1). There were also cases of employment termination by forced resignations. In addition, there were cases when employers terminated employment contracts with employees on the grounds of the restriction of entrepreneurial activity and deterioration of the economic situation, even when neither the deterioration of the economic situation was demonstrated nor was it impossible for the company to move to remote work.

The law clearly defines the need to justify dismissals. In particular, within 30 days after the receipt of the decision of dismissal, the employee has the right to request a written justification for the termination of the employment contract. The employer is obliged to submit a written justification for the decision made to the employee within seven days after receiving the specified request.

It should be noted that according to the labor legislation, the employer, upon the termination of the employment contract, must notify the employee 30 days in advance and provide a monthly compensation equal to the employee's monthly salary. However, when it is not possible to notify the employee of the termination of the employment contract 30 days in advance, in accordance with the law, the employer has the right to notify the employee at least three days in advance of the decision. In such a case, the determined amount of compensation is salary for two months.

Under the current labor code, the grounds for termination of an employment contract may be economic circumstances, technological or organizational changes that necessitate a reduction in the labor force.⁵ According to well-established case law, an economic situation can become grounds for dismissal of an employee only if the pre-established procedure is followed and appropriate preconditions exist. When dismissing an employee due to a deteriorating economic situation, it is necessary to have at the same time: 1. Economic circumstances, technological or organizational changes; 2. The need to reduce the labor force due to the former. The circumstances (economic, technological, or organizational changes) provided for in the first element may exist independently, but in order for a ter-

5 Labor Code of Georgia, Article 37.1 (a) www.matsne.gov.ge

mination of the employment contract to be considered reasonable in each case, any of these (economic, technological, or organizational) circumstances must result in a reduction in the labor force. This means the norm under consideration and its given elements - economic circumstances, technological or organizational changes - and labor force reduction must both be present.⁶ In many cases of termination of contracts, such grounds did not exist.

2.2.1 Dismissal through the abuse of the probationary period

During the pandemic, there were instances of a huge number of dismissals of employees during the probationary period.

According to the current legislation, a contract is made with a person for a probationary period only for the purpose of seeing if the employee is suitable for the work.

In a high-profile case, gambling provider Evolution Gaming suspended work on March 23, after one of its employees was diagnosed with the coronavirus, and fired 1,300 employees on probation.⁷ In public speeches company representatives explained the mass layoffs were caused by economic difficulties, however the only contracts that were terminated were of employees on probation.⁸ The reason for this seems to have been the simple rules for terminating a probationary contract - including the absence of an obligation to pay compensation. However, it is clear that “Evolution Gaming” has reduced its workforce not by selecting and allocating a certain number of employees now unnecessary for reduced operations, but by those with whom it would be able to terminate the employment relationship with a less financial cost. Such action of the employer is illegal and contradicts the essence of the contract intended for a probationary period.

2.3 Forced to Take Unpaid Leave

As a result of the restrictions caused by the coronavirus pandemic, employers have forced employees to take unpaid leave en masse in order to avoid the financial burden and paying wages. Many employees were forced to write a request for unpaid leave for fear of losing their jobs.

6 Georgian case law on labor disputes (collection of decisions), Z. Shvelidze, 2020, 145-150.

7 “Coronavirus: Evolution Gaming suspends work,” Netgazeti, 23.03.2020.

8 “EMC Evolution Gaming Inc., Termination by Evolution Gaming is deemed illegal” – EMC, 21 September, 2020.

In pandemic conditions, it was revealed that employers created a degrading work environment so the workers themselves would be forced to voluntarily request unpaid leave.⁹

According to the Labor Code of Georgia, the employee has the right to take paid leave, including unpaid leave. To directly or indirectly intimidate, coerce, and/or threaten an employee to request unpaid or paid leave is not allowed. In addition, according to the Labor Code of Georgia,¹⁰ creating a degrading environment for an employee in labor relations is considered discrimination. The Law of Georgia on the Elimination of All Forms of Discrimination states that harassment is the persecution, coercion, and/or undesirable behavior of a person on any grounds, aimed at or causing a violation of a person's dignity and creating a terrifying, hostile, degrading, or abusive environment.¹¹ Increasing workload, reducing wages, and other actions aimed at forcing an employee to go on leave are clear examples of harassment.¹²

Employees, without prior negotiation and consent, were sent on unpaid leave indefinitely in restaurants and other food establishments.¹³ Employees of the aviation company also had to write requests for unpaid leave for fear of losing their jobs.¹⁴

Employees were often forced to choose between losing their job and unpaid leave. Hotel employees faced a similar choice.¹⁵ EMC was also approached by a gambling company, whose employees were asked to sign a template request form for unpaid leave in order for them to receive their earned salary.

Creating a degrading environment in order to force employees to go on leave also happened in one well-known food service establishment. As a form of harassment, employees were required to perform much more work than normal, thereby sig-

9 "Does the employer have the right to send you on unpaid leave or terminate your employment" - EMC, March 19, 2020.

10 Labor Code of Georgia, Article 21, Part 1, Part 2.

11 Law of Georgia on the Elimination of All Forms of Discrimination, Article 2, Paragraph 3.

12 Elena Ferrari, Raising awareness on Mobbing, an EU perspective , 2004, p. 2.

13 "95% of employees are on unpaid leave" - Restaurant Levan Kokiashvili, BMG, March 20, 2020; Hotel Palace Hotel has sent some employees on unpaid leave - General Manager, BMG, March 10, 2020.

14 Forced leave for up to 1200 employees of "TAV Georgia" - Mtavari TV June 10, 2020

15 "We have employees on unpaid leave at this stage" - Shalva Alaverdashvili, Founder of the Federation of Hotels and Restaurants, Commersant, March 3, 2020.

nificantly increasing working hours. This circumstance forced employees to agree to unpaid leave.¹⁶

The Prime Minister's statement during the presentation of the anti-crisis package stating that the 1, 200 GEL assistance provided by the government anti-crisis package also applied to "employees on unpaid leave" unfortunately legitimized such practices.¹⁷ With this statement, the government, in a way, encouraged the illegal practice of forcing unpaid leave. On the contrary, it was advisable for the Georgian government to make bold and precise statements ensuring the rights protected by law and preventing their violation.

There were also cases when employees were forced to take paid leave.¹⁸

According to the information provided by the Youth Georgian Trade Union Confederation, one meat product company considered the employees to be on vacation while they were working remotely, and made an unscrupulous interpretation of the remote work. After returning to their workplaces, they learned that remote work was considered their vacation when they had requested time off. The employer's right to take leave of his or her own free will has been limited and unenforced.

2.4 Forced to appear at work

Due to the restrictions imposed by the government and the mandatory recommendations, some of the employees had problems appearing in the workplace. Reasons for non-appearance were self-isolation of employees, quarantine, and inability to travel by transport. In response, employers forced employees to report for work in various ways, often refusing to provide transportation, and in case of a no show, they reduced their wages or fired them.

2.4.1 Self-Isolation and Quarantine

In the first phase of Covid-19's spread, there were cases where employers asked employees to leave self-isolation and quarantine and show up to work. This was

16 "Degusto" did not pay 20% of salaries and sent some employees on unpaid leave - Publika, March 17, 2020.

17 "Assistance will apply to the self-employed, the informally employed and those on unpaid leave" - Prime Minister Giorgi Gakharia - Publika, April 24, 2020.

18 Consultations issued by the Young Lawyers Association.

the basis for the non-payment of wages, threats of termination of employment, and termination of the contract by the employer.¹⁹

In congruence with the Labor Code of Georgia, temporary incapacity for work is if the period does not exceed 40 consecutive calendar days or in the total period for six months does not exceed 60 calendar days - and as a rule, in these cases, when the period has not been violated - is not ground for termination.²⁰ Temporary non-performance of work (temporary incapacity for work) can become a reason for the suspension of employment. According to the order of the Minister of Labor, Health and Social Affairs of Georgia, due to temporary incapacity for work, employees will be given the equivalent of a hospital note in order to excuse them from work.²¹ In addition, according to the Labor Code, an employee has the right to refuse to perform a job, assignment, or instruction that is against the law.²² In cases where violating quarantine or self-isolation risks spreading the disease to other people and violating self-isolation means violating a number of laws, forcing an employee on medical leave to report for work in a pandemic may be a criminal offense.²³ Under the same code, a violation of a sanitary-epidemiological rule which may result in mass illness or poisoning of people is punishable by a fine or house arrest for a term of six months to two years or imprisonment for a term not exceeding two years, with the loss of the right to hold office and barred from certain activities for a term not exceeding three years.

Besides that, the obligation to appear at work due to the threat of losing one's job or loss of wages because of the restrictions imposed under quarantine, self-isolation or a state of emergency contains the signs of forced labor and violates the Constitution of Georgia and fundamental principles of international law.²⁴

Termination of employment contracts or cutting off wages for workers in quarantine, self-isolation or in a state of emergency in the country were, in many cases, illegal.

In response to these said illegal practices, the Ministry of Health issued an official statement issuing a temporary disability note to people in self-isolation and quar-

19 Coronavirus and Workers' Rights - EMC, March 21, 2020.

20 Labor Code of Georgia, Article 36, Part 2.

21 Order №87 / N of the Minister of Labor, Health and Social Affairs of Georgia of February 20, 2009, Article 4, Paragraph 1, Subparagraph "c".

22 Labor Code of Georgia, Article 35, Part 3.

23 Criminal Code of Georgia, Article 132, Article 248.

24 Constitution of Georgia, Article 30, first paragraph.

antine areas, which should have been the basis for the employee to continue his employment and receive a salary.²⁵

2.4.2 Transportation Restrictions

Due to the state of emergency in the country, many employees were unable to report for work due to restrictions on the movement of mini buses within the city limits or municipal administrative boundaries.²⁶ Many employees in the regions found themselves unable to appear at work due to the closure of Tbilisi.

The situation in the country under the conditions of the pandemic, by its nature, possible risks, and taking into account the recommendations issued by the government, was in fact equal to the quarantine situation. As mentioned above, by the order of the Minister of Labor, Health and Social Affairs of Georgia, one of the grounds for giving assistance (maintenance of salaries) to employees due to temporary inability to work was the declaration of quarantine.²⁷ Consequently, employees were supposed to maintain their monthly wages and the additional social benefits provided by employment contracts.

Nevertheless, many employers refused to pay wages due to employees' failure to appear and, in some cases, terminated employment contracts unilaterally.²⁸ Supermarket employees had problems showing up to work amidst public transport restrictions.

Employers refused to ensure transportation.²⁹ Even traveling by taxi was an unreasonable expense and practically a change in the substantive terms of the contract for the already low-paid wage workers.

1.5 Labor Safety

Under national regulations, in order to protect the health of employers, employees, and other persons in the workplace, it was required to follow the general recommen-

25 "At the initiative of the Ministry of Health, quarantine and self-isolation employees will be compensated for missed working days" - Imedinews, March 4, 2020.

26 Resolution of the Government of Georgia №204, Article 1, first paragraph, sub-paragraph "a"

27 M. 4.1. (C) Order №87 / N of the Minister of Labor, Health and Social Affairs of Georgia of 20 February 2009, Article 4, Paragraph 1, Subparagraph "c".

28 Coronavirus and Workers' Rights - EMC, March 21, 2020..

29 "You just finished your shift, but now there is a curfew, how do you get home?" - Radio Freedom, April 1, 2020.

dations in the workplace, take preventive measures against the spread of viral infection, and periodically monitor risk factors, which were mandatory for all sectors.³⁰ In order to meet these goals, the Minister of Health adopted more than 30 general and sectoral recommendations for places of employment due to the threats caused by the pandemic.³¹

Nevertheless, some employers did not suitably fulfill their obligation to create a safe working environment. Individuals employed in various sectors were not provided with personal protective equipment against the spread of the virus (headgear, gloves, protective shield, a disinfectant solution, etc.). In some cases, employees were forced to purchase personal protective equipment at their own expense. In many cases, employees did not have the ability to refuse to report in an unsafe environment.

Performing work in a safe environment is the most important right of the employee.³² The employer is obliged to ensure the safety of the employee's work environment and space, which, in a pandemic means arranging the work environment in such a way as to minimize the risks of infection and spread of the virus by employees. According to the law, an employee has the right to refuse to perform a job or duty if it does not comply with labor safety conditions and poses a certain threat to the employee or the life and health of third parties.³³ The inability of employees to perform their work due to the hazardous environment should be considered a forced delay. According to the Labor Code, if a forced delay is caused by the employer, the employee is to be paid in full.³⁴

Improper implementation of the recommendations proved to be particularly problematic in the field of medicine and the service sector. By the time this report was completed, more than 4,000 medical personnel in the country were infected including nurses. EMC's hotline was contacted by employees of various medical institutions, who stated that despite their request, they did not take appropriate

30 Order of the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia 2901-227 / O of May 29, 2020 "On Approval of Recommendations to Prevent the Spread of the New Coronavirus (Covid-19) in the Workplace". Appendix 1.

31 Order of the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia 2901-227 / O of May 29, 2020 "On Approval of Recommendations to Prevent the Spread of the New Coronavirus (Covid-19) in the Workplace".

32 Labor Code of Georgia, Article 35.1. www.matsne.gov.ge

33 Labor Code of Georgia, Article 35.1.

34 Labor Code of Georgia, Article 32.3

measures for their safety in the workplace. In one such medical facility, an employer “temporarily fired” an employee who worked in the reception area and had requested the installation of a protective shield on their work desk for safe communication.

In the conditions of the pandemic, a safe working environment was not provided even in garment factories. According to the information obtained on October 14th of this year, the number of employees infected with coronavirus in a garment factory had increased to 116,³⁵ which, according to the garment workers themselves, is due to a lack of safety in the workplace.³⁶ While women garment workers are sewing the most important safeguard to prevent the spread of the virus, masks, a safe workplace to ensure their life and health is still not organized for them.

In the early stages of the spread of the virus, a safe work environment was a challenge for people working in wholesale and retail outlets. EMC and partner organizations were contacted by people employed in supermarket chains (7 cases) and noted that their already strenuous work became even more stressful due to the dangerous work environment in the stores. Employees talked about how there was no attempt to disinfect customers, cashiers did not have a protective face shield when interacting with customers, and due to overcrowding, social distance protection was not ensured at the cash register line.

The urgency of the problem was confirmed by the results of the inspection carried out by the Labor Inspection Department in Batumi. 7 out of 8 retail store inspections resulted in a fine of 10,000 GEL for non-compliance with safety standards.³⁷

During the pandemic, the problem of labor safety was actively raised for those working in the mining sector as well. Workers in Tkibuli and Chiatura have spoken out against the lack of compliance with labor safety requirements in the workplace. According to the miners interviewed in the report, Tkibuli miners were not able to maintain social distance in their workplaces, in particular, during travel time in wagons and at the opening, “cleats,” of the mine; 18-20 people had to be transported at the same time without any distance or staggered entry. Neither auxiliary spaces (shower) were safe to be in. Despite these violations, due to a government decree that mining in the Tkibuli mines was

35 “Coronavirus has been confirmed to 116 employees of Poti Garment Factory” - Radio Freedom October 14, 2020.

36 Investigative journalist of OC Media, Tamuna Chkareuli, respondent.

37 For an example, see. “Carrefour, Wilmart, Yalchin and other markets were fined”, TV 25, September 17, 2020.

considered “essential work” for the country’s economic sustainability, employees were forced to report for work.³⁸

Creating a safe work environment could not be ensured even for social workers and social agents. Social agents and social workers who were interviewed noted that they had to purchase personal protective equipment such as a mask and disinfectants individually at their own expense. There have been cases where due to low wages, existing risks, and costs of purchasing personal protective equipment, social agency employees voluntarily terminated their employment, which created additional problems for the already overcrowded social protection system.³⁹

The pandemic made it clear that obedience to labor safety norms in the workplace was a challenge, and employers often avoided adequate adherence to safety norms, indicating the need to strengthen labor oversight mechanism, labor inspection.

2.6 Changing the substantive conditions of the labor contract unilaterally.

Violation of labor rights during the pandemic manifested further in the unilateral changing of the substantive terms of the contracts. According to the Labor Code of Georgia, it is possible to change the substantive terms of labor contracts only with the agreement of all parties.⁴⁰ Remuneration, working hours, and workload are the essential conditions of the contract, their unilateral change is an illegal act and if done is considered void in accordance with the law. During the pandemic, reducing wages for employees, as well as increasing working hours and workloads without the workers’ consent became common. It seems that the only way to keep their jobs was to accept reduced wages by employers (as well as unilaterally suspending insurance and other labor benefits).⁴¹ In this subsection, we discuss the consequences of unilaterally changing the substantive terms of employment contracts by using examples from different areas of employment.

38 For example, see. “Work of coal miners and manganese miners against the background of coronavirus”, Kutaisi Post, September 17, 2020. By the time the report was completed, 144 miners had been infected with Covid 19

39 Social Agent, Respondent

40 Labor Code of Georgia, Article 11, Part 2.

41 “Degusto reduces staff salaries by 20% - Netgazeti, March 17, 2020.

2.6.1 Employees in the Supermarket Chains

While the government considered certain economic activities including the operation of grocery stores to be necessary for the survival of the country's economy and society,⁴² the work of service sector employees, store consultants, and cashiers became extremely vulnerable. A clear example of this is the case of Spar, a grocery store chain. During the curfew imposed in the country, when movement was prohibited from nine o'clock in the evening to six o'clock in the morning, the employees of Spar were instructed to spend the night at work in order for the company to maximize the customer traffic of the store. According to information provided to human rights organizations, the employees did not even have a proper environment to spend the night. Employees had to work 60 hours a week, and the specified work was not subject to overtime pay.⁴³ In addition, due to the inability to leave the store during curfew, employees were not actually able to exercise their right to a break because, as amended by the Labor Code in October this year, the time spent by the employee at the employer's disposal could not be considered a break.

The situation in Spar was followed by a response from the Public Defender. According to the Public Defender, similar cases, which have become permanent, once again and clearly show the problems of the implementation of labor legislation and the importance of strengthening the mandate of the labor inspection.⁴⁴

According to available information, the retail chain Nikora also practiced leaving employees overnight at work. Due to severe working conditions, many employees left their jobs, while for the remaining workers, the workload increased and became more strenuous.

2.6.2 Nurses

Human rights organizations have long talked about the harsh working environment for nurses in the country, low pay, and very heavy workload.⁴⁵ Prior to the pandemic, the reason for the heavy workload was the additional jobs nurses took on due to low

42 Resolution №181 of the Government of Georgia of March 23, 2020.

43 "EMC calls on labor inspectorate to immediately conduct SPAR inspection" - EMC. April 7, 2020.

44 "The Labor Inspectorate should have a mandate to control supermarkets" - EMC on the situation in "Spar" - Formula News, April 6, 2020.

45 "Nurses' Work - Solidarity Network has published the results of research in this area" - Radio Freedom, February 26, 2019.

pay. Many nurses work extra jobs not only in several clinics at the same time but also in informal domestic work, child care, and care work.⁴⁶ The pandemic made the nurses' work environment substantially strenuous.

If before the pandemic, there were an average of 11 patients per nurse,⁴⁷ which is twice the international standard, given the growing number of people infected with coronavirus today, this number has likely increased significantly. With the spread of the virus, nurses have to work virtually continuously. During emergencies, due to transportation restrictions, nurses employed in two or more workplaces often had to move from one clinic to another on foot.⁴⁸ There was a case when an employed nurse was walking from the Tbilisi Sea Hospital to the Republic Hospital (10-11 km). Work overload of nurses which is due to unfair working conditions is already threatening the sustainability of the entire health care system with the spread of the virus.

2.6.3 Garment Factories

As already mentioned, women garment workers employed in garment establishments found themselves in a difficult situation. Based on a series of qualitative research conducted by our organization in 2017,⁴⁹ and a series of articles prepared by OC Media using investigative journalism in 2019, the harsh reality of women garment workers employed in textile enterprises in the Adjara region were brought to light.⁵⁰ Part-time and precarious employment, a degrading work environment, unregulated working hours, and unpaid overtime are the daily challenges of those employed in the garment sector. According to the decision of the Government of Georgia, the work of women employed in garment enterprises was considered essential work for the welfare and safety of the society.⁵¹

Many garment factories started producing masks. Consequently, during the pandemic, the workload of garment factories doubled. However, the working conditions of garment workers have become more severe both in terms of unsafe work environments discussed

46 Revaz Karanadze, representative of the Health Care and Service Trade Unions - Solidarity Network, respondent.

47 Solidarity Network, Nurses' Working Conditions, 2019. Website <http://solnet.ge/wp-content/uploads/2019/04/>

48 Revaz Karanadze, representative of the Health Care and Service Trade Unions - Solidarity Network, respondent.

49 „The situation of labor rights of employees in garment factories” - EMC, March 29, 2017.

50 EMC responds to labor exploitation of women employed in sewing - EMC, March 8, 2020.

51 Justice to the Worker - EMC, April 10, 2020

in Section 2.4 and increased workload due to increased demand for masks. Garment workers were working for 17-18 hours a day, often, in exchange for meager pay.⁵²

2.6.4 Social Workers

The social workers of the Agency for Protection and Assistance to Victims and Persons Affected by Human Trafficking have been facing significant challenges for years. By international standards, one social worker serves 5,000 - 10,000 people. In Georgia, this number reaches 15,000 - 82,000 per social worker.⁵³ In the conditions of the pandemic, the increased social needs of the population have led to more frequent seeking out of social workers. The social workers, in accordance with the existing recommendations, moved to shifts, which significantly increased the daily work and workload of the worker.⁵⁴ In order to maintain their monthly pay, social workers were forced to agree to changed working conditions and increased workload. According to them, it is also difficult for the agency to reliably provide them with transport. Employees often have to travel at their own expense to reach beneficiaries.⁵⁵

2.6.5 Social Agents

Changes in the social protection system brought on by the pandemic have put social agents in a difficult position. Prior to the pandemic, the baseline monthly salary of social agents was 80 GEL. Additionally, piecework pay per completed cases - this includes visiting beneficiaries' residences to gather information regarding their living conditions - are added to baseline salaries. The monthly salaries of social agents average between 500-600 lari before the pandemic. Even though due to the crisis, all planned and unplanned check-ups were suspended and benefits were automatically extended (see Chapter 3), the piecework wages of social agents significantly decreased.

Due to the difficult situation, the social agents went on strike demanding higher wages and changes in terms of employment in the contract. As a result, the agents' demands were partially met and their baseline salary was raised to 250 GEL. However, because scheduled and unscheduled check-ups are still suspended, social agents are still unable to receive the full amount of the already low pre-pandemic income.

52 Investigative journalist of OC Media, Tamuna Chkareuli, respondent.

53 "One social worker serves 19 to 82 thousand people" - EMC, February 14, 2020.

54 Representative of the Union of Social Workers, Ketevan Khutsishvili, respondent.

55 Representative of the Union of Social Workers, Ketevan Khutsishvili, respondent.

2.7. Overtime work and compensation

At a time when the pandemic crisis has significantly increased the workload and, consequently, the working hours of many employees, the problem of overtime pay has reemerged.

The Labor Code of Georgia defines the legal aspects of overtime work. Concretely, for an adult, overtime means doing work for a period of time that lasts more than 40 hours per week. It should be noted that overtime work can be carried out only with the agreement of the parties⁵⁶ (with exemptions specified in the Code).⁵⁷ Alongside this, overtime work must be compensated with increased hourly pay, which must be agreed upon between the employer and the employee.⁵⁸ The law, on the one hand, does not specify the maximum amount of overtime work per working day/week, and on the other hand, the absence of the overtime rate often allows employers to make unscrupulous interpretations and overtime work is either not paid at all or paid with nominal increases (often paid 0.01 GEL).⁵⁹ Even before the pandemic, labor rights organizations actively spoke out against the prevalence of overtime normalization and lack of compensation practices in the country.⁶⁰

In the conditions of the pandemic, the scale of this problem increased even more. Nurses employed in hospitals and medical facilities had to work overtime on a daily basis, which in many cases was not subject to additional remuneration at all.⁶¹ The Public Defender issued a statement about the lack of overtime pay practices and other labor rights violations in the service sector during the pandemic.⁶²

56 Georgian Labor Code, Paragraph 17, Section 3

57 Georgian Labor Code, Paragraph 17, Section 3

58 Georgian Labor Code, Paragraph 17, Section 4

59 It is important to note the reform of Georgian labor legislation, which was approved by the Parliament in the third reading on September 29 this year. The initial version of the draft law, which was supported by the Parliament of Georgia in the first reading, included the amount and procedure of overtime pay, specifically overtime work would've increased by 125% of the minimum hourly wage unlike the vague wording under the current regulation. Unfortunately, during the second reading of the bill, the Parliament of Georgia removed the norm of overtime pay by 125% from the bill.

60 "Survey of Labor Conditions and Practices in the Service Sector" - EMC, September 30, 2015.

61 Revaz Karanadze, Representative of the Health Trade Unions - Solidarity Network, respondent; "Nurses' work before the coronavirus and today" - Publika.ge - June 15, 2020.

62 Public Defender Statement on the International Labor Day, Office of the Public Defender, May 1, 2020.

2.8 Remote Work

According to International Labor Organization data, due to the “Stay at home” policy pursued by most European countries, 40% of employees have moved to remote work.⁶³ Remote work became a kind of solution because, on the one hand, it made it possible to maintain the existing workflow and continue the employment relationship, and on the other hand, it minimized the risk of spreading the disease. According to the recommendations of the World Health Organization, governments of different countries have taken appropriate measures to encourage remote work. In Belgium, for example, the decree on March 18, 2020, obliged employers to organize teleworking during the lockdown.⁶⁴ Similar regulations have been implemented in Germany.⁶⁵

Since the shift to remote work is usually possible in the cases of intellectual and mental work and also requires respective material infrastructure, access to such conditions is directly proportional to the amount of income and is usually the privilege of high-paying employees.⁶⁶ Consequently, the most vulnerable are the workers whose work is impossible to do remotely. Due to the high degree of disparity between high-skilled and low-skilled jobs in Georgia and the large and growing market for low-skilled jobs,⁶⁷ it was impossible for most employees to work remotely.

In addition, employers, for the most part, did not make a reasonable effort to adapt labor contracts to the changed labor conditions. According to the Labor Code of Georgia, the employer is obliged to provide a safe working environment for the life and health of the employee.⁶⁸ This said legal entry should be widely considered and should include, among others, the importance and obligation of adapting the work process to the circumstances. While physical exposure in the workplace promotes the spread of the virus, remote work allows the work to continue, each employer is required to remotely manage work processes. However, given the transport restrictions in place in the country, instead of forcing employees to report for work at their own expense, employers should have taken care of adapting to remote work.

63 Teleworking during the COVID 19 – pandemic and beyond – ILO 2020.

64 Coronavirus – employment law update – fieldfisher, 2020.

65 Coronavirus – employment law update – fieldfisher, 2020.

66 Chiou, L. and C. Tucker (2020), Social Distancing, Internet Access and Inequality, NBER Working Paper Series, 26982.

67 Labor market polarization and its specifics in Georgia, EMC, 2020

68 Labor Code of Georgia, Article 35, Part One.

Given the specifics of the employment contract and the situation created, each employer was obliged to make every effort to make the employment relationship adaptable to the changing circumstances. Otherwise, prior to tackling the aforementioned circumstances, all work outlined in the employment contract not done by employees should've been considered as forced delay by the employer, therefore, all the employees should have been paid full compensation as outlined in the contract.⁶⁹

According to former employees of Silknet, although after they protested against the dangerous work environment they were allowed to work remotely, the company did not provide them with the necessary technical equipment, including work computers. Employees were forced to buy personal computers at their own expense, often using bank loans. Though after employees illegally exercised their right to strike to demand a pay rise, they were fired.⁷⁰

2.9 Labor Inspection During the Pandemic

The government has not found effective mechanisms to prevent or mitigate labor rights violations discussed in this chapter and to empower workers.

Such a mechanism could have been labor inspection. However, the mandate of the labor inspection, as of today, mainly extends to the monitoring and enforcement of labor safety rules. Only from January 1, 2021, will the inspection be empowered to thoroughly examine all aspects of labor rights. The already limited inspection authority faced an additional challenge during the pandemic when the authority to execute both scheduled and unscheduled inspections of labor safety norms under the state of emergency was suspended.⁷¹ On the other hand, by the order of the Minister of Health, it was the task of the Labor Inspectorate to check the adherence to the recommendations and regulations developed for various sectors of the business to combat Covid-19.⁷² Today, the Labor Inspectorate has established itself as one of the most important state institutions in the fight against the coronavirus. However, given that the human and material resources of the inspection were scarce even before the pandemic, and due to this, it could not carry out adequate proactive activities to meet labor safety standards, active participation in the fight against the virus ceases its main

69 Labor Code of Georgia, Article 32, Part One.

70 "What former Silknet employees are protesting" - Netgazeti, September 30, 2020.

71 Resolution of the Government of Georgia №184, March 23, 2020, Article 5.

72 Order of the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia №01-227 / O

functions and weakens its labor protection effectiveness. Today, the inspectorate has only 60 inspectors, which is a few dozen less than the international standard, considering that this standard does not take into account the inspection, which has become functionally limited due to the pandemic.

When asked how the Labor Inspectorate will be able to fulfill its even greater mandate from January 1, the head of the Labor Inspectorate, Beka Peradze, answered that it is planned to hire additional 40 qualified inspectors from the new year. In addition, Peradze said, the institutional independence that his agency would acquire under the new law would make the inspection work even more flexible and efficient. However, given the scale of the virus spread and the expansion of the labor inspection mandate, it is not clear whether even 40 additional inspectors will suffice. In this regard, it should be noted that according to international standards, 1 labor inspector per 20,000 employees in developing countries should come, which in the case of Georgia means about 84-85 inspectors. However, this standard, of course, does not provide for the need for measures against the spread of the virus, which is the function of labor inspectors in Georgia today. However, the mass nature of labor rights violations requires proactive labor inspection policies and systematic inspections that require adequate resources. In addition, until January, before the inspection mandate increases with the entry into force of the new law, it remains unclear what immediate measures the state will take to curb widespread practices of violating workers' rights.

2.10 Communication Problems between Employers and Employees

Resolving, exchanging information, or adhering to rules in order to stop the spread of the virus required active collaboration between employers and employees.⁷³ Such communication channels and the culture of cooperation, unfortunately, were not only not created for many years but were also weakened in many directions, which led to significant problems of communication and crisis management in many workplaces during the pandemic.

Against the backdrop of the negative experience caused by the pandemic, the Employers' Association with the support of the ILO, has prepared a package of recommendations for companies, which aims to better prepare companies for future crises and focuses on policies for communication with employees.⁷⁴

73 Representative of the Employers' Association, Shalva Tskhakaia, respondent.

74 Representative of the Employers' Association, Shalva Tskhakaia, respondent.

As an example of the unexpected understanding of the importance of effective communication channels with employees by employers, we can cite the ongoing processes in the Georgian Railway. The traditionally tense relations between the Railway Trade Union and the Georgian Railway Administration became cooperative during the pandemic as a result of the administration's activity.⁷⁵ The representative of the new railway union hopes that this positive trend will not be episodic and will not only meet the challenges posed by the pandemic but will continue in the future.

2.11 Ineffectiveness of Tripartite Commission

In addition to the problem of communication between the social partners was the fact that despite the unprecedented challenges in terms of labor relations, a tripartite commission could not be convened during the pandemic.

The Tripartite Social Partnership Commission was established by the 2013 Legislative Amendments to facilitate the development of social dialogue and social partnership between employers and employees in the country. However, despite the obvious need for social dialogue, including the commitment made by the government in this regard under the agenda of the Association Agreement between Georgia and the European Union,⁷⁶ it has not yet become an effective mechanism in practice.

Unfortunately, during the pandemic, the passivity of the Tripartite Commission reaffirmed the formal nature of the Commission's work, when it could have played a central role in preventing mass violations of labor rights in the country.

Appendix 1:

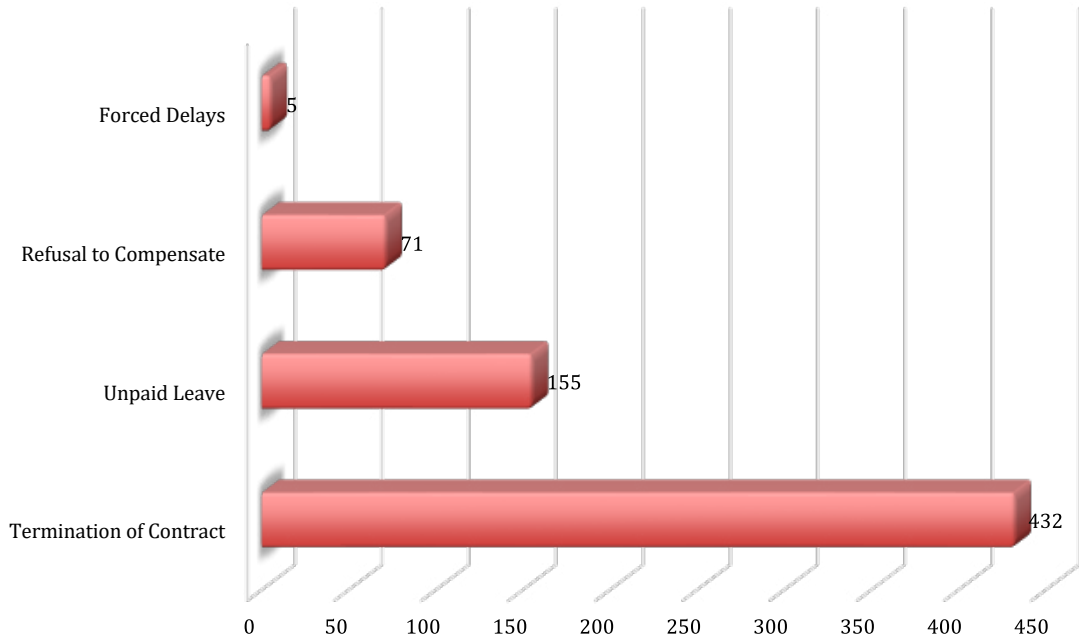
Below are the types and statistics of labor rights violations during the pandemic.

The data summarizes the free legal consultations issued by EMC, the Georgian Young Lawyers Association, and Solidarity Network from March 2020 through August.

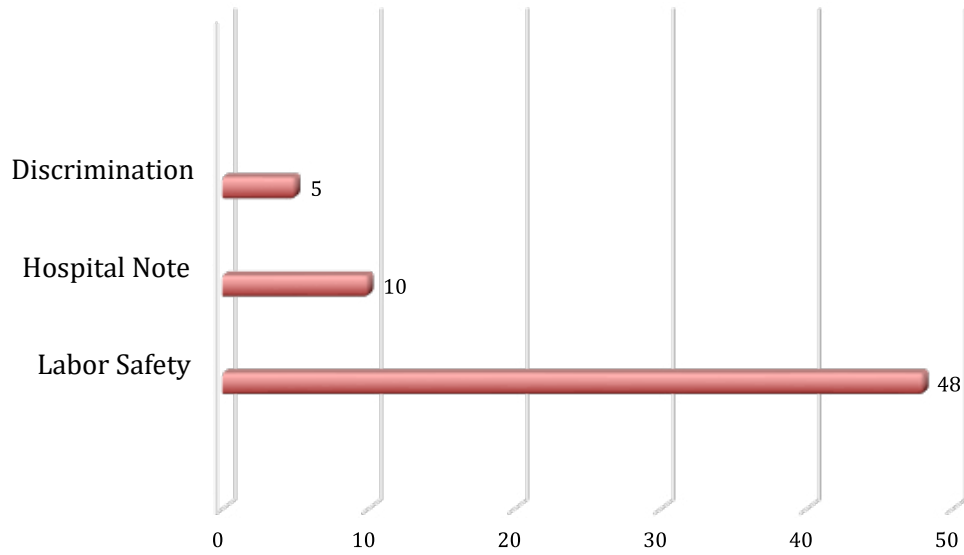
75 Representative of the New Railway Union, Ilia Lezhava, respondent.

76 Association Agenda between the European Union and Georgia 2017-2020 - p.22.

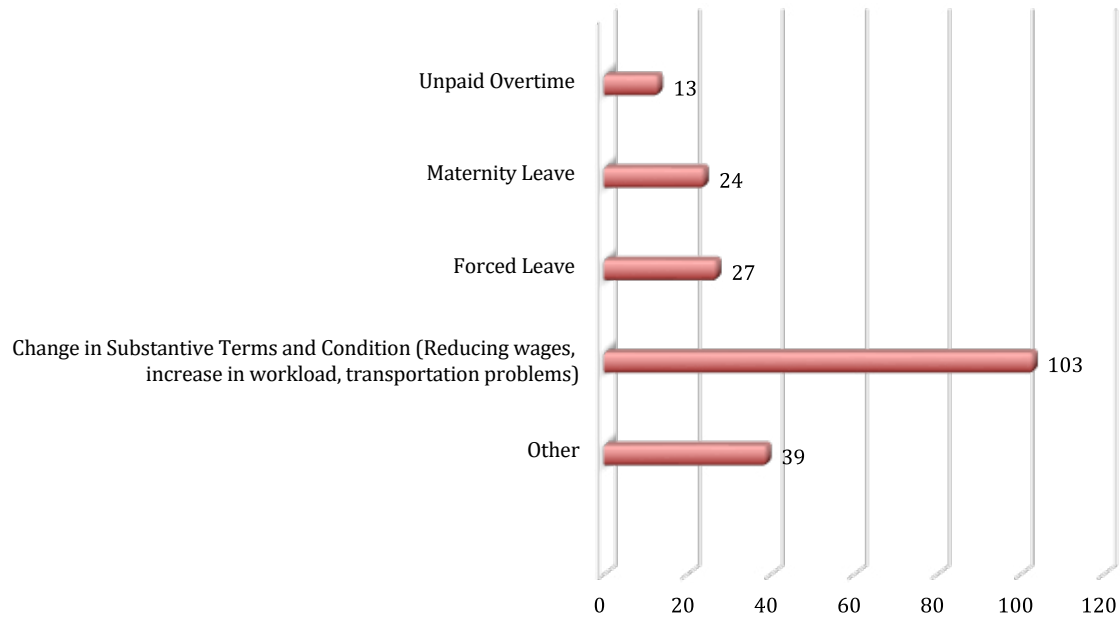
Loss of Income



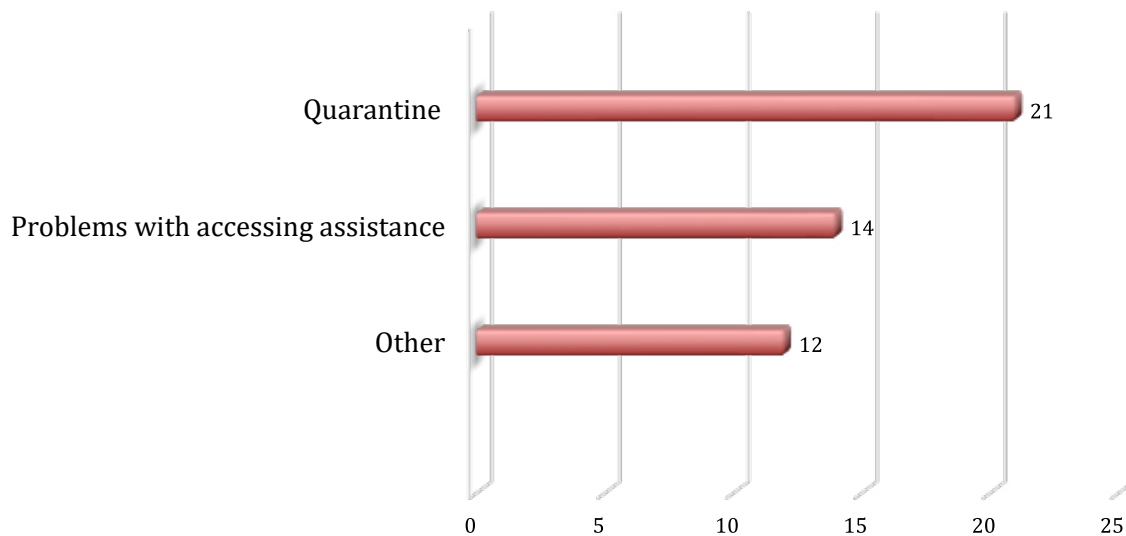
Worksite Safety



Violations of Labor Contract



Problems associated with Restrictions



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INFORMAL WORK

CHAPTER 3.

INFORMAL WORK

3.1 Introduction

The National Statistics Office of Georgia (Geostat) defines informal employment as the group of employees in the non-agricultural sector who are either not at all or partially protected at their workplace by formal agreements (employer did not pay income tax on the employee's salary; employees could not take paid vacation time; could not benefit from a reimbursable hospital not in case of illness).⁷⁷ In addition, a person who performs unpaid work in a family enterprise or farm, who manages household activities, or works in an unregistered enterprise is also considered informally employed. An informal employee may be both a self-employed person (for example, in an unregistered enterprise, or, for example, a registered enterprise without a formal agreement), as well as self-employed (e.g. a repair person, electrician or plumber, retail vendor, taxi driver, etc.) (See Appendix 2).

The fact that a large proportion of informal employees do not have an employment contract in Georgia is evidenced by the fact that more than 98% of employees in domestic work agree to enter into an employment relationship on the basis of a verbal agreement that includes internal regulations, job specifics, length of employment and other duties which, for the most part, are tailored to the daily needs of the employer (see Table 1). A large proportion of respondents employed in the informal sector also speak about the lack of formal agreements. Added to this is the fact that informal employees, who do not have formal agreements, receive their remuneration mostly in cash without a bank transfer. This in turn makes their labor activity and income invisible to the banking and financial sectors, which is another additional factor to social insecurity.

In Georgia, informal employment is found both among the self-employed and among wage workers. When Geostat calculates informal employment, it focuses only on informal workers employed in the non-agricultural sector and maintains statistics on informal workers with this approach. In particular, the number of informally employed is calculated from the total number of people employed everywhere except in

77 National Statistics Office of Georgia, economic activity of the population.

the agricultural sector (see Appendix 2). Therefore, according to Geostat, informal employment is calculated by determining the number of people informally employed in the non-agricultural sector, whose percentage was 34.7% according to 2019 data.⁷⁸ It should be noted that the UN Women 2018 study, which was prepared based on the design and analysis of data collected by CRRG-Georgia and examines the causes and effects of women's economic inactivity and informal employment in Georgia, indicates that 23% of the total population is in informal employment, which comprises 45% of employed workers.⁷⁹ It is noteworthy that, like the UN Women study the Geostat data show that people living in rural areas are more involved in informal labor than urban people. According to Geostat, non-agricultural informal employment in urban and rural settlements, according to 2019 data, is distributed as follows - 33.8% of the workforce is represented in urban areas and 36.8% in rural areas.

The distribution of informal employment in urban areas by type of economic activity shows that the largest share of informal employment is in construction, wholesale and retail industry, transportation, and work in private households.⁸⁰ Numerous reports today speak openly about the fact that these areas are most affected by the Covid 19 pandemic and its accompanying limitations.

According to a report prepared by ISET in April, out of all the types of economic activities listed above, COVID-19 hurt construction, wholesale and retail, and domestic workers the most.⁸¹

It is also noteworthy that the impact of COVID-19 on informal employment, as in the case of other formally employed workers, has a high gender component. Given that areas of employment such as services, street vending, or domestic work are occupied by mostly women workers, pandemic has a much more direct and severe impact on the women workers. In their case, the risks of unemployment and, consequently, impoverishment will be particularly high, as well as the chances of returning to employment or establishing oneself in the labor market in a post-pandemic situation will be particularly reduced.

78 National Statistics Office of Georgia, informal work, 2019.

79 Diamond Alex and Jenkins Margaret, "Women's Low Economic Activity and Involvement in the Informal Sector in Georgia: Causes and Consequences," UN Women, 2018, p. 30.

80 Labor Force Survey, 2019. Formally employed in the non-agricultural sector * Type of economic activity (according to section NACE Rev.2 classifier), cross-tabulation, author's calculation.

81 Pavlenishvili Levan et al., "The Social Effect of COVID-19 - The Basis for the Introduction of Universal Assistance?" (ISET, April 2020).

The purpose of this section of the report is to assess the impact of COVID-19 on informal employment in the non-agricultural sector. Through data processing, case studies, and state policy evaluations, we will analyze the challenges and needs of informally employed people in the face of a pandemic.

In this chapter, we discuss a few cases of informal employment. In terms of vending, we consider, on the one hand, the case of street vendors moving from Adjara to Turkey through Sarpi customs (data collected as a result of two group meetings with five street vendors), and on the other hand, the case of street vendors working at the entrance to Batumi Central Market (data collected as a result of two group meetings with five street vendors). In addition, we will discuss the case of street vendors in the Tbilisi Deserters Market, about which we obtained information based on an expert interview. In the case of domestic workers, the analysis will be based on telephone interviews with seven respondents - five nannies and two domestic helpers; We also recorded interviews with two actors of the theater about the problems in the field of theater; Finally, to analyze the situation of informal workers in the service sector, we will use fifteen telephone and online interviews recorded between June and July 2020, which included respondents employed in the field of entertainment and recreation.

3.2 Informal Work during the Economic Crisis

Informal workers face high economic vulnerability during the COVID-19 crisis. Often, informally employed people are directly dependent on sales and purchasing potential of formal employees. These “Trickle-down” effects of financial resources have been almost completely eliminated due to the COVID 19 pandemic, and the accompanying crisis.

Informal employees, due to the specifics of their work,⁸² react particularly strongly to changes in the country’s gross domestic product, as well as in the country’s gross domestic product. In 2017-2018, the consumption of Georgian households amounted to 66.8-66.7% of GDP.⁸³ The decline in incomes caused by the pandemic and the economic crisis has resulted in a radical decline in household consumption, which has also been reflected in changes in GDP. This is confirmed by the 5.5% decrease in GDP per capita in US dollars in the second quarter of 2020 compared to the first,

82 Qeburia, Tamuna, Labor Market Segmentation and Informal Labor in Crisis, Center for Human Rights Education and Monitoring EMC, Tbilisi, 2020.

83 National Statistics Office of Georgia, “Georgian National Reports 2018”, Statistical Collection (Tbilisi, 2020).

and also the -12.3% decline in real GDP growth over the same period.⁸⁴ The average monthly nominal wage of hired employees in the second quarter of 2020 is also reduced by 12.8% compared to the fourth quarter of 2019, and by 2.5% compared to the second quarter of the same period in 2019. As the ISET School of Economics report indicates:

“The decline in domestic demand is particularly severe for people working in the informal sectors (e.g. temporary workers, other self-employed people, taxi drivers, service workers) who work without a regular salary.”⁸⁵

Despite the ostensible particularities of incomes of informal workers in domestic work, the service sector, or street vending, everyone’s income in this group is dependent on the same source - the country’s domestic consumer dynamics and the incomes of the employees. People involved in domestic work - be it a domestic helper, a nanny, or an elderly caregiver - are paid by the employer out of their own pocket, or in the case of street vendors, they are paid from the general household budget - their daily income depends on consumer’s income and local purchasing ability, while service sector workers are dependent on each consumer’s purchasing ability (bar-restaurant customers, tourists, yoga studios or music club customers).

As revealed in fieldwork and group interviews, street vendors in the Central Market who refer to themselves as “petty sellers” or simply “the petties” when asked if the reduction in tourists due to COVID-19 had a direct impact on their incomes, noted that their “trinkets” were not intended for tourists, but for more local, ordinary people who would come to the market to and “pick up these small trinkets on their way back from the market.”⁸⁶ However, among other challenges, the reduction in the number of tourists had a direct or indirect impact on their sales - in particular, the reduction in tourist flows reduced financial income to their customers, which affected the purchasing power of locals, and also reduced the potential for vendors to sell goods. “If my client does not have money to buy these trinkets, then how will I make those pennies for which I am standing here for?!” stated one of the street vendors.

84 National Statistics Office of Georgia, Gross Domestic Product (GDP).

85 Babichi Yaroslava, Keshelava Davit, and Giorgi Mzhavanadze, “Economic Response to COVID-19: How Does Georgia Cope With the Challenge?” (Tbilisi: ISET, March 2020).

86 Batumi street vendor respondent.

Covid-19, first and foremost, reduced the daily incomes of informal employees and increased their daily financial needs. It is because most of them rely on daily small incomes and so-called “daily salaries” (taxi drivers, traders, DJs, yoga instructors, and other non-agricultural informal people), and because most of them do not have even minimal savings,⁸⁷ cuts in income put them and their families in physiological survival mode.

3.3 Informal Labor Under Imposed Restrictions

Due to being excluded from the social protection system and labor law guarantees, virus prevention restrictions imposed by the government have had a particularly severe impact on those employed in the informal sector. Employees in domestic work have faced particular problems in the face of the government’s ‘stay at home’ orders, restrictions on transportation under the state of emergency, or the suspension of a number of economic activities. Often, their employers themselves would take on the domestic work that informal domestic workers had previously done. As one respondent noted, “(The child’s) parents were at home, and I was at home.”⁸⁸ Lack of access to guarantees under labor law made it impossible for domestic workers to claim adequate compensation for loss of income or employment.

Restrictions also affected street vendors, in their case, in addition to the reduction in demand-consumption, government restrictions on movement, being outside, as well as the active practice of regulations and fines, created problems. During the state of emergency, farmer’s markets organized by street vendors were closed in many cities of Georgia. Gori farmer’s markets were among them.⁸⁹ Gori local authorities explained that the main reasons behind preventing street vending were to prevent the spread of the COVID-19 virus and to protect the health of citizens, as vendors and food buyers could not socially distance.

According to the street vendors, the representatives of the relevant service of the City Hall dismantled the infrastructure⁹⁰ arranged for selling without warning during the curfew, which caused additional material damage to the people already in a difficult social situation. It is noteworthy that while the chain super-

87 See Chapter 3

88 Nanny employed in a private household, respondent.

89 Closed markets and the situation of the self-employed “, Radio Liberty, March 8, 2020.

90 <https://www.facebook.com/FM97.8/videos/223203232114809/>.

markets continued to operate under emergency conditions, street vendors, and markets were not allowed to continue their activities even with plans to create safe conditions.

The situation of the street vendors was further complicated by the fines used by state agencies to control street vending activities. In particular, during fieldwork and group meetings held in Batumi in early September, a large number of vendors stated that they were fined at least once during the pandemic, fines of a minimum of 500 GEL for street vending.

Batumi Street Vendor, respondent 1

“When City Hall officials appeared, I would grab my cart and run. Some others ran faster, some others ran slower. My cart had a broken wheel, and I could not run as fast so I was punished, I needed to run better” (laughs).

Batumi Street Vendor, respondent 2

“They made me run like mad, a 60-year-old woman, so I could earn two kopecks somehow and not contract a 500 GEL fine. I did this solely for my orphaned grandchild, I wasn’t worried about myself so much.

Under the pandemic restrictions, the active dismantling of the counters or infrastructure of street vending and the fining system was a continuation of the ongoing multi-year state policy against street vending.⁹¹

3.4 Labor Safety Issues

Informal employees also face serious health and physical safety risks. Informal employment is often incompatible with remote work and most frequently is connected with high mobility, contact with different groups of people, and prolonged stay in outdoor spaces (especially in the case of the street vendors, informal transport workers, service workers). Because the rules of physical distance or safety have little or no control over informal employment, people employed there are infected. Because there is little or no control over social distancing or safety norms in these informal working spaces, these workers are included in high-risk groups.

⁹¹ Lela Rekhviashvili, *Street Vendors, and the Capitalist Order*, EMC, 2017; Tamuna Qeburia, *Why are they removing street vendors out of public space? On Symptoms and Risks*, EMC, 2017.

Numerous international reports and studies have been prepared on this topic.⁹² In preparing this report, one of the interviewed nannies talked about the stress she had working in her employer's family due to the fear of getting the virus and then bringing it back to her home and infecting her elderly parents, but given the current economic crisis and the vulnerability of her job, she still considered this problem less important than others.

3.5 Problems Associated with Receiving the Anti-Crisis Assistance

Due to high labor mobility, variable incomes, and vague administrative criteria or procedures for social programs, informally employed people often fail to benefit from universal social assistance programs.⁹³ Because the government has not had a policy of protecting the labor rights of the informal workers or alleviating their social vulnerability for years, many difficulties have arisen in the administration of anti-crisis assistance, and many informal employees have not been able to benefit from the assistance. These difficulties were another clear manifestation of the deep and systemic failures in this area.

In order to support workers in the informal sector, it is necessary to develop emergency programs tailored to their needs, as well as to create a solid and flexible social protection system. These programs must, on the one hand, respond to the new and dire needs arising from the pandemic, and, on the other hand, to the systemic failures in the sector.

3.5.1 Impossibility of Providing Proof of Eligibility

Informal hired workers (including domestic workers, yoga instructors, bartenders, servers, music DJs, actors) indicated that they were deprived of the opportunity to receive the 1,200 GEL payment for hired workers because they were unable to provide proof of income deposit. This proof was inaccessible to them due to the absence of an employment contract and lack of banking history. There was also a

92 Jeemol Unni, 'Impact of COVID-19 on Informal Economy: The Revival', *The Indian Journal of Labour Economics*, 16 September 2020; Rajneesh Narula, 'Policy Opportunities and Challenges from the COVID-19 Pandemic for Economies with Large Informal Sectors', *Journal of International Business Policy* 3, no. 3 (1 September 2020): 302–10.

93 Extending social protection and facilitating transition from the informal to the formal economy: Lessons from international experience. ILO. 2019.

problem for informal workers who couldn't furnish proof of income loss in order to receive the 300 GEL assistance. For example, Giga Bekauri, chairperson of the GTUC youth movement and co-founder of the Guild, said that vendors who move around the market with products for sale (ready-made food, drinks, other goods) during the day had virtually zero chance of confirming their income. They had neither a formal or informal agreement with the market administration, nor could they obtain relevant information. Problems were encountered by seasonal migrant workers. In particular, Georgian citizens working in Turkey who were stranded in Georgia⁹⁴ due to the closure of the Sarpi customs, were initially refused anti-crisis assistance. However, through protest and collective mobilization, they were able to meet the demands related to the right to go to Sarpi customs and receive the one-time assistance of 300 GEL. In particular, those who proved their systematic self-employment in Turkey and submitted proof of employment (tea plantation owner, shop owner, hotel owner, or any other employer) were able to receive one-time assistance of 300 GEL.

They were also allowed to cross the Georgian border and work in Turkey, provided that they underwent mandatory quarantine procedures when crossing the border back. It is noteworthy that in the case of employees moving to Turkey, segregation between formal and informal employees was also revealed. Employees who, despite the high rate of border crossing, could not obtain proof of employment due to the informal nature of employment, could not qualify as a recipient of GEL 300 assistance, and therefore could not exercise their right to cross the border. Such were, for example, persons traveling in Turkey for the purpose of petty trade or street vending and engaged in the sale of petty products. As of August 3, according to the Employment Agency, 75,931 persons seasonally employed abroad were registered to receive 300GEL assistance while compensation was given to only 31,261 persons. On August 6, the government decided to expand its anti-crisis assistance program to cover all those who applied for assistance. Nevertheless, many informal workers who had not previously registered on the Ministry of Health website due to lack of evidence were left without assistance.

Some of the actors employed in the field of theater also faced the problem of receiving anti-crisis social assistance. Unlike actors who have labor contracts with theaters, there is a fairly large group of actors who collaborate with theaters as part of a project, working on specific plays. Under the project, which is usually funded by the Ministry of Culture, the actors participate in the play and receive a one-time honorarium

94 Women who worked in Turkey will not be helped by the government of Adjara," - "Batumelebi", April 29, 2020.

after the premiere of the play. After that, the play is usually included in the repertoire of the theater. During the period before the play is in the repertoire, the actors are paid a monthly stipend for participation. As our respondent told us, he plays in a number of plays staged as part of the project. For example, he has been playing for four years in one of the performances twice a week in exchange for which he receives 120 GEL per month from the theater. Although for a large part of the theater actors such employment is long-term and continuous and bears the signs of labor relations, they do not have labor contracts, but service contracts, which is why they could not receive 1200 GEL social assistance because the precondition for such assistance was having a labor contract.

If experienced actors receive honorariums for rehearsals from the beginning of the project, often, the work of students employed on the play will be remunerated only at the end of the project. As a result of the suspension of projects due to the pandemic, many actors employed under the project were deprived of the opportunity to provide proof of income and receive social assistance. Unfortunately, as the actors point out, the Ministry of Culture neglected them and did not protect their interests. According to one of the actors,

It is important for me that the Ministry of Culture or even the government knows that I am employed, that I work ... This perception can help them understand that there are many people like me [informally employed] today and that we also need help.

3.5.2 General Lack of Information

Interviews revealed how informally employed people held scarce and inaccurate information on anti-crisis assistance. Giga Bekauri also pointed to the same thing when he mentioned how disconnected the Deserters and Khashuri street vendors were from the information channels. Their level of awareness was extremely low regarding the assistance, or, in some cases, based on misconceptions. They did not know who to turn to for the relevant proof of eligibility; Added to this were the difficulties of dealing with technical procedures, which were related to finding and opening relevant websites of the Ministry of Health, digitizing and uploading information. Given that informality, in addition to labor and social insecurity, also implies the exclusion of people from formal public spheres, workers automatically became the target of some kind of conspiratorial or falsified sources of information, further reducing their ability to defend themselves and deal with the crisis.

Although the Georgian Government's May 4 decree would not have made anti-crisis assistance a prerequisite for revising targeted social assistance points,⁹⁵ the first phase of the anti-crisis package has confused both street vendors and the nannies we interviewed, who are all beneficiaries of targeted social assistance. Will receiving self-employment assistance have an impact on access to social protection assistance? Many informal workers feared that they would lose targeted social assistance if they received assistance.

At the same time, contradictory statements were made about the coverage of specific groups. For example, according to the explanation given during the self-employment assistance program presentation, income-deprived self-employed persons, such as nannies, would need to submit a letter from a legal entity confirming income to receive assistance. However, the Prime Minister later said that families could issue such a letter to the nannies working with them, and the nannies would be included in the anti-crisis program based on this letter.

3.5.3 Refusal to Issue Proof of Eligibility

One of the main problems was that a large proportion of informal workers depended on the cooperation of those from whom they received income to receive assistance, which posed significant risks.

Street vendors with stalls in the market area had to obtain the essential proof of eligibility for social assistance from the market administration, this turned out to be difficult to obtain, or they weren't able to get such documents at all.

This issue has raised a number of difficulties in communicating and negotiating with the market administration. The considerable hesitance of the market administration in issuing the proofs made it impossible to satisfy the request of each vendor to receive the appropriate documents.⁹⁶ This caution was due to the disorder in the clerical and accounting affairs and the already established informal nature of the relationship. The government has not taken steps to ensure these kinds of risks and protect their interests of employees in such a relationship. Only with the involvement and activity of the trade union organization was it possible to issue relevant proof of eligibility documents to street vendors.

The markets in Khashuri, Gori, and other cities experienced similar problems.

95 On Approval of the Targeted State Program for Mitigation of Infection Caused by New Coronavirus (SARS-COV-2) Infection (COVID-19), Resolution of the Government of Georgia № 286, May 4, 2020.

96 Trade union representative, Giga Bekauri, respondent.

3.6 Returning to Work After the Restrictions are Lifted

Informal and unpredictable relations with the market administration put vendors in a vulnerable position. In the case of the Deserter Market, Giga Bekauri points out that the market administration's attempts to restrict vendors' ability to return to market stalls after the removal of pandemic restrictions, most of which were explained away by security arguments. However, as Bekauri points out, there were actually financial interests behind this. In particular, because the lockdown affected retail, rather than wholesale, it freed up the Deserter Market areas for wholesalers who were paying higher rent rates than retailers to occupy the market area. Consequently, it was more profitable for the market administration to keep the people engaged in wholesale trade in these areas, while for retailers, they were not allowed to return to the stalls. As Giga Bekauri explains, this was followed by protests from retailers (about 130 street vendors), which lasted up to a week. These and other factors became a prerequisite for vendors to return to their stalls. However, it should also be noted that vendors returning to the stalls were ordered to individually maintain hygienic and anti-pandemic safety measures, which put a great financial strain on them. This combined with a reduction in sales made it unaffordable for some and forced them to refuse to return to their stalls.

3.7 Formalization

It is important to research how informal employees' attitudes towards formalizing their work have changed. Unfortunately, at this time, the data is only available on the number of employees employed in domestic work. If before the pandemic only 23% of the domestic workers surveyed were interested in formalizing, after the pandemic, this figure increased to 72%.⁹⁷ The main motivation was access to state anti-crisis assistance and obtaining labor guarantees.

As the ISET School of Economics expert points out in the interview, the pandemic has made many domestic workers think about the importance of formalization. Nevertheless, formalization issues such as fear of cuts to their pay or income related to taxation remain a barrier; distrust of the fact that in the case of formalization labor rights will be protected, especially when today, the rights of the formally employed are massively violated was also an issue.

Formalization also faces barriers in the form of individual perceptions and attitudes. In particular, a large proportion of informal employees (yoga instructors, DJs, traders,

97 UN Women, ISET (in the process of publication), "Analysis of the Regulatory Impact of Ratification of 189 International Labor Organization Conventions (on Domestic Workers)".

artists, accountants, illustrators) believe that informal employment is much more flexible and convenient in terms of time planning, work schedule management, and flexible rules. In addition, some kinds of psychosocial perceptions create barriers - low self-esteem, doubts about one’s own competencies, fears about formalized work ethic and high discipline. It should be noted that in the case of employees in domestic work, the “familiarization” component is also present, where, as respondents state, they perceive themselves not as employees but as family members. It should be clarified that the aspect of familiarization, in the case of domestic workers, is accompanied by both negative and positive aspects - on the one side, the employee “domesticated” with the employer’s family finds it difficult to talk about problematic and worrisome aspects of labor relations. On the other hand, it imposes an obligation on the employer to find some kind of social assistance in crisis situations - be it advance payment of salary, certain material or in-kind assistance, etc. Yet in a pandemic crisis, when incomes plummeted and demand for services or consumption fell, similar personal relationship practices proved insufficient to adequately protect informally employed people.

Concretely how informal workers imagined formalization was different, the answers varied, though all employees saw the need for some form of regulation. For example, street vendors see formalization as City Hall and municipality being in charge of the arrangement and organization of the market stalls and the walkway. Domestic workers point to two ways to formalize: strengthening the mandate and role of employment agencies and placing more responsibility on them in regulating labor relations; and on the other hand, self-organizing those involved in domestic work where they can work together to meet the challenges they face. More direct ways of formalization are much more acceptable and desirable for employees in the service sector, whether signing an employment contract, directly depositing paychecks in bank accounts, or developing other formal mechanisms.

Table 1

Type of Economic Activity (at section level according to NACE Rev.2 classification) *households, as employer’s activities		
non-agricultural informal employees	NO	YES
	0%	100%
Sex	Male	Female
	1,4%	98,6%
Agreement Type	Written Contract	Verbal Contract
	3.0%	97.0%

Appendix 2

მეთოდოლოგიური განმარტებები არაფორმალური დასაქმების მაჩვენებელთან დაკავშირებით

არაფორმალური დასაქმება მოიცავს არასასოფლო-სამეურნეო სექტორში დასაქმებულებს, რომლებიც თავიანთ სამუშაოზე არ იყენებენ ან ნაწილობრივ იყენებენ დაცული ფორმალური შეთანხმებებით, რაც გულისხმობს, რომ შემდეგი პირობებიდან სრულდება ერთ-ერთი მაინც:

- დამქირავებელი არ იხდის საშემოსავლო გადასახადს დაქირავებულის ხელფასიდან;
- დასაქმებულს არ შეეძლო ესარგებლა ანაზღაურებადი ყოველწლიური შვებულებით;
- დასაქმებულს არ შეეძლო ესარგებლა ანაზღაურებადი საავადმყოფო ფურცლით ავადმყოფობის შემთხვევაში;
- დასაქმებული განსაზღვრავს საკუთარი დასაქმების სტატუსს, როგორც ოჯახის საწარმოში/მეურნეობაში უსასყიდლოდ მომუშავე;
- უძღვება შინამეურნეობის საქმიანობებს, როგორც საშინაო პერსონალის დამქირავებლები;
- მუშაობს საწარმოში, რომელიც არ არის რეგისტრირებული.

არაფორმალური დასაქმება გამოითვლება შემდეგი ფორმულით :

$$\frac{\text{არასასოფლო - სამეურნეო სფეროში დასაქმებულების რაოდენობა, ვისთვისაც სრულდება ერთ - ერთი პირობა}}{\text{არასასოფლო - სამეურნეო სფეროში დასაქმებულების რაოდენობა}} \%$$

მონაცემთა წყარო: სამუშაო ძალის გამოკვლევა.

A large, light teal number '4' is positioned on the left side of the page, extending from the top to the bottom. It is semi-transparent, allowing the dark teal background to show through. The number is stylized with a thick stroke.

SOCIAL PROTECTION INSTRUMENTS

CHAPTER 4.

SOCIAL PROTECTION INSTRUMENTS

4.1 Introduction

The pandemic has caused an economic crisis in all countries of the world, however, depending on the economic structure and the current socio-economic situation, instability has been stronger in some countries than in others. In Georgia, due to the dependence on tourism revenue, the service sector, and remittances, the crisis was felt with particular severity by a large part of the population. According to a study prepared in August, revenues from tourism are expected to decrease by 83%, services sector revenues by 19%, and remittances by 10% by 2020.⁹⁸ The dramatic decline in revenues has created a precondition for finding additional foreign debt.

In the second quarter of 2020, compared to the second quarter of 2019, the number of unemployed increased by 15,600 people, which means a 0.9% increase in unemployment, and 89% of them were women. According to the ILO, by the end of 2020, about 284, 000 - 360,000 people will remain unemployed in Georgia, and by 2021 this figure will be equal to 363,800 people.⁹⁹ The ILO estimates that by 2021, 100,000 self-employed people will lose their jobs and, consequently their income.¹⁰⁰ Approximately similar predictions are made by a study prepared by ISET, which is based on sub-sectoral employment data. According to this study, as a result of COVID-19, 30% of hired employees were at high risk of losing their job, while 15% of those who were self-employed were at risk. This equates to a total of about 380, 000 employees. According to a study conducted by UNICEF, due to the economic crisis caused by COVID-19, child poverty in Georgia will increase to 31% in the best-case scenario and to 38% in the worst-case scenario. According to the same study,

as a result of the shock associated with the coronavirus pandemic, the poverty rate (166 GEL per adult per month) is expected to increase from 21.7% to 24% in the case of low shock, 26% in the case of moderate shock and 30.9% in the case of severe shock.

98 Macro Insights: Fiscal Bridging to Further Recovery. TBC. August 2020

99 World Employment and Social Outlook, Trends [2020, ILO](#)

100 World Employment and Social Outlook, Trends [2020, ILO](#)

The number of recipients of social assistance has also increased. In August, almost half a million (493,088) citizens received subsistence benefits, which means that the number of social assistance recipients increased by 14% by 2020.¹⁰¹ The sharp and instantaneous increase in poverty was not unexpected given that 88% of the population surveyed had no savings,¹⁰² while 65% in a July 2020 survey¹⁰³ indicated that they only had money to provide food for a family for a maximum of one month.

Unfortunately, the existing social protection system was not ready to respond effectively to these challenges.

A social protection system is a set of policies and programs aimed at combating poverty and social vulnerability and includes preventive and responsive mechanisms that insure people against social and economic risks and enhance their ability to cope with income loss. In Georgia, significant components of social protection are either non-existent or weak and inflexible, which has led to particular vulnerabilities in society during the crisis.

The purpose of this chapter is to assess both the government's anti-crisis measures and the failures of the existing social protection system and to answer the questions of why the population faced a crisis in such a vulnerable state, and why the government found itself without the social protection tools necessary to deal with the crisis.

4.2 Minimum Wage

One of the main reasons for the extreme social vulnerability identified during the pandemic crisis is the lack of an effective minimum wage. Today, the nominal minimum wage regulation adopted in 1999 is still in force in Georgia, which sets it at 20 GEL. The average salary, according to official data, is 1,200 GEL, although due to the Geostat methodology, its calculation does not cover more than half of the labor market. Due to the high share of the self-employed (approximately 50%) and the informal economy, it is likely that the average wage calculated by Geostat only reflects the situation of a narrow segment of the employed, and the real average wage is much lower. In addition, according to the data, the monthly salary of almost [400,000 people is less than 300 GEL](#).

The lack of an effective minimum wage is especially problematic in conditions of high

101 Social Services Agency, Targeted Social Assistance Program Database 2020.

102 Public Opinion Study. NDI. 2019.

103 Public Opinion Survey. Edison Research, 2020.

unemployment when employees are rarely given choice in employment and usually have to choose between unemployment and low wages. According to Geostat, the unemployment rate in Georgia before the pandemic was 12%, however, due to the high share of self-employed people in the labor market who are engaged in agriculture and produce only their own agricultural products by classification, the real unemployment rate is likely to be significantly higher.¹⁰⁴

Setting a minimum wage is essential for the effective operation of other instruments, such as the introduction of unemployment benefits, as well as unemployment insurance, and a stable socio-economic situation. The COVID-19 pandemic reveals that the current wage structure in the labor market makes it impossible to accumulate savings and leaves workers and their families constantly on the brink of poverty. Partly because of the lack of a minimum wage, before the pandemic, 88% of the population did not have savings, which puts a large part of the population extremely vulnerable to the crisis. At the same time, the minimum wage becomes particularly important when strong workers' unions fail to effectively protect the interests of employees in collective bargaining, and the risk of losing a job - which puts many people in extreme poverty due to a flawed social system - places the employees in a weak position in negotiations with the employers.

4.3 Severance Pay

The government met the crisis without the fundamental tools of social protection. Worker protection tools are divided into active and passive programs.¹⁰⁵ Passive programs refer to the instruments aimed at providing income for the unemployed - this category includes unemployment insurance and unemployment benefits. Active programs incorporate the mechanisms that help labor market participants find work - such as training and retraining programs, employment agencies, wage subsidies, and tax tools aimed at preserving jobs. In crisis situations, both types of instruments can be activated, and in most European countries, a combination of active and passive programs are available before and during the pandemic. Of course, the importance of these tools is not limited to the crisis caused by the COVID-19 pandemic, and their institutionalization is essential for the social protection of workers, which, in turn, will be important in terms of strengthening their employment relationship with employers.

104 Employment policy in the context of development. EMC. 2020.

105 Employment policy in the context of development. EMC. 2020.

For a short time in Georgia, like the minimum wage, the unemployment benefit that was in force from 2002 to 2006 was only a nominal amount and was first set at 14 GEL and then at 20 GEL. With the replacement of the Labor Code in 2006, this entry was also abolished. Since then, despite several attempts to introduce unemployment benefits - 2017-2018, a legislative initiative was formulated by the Georgian Trade Union Confederation¹⁰⁶ - the introduction of unemployment benefits or unemployment insurance systems, despite the high level of unemployment, is still unsuccessful. Unlike in Georgia, in many countries around the world, the welfare of people left unemployed en masse due to the pandemic has been addressed through the unemployment compensation system.

4.4 Active labor market tools

As for active labor market programs, they are weak or episodic in Georgia. On January 1, 2020, the State Employment Agency was launched, replacing the department with the same functions in the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health, and Social Affairs. Despite being established as a separate LEPL, the agency's budget has remained unchanged, and the number of potential beneficiaries, i.e. the number of people the agency will seek to employ, does not exceed 2,500.¹⁰⁷ An employment program of this scale will obviously not fundamentally change the state of the labor market.

The same can be said about the government training - retraining program, which was launched in Georgia in 2014. In 2018, a total of 2,575 people benefited from the program, and as a result, only 19%, or 514 people were able to find a job. It turns out that the two main tools of the active labor market, in total, are used by only a few thousand people a year.¹⁰⁸

According to the International Labor Organization, active labor market programs are "the most important tools"¹⁰⁹ to overcome the economic crisis caused by the COVID 19 pandemic, which has the potential to strengthen anti-crisis plans. In the current crisis, active labor market tools can perform two main functions: on the one hand, to promote the retention of existing jobs and, on the other hand, to support the creation of new jobs for the unemployed and support their active involvement in the labor market.

106 Compensation for the unemployed - trade unions are taking the initiative. Netgazeti. 2018.

107 How can an employment agency help job seekers? BM.ge January 14, 2020; Employment Policy in Georgia, EMC, 2020.

108 Department of Labor and Employment, 2019. Employment Policy in Georgia, EMC, 2020.

109 COVID-19: Public employment services and labour market policy responses. ILO. 2020

Unlike other countries, under the pandemic conditions, neither the emergency active labor market programs have been developed in Georgia, nor the existing programs have been expanded.

Private sector anticrisis assistance programs cannot be considered to be focused on maintaining jobs and wages. It should be noted that significant financial resources were mobilized to assist the private sector, although providing assistance to businesses did not involve stipulations that would protect the interests of employees. The government could have leveraged their financial and tax bargaining chips and benefits at its disposal to make job retention a priority for employers - this would only happen in the case where the government was at least partially committed to avoiding layoffs. Instead, however, the anti-crisis plan offered unconditional assistance to businesses.

The only exceptions were income tax benefits, which can be considered as a form of partial salary subsidy. Under this program, from May through October, the government didn't collect income tax and allowed employers to leave the said funds in the enterprise account. The program covered almost all formally employed people in Georgia, whose salary does not exceed 1500 GEL. The benefit was extended to a maximum of 750 GEL, i.e. only part of the salary of those employees whose salary is between 750 and 1500 GEL was covered. 400,000 employees took part in the program. Part of the salary of the employees under this program is left to the employers, which raises legal questions. Nevertheless, it should be assumed that the program facilitated job retention as it eased the wage burden for employers.

4.5 Social Assistance System

In the absence or inefficiency of passive and active labor market programs, the subsistence allowance system remains the only tool for workers' social protection. This system has existed in Georgia since 2006 and its main goal is to alleviate extreme poverty. There is a points system for identifying and categorizing beneficiaries, according to which the social agent assesses the material condition of the beneficiary. The families with the lowest score, up to 30,000, receive GEL 60 per family member. As points increase, the amount of aid decreases.

During the pandemic, the social assistance system was expanded. For large families (3 or more children) whose score does not exceed 100,000, additional assistance in the amount of 100 GEL was allocated. For families whose points ranged from 65,000 to 100,000, an allowance of GEL 70 was allocated to the first member of the family and GEL 20 to the second member. Prior to the crisis, this category did not receive social assistance, except for 50 GEL for children under 16 years of age.

In addition, the process of regular planned and unplanned verification of social status was suspended and benefits for the socially vulnerable were automatically extended.

After the general quarantine was announced, daycare centers and free cafeterias closed though food vouchers were distributed instead, allowing beneficiaries to purchase food themselves. This change was timely given that free cafeterias are used by 40,000 people in Tbilisi alone. However, it is likely that with the amount allocated per person (1.30 GEL per day), it will be impossible to get food of the same value in the store as the beneficiary received in the free cafeteria, especially due to the increased prices in pandemic conditions.

In 2020, the number of recipients of subsistence benefits increased by 42,000,¹¹⁰ although if we take into account the prognosis of rising unemployment and poverty, it is likely that the number of people wanting to receive subsistence benefits is much higher. The current crisis has put pressure on the subsistence benefits system and has once again exposed the shortcomings in its administration. While tens of thousands of people were suddenly left without income, it was impossible to start compensating them instantly because the procedure required to register in the system takes at least a month, and the evaluation criteria depend on the available property rather than income, reducing the system's response speed. Consequently, unlike unemployment benefits or insurance, the loss of income is not enough to benefit from the social assistance system, which reduces its effectiveness in the event of a sudden economic downturn.

The fact that the subsistence assistance system did not fully cover the population in need of increased economic crisis is not surprising given that the subsistence assistance covered only half¹¹¹ of the lowest-income population in the first place, despite the system is subject to expansion and refinement.¹¹²

4.6 Anticrisis Social Assistance

In a situation where the state did not have the experience of effective use of active and passive labor market instruments, and the social assistance system was targeted and quantitatively limited, it became necessary to develop emergency social transfer programs. In other countries where there is unemployment benefit or unemployment insurance, the crisis burden has been shifted to those programs, while a sig-

110 Social Service Agency, Targeted Social Assistance Program Database, 2020.

111 Population Welfare Survey, UNICEF. 2017.

112 Assessment of the preparation of the Georgian social protection system. UNICEF. 2020.

nificant portion of the population in Georgia has become beneficiaries of emergency social transfers. These social transfer programs are known as anti-crisis programs.

The anti-crisis programs, the main part of which was announced by the government on April 24, 2020, included a number of components of universal and targeted assistance. Students received benefits; More than a million households were exempt from utility bills related to electricity and natural gas; Mortgage and other loan deferral or partial subsidy programs have been established with the private sector; Part of the municipalities also provided assistance in the form of food. However, the bulk of the social transfers planned during the pandemic were implemented through three anti-crisis programs, which we will review here.

- **1,200 GEL for employees, in the amount of 200 GEL per month (from May to October)**

For hired workers who were left without a salary during the pandemic, the anti-crisis package included a monthly allowance of GEL 200, for a maximum of 6 months before salary is restored.

Those who benefited from the program:

Period	1	
	Recipient of monthly (GEL 200) compensation	
	Number of Persons	Amount Transferred
May	72,164	14,432,800
June	132,679	29,895,400
July	118,578	24,357,600
August	96,183	19,353,200
Total	161,295	88,039,000

The planned GEL 200 assistance amount was flawed in essence and incongruous with international standards for subsistence minimum. This is particularly problematic because the aid does not meet existing needs, especially in the face of a pandemic. However, in the initial stage of the program, there were cases when employers were unable to submit mandatory documents in a timely manner or failed to submit the necessary documentation, which hurt employees. According to an interview with a person employed in the tourism sector, submission of proof of eligibility- confirmation of income directly before the pandemic - was difficult for seasonal employees, who often depend on income received in the spring and summer.

It's important that the inclusion of those who have lost their income do not come at the expense of inadvertently or indirectly contributing to the normalization of illegal practices by the government that have left people without their jobs as other sections of this report shows, under the pandemic conditions illegal terminations of contracts through "Forced unpaid leave" have become more frequent. Anti-crisis programs should not be considered as compensation for them.

- **300 GEL for the self-employed and informally employed left without income**

Those who benefited from the program:

	May	June	July	Total
The number of beneficiaries	101,622	60,910	85,750	248,282
Amount transferred	30486600	18273000	25725000	74484600
Denied enrollment (Total)				1718

While the informal sector and the self-employed are often overlooked, and government policies usually do not address their interests and concerns, today they are among the recipients of the announced social packages, which is a step forward.

- **One-time 200 GEL assistance for each citizen under 18 years of age**

Those who benefitted from this program:

The number of beneficiaries	850,000 (estimated)
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It is clear that the above-mentioned efforts of the government in the form of anti-crisis packages still proved insignificant to neutralize the general crisis brought about by the new coronavirus across the country. The World Bank report, which discusses the global trend of government-level anti-crisis measures, states that a total of 14% of the world's population has benefited from similar anti-crisis policies. As for the coverage rate of the population by country, according to this report, in the case of Georgia, the government anti-crisis plan affected only 9% of the total population, which is five points behind the world average of 14%. However, it should be noted that this figure did not include the 200 GEL one-time assistance package for children under 17 years of age.

A number of vulnerable groups were left without assistance at all. The anti-crisis programs did not cover the homeless or those who have been hurt by private lenders and microfinance organizations. Unlike commercial banks, microfinance organizations did not make exceptions in the face of pandemic conditions, and the government has refused to intercede on behalf of borrowers to restructure debt. For many groups, such as those who relied on remittances from emigrated family members -, remittances fell by 10 percent in May 2020 - or those with chronic illnesses, the coronavirus pandemic makes an already dire economic situation even more unbearable.

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CONCLUSIONS AND GENERAL RECOMMENDATIONS

CHAPTER 5.

CONCLUSIONS AND GENERAL RECOMMENDATIONS

5.1 Formal Labor

The persistence of employee rights violations, legislative failures, the lack of an effective labor rights monitoring and enforcement mechanism, and the problems for employees in terms of prompt and credible judicial courts have been made acute and clear by the pandemic. The creation and strengthening of effective institutions for the protection of the rights of employees and the protection of labor rights through legislative changes are extremely important today.

In September-October of this year, labor reform was carried out¹¹³, which, despite a number of shortcomings, provides substantial guarantees for workers' rights. It is noteworthy that the Labor Inspectorate is mandated to fully monitor labor rights and sanction violations; According to the Law of Georgia on Labor Inspection, the institutional independence of the inspectorate is increasing and the guarantees of social protection of inspectors are being strengthened.¹¹⁴

While the expansion of the inspection mandate and institutional independence is welcomed, if it is not equipped with human and material resources, including regional representation, especially in the face of increased authority during the pandemic (see 1.7), it will not be able to effectively protect labor rights.

Other positive legislative changes include: new regulation of the form, terms, and content of labor contracts; The emergence of definitions of working time, shift work, and overtime work in legislation; Regulation of the right to breaks and rest at the legislative level; abolish the existing problematic list of a specific category; Additional guarantees for overnight employees.

113 Initiators: Members of Parliament of Georgia - Dimitri Tskitishvili, Sophio Kiladze, Davit Matikashvili, Tamar Chugoshvili, Irakli Kobakhidze, Rati Ionatamishvili, Tamar Khulordava.

114 Law of Georgia Regarding Labor Inspection.

In parallel with the positive legislative changes, a number of issues remain unregulated or poorly regulated. Among them, it should be noted that the maximum of overtime work, the obligation to pay overtime work, the comprehensive basis for entering a fixed-term employment contract, and termination of an employment contract are still unclear. The legislation still does not regulate the possibility of solidarity strikes, decent maternity leave for women, and does not set an adequate minimum wage.

In addition, timely due process, court fees, and trial deadlines remain problematic in the country. Numerous studies confirm that Georgian citizens often have a completely vague idea about the course of court proceedings, court costs, and resources.¹¹⁵ In the annual reports of the Public Defender, including the last report of 2019, the issues of court deadlines, protracted processes, and access to timely due process are still extremely problematic.¹¹⁶ In the wake of similar problems in the judiciary, labor disputes and the quick establishment of objective truths are becoming increasingly difficult. Although the possibility of an alternative dispute resolution - labor mediation - has been codified at the legislative level since 2013, this institution, even seven years after the reform, does not at all achieve its goals. The practical and legislative problems of labor mediation have long been discussed by non-governmental organizations.¹¹⁷

5.2 Informal Work

The extreme vulnerability and insecurity of informal workers during the pandemic is the result of years of lack of government policy towards informal labor. Labor legislation in Georgia to this day largely neglects issues related to informal employment. The ILO conventions¹¹⁸ and resolutions¹¹⁹ set international standards for the formalization of the informal economy, including opportunities to improve the legal status of those employed in the informal sector and to protect and enforce labor rights. Unfortunately, Georgia is not a party to any of the above international agreements, so the mandatory standards are not required to be enforced in the domestic legislation, although the Association Agreement between Georgia and the EU includes a number of obligations, including compliance with ILO standards in labor relations, which also

115 "Court Access, Population Survey Results" - EMC, May 20, 2020.

116 Public Defender of Georgia 2019 Report - p. 136, pp. 149-150.

117 Legal and Sociological Survey of Labor Mediation - EMC, February 12, 2019.

118 Transition from the Informal to the Formal Economy Recommendation (No. 204), ILO, 2015.

119 Resolution concerning decent work and the informal economy, ILO, 2002.

implies the identification of the informal sector and the government's aspiration to formalize them.¹²⁰

As part of the labor law reforms carried out in the fall, the Inspectorate has been given the authority to inspect and supervise all labor relations, including the informal sector. Although the mandate of the inspectorate in relation to the informal sector is not clearly defined, the head of the labor inspectorate said in an interview that from January, with the new law going into effect, the labor inspectorate will work actively to eliminate violations of labor law in the informal sector.

5.3 Social protection System

As discussed in Chapter 3 of the report, the government was unprepared for the challenges posed by the pandemic due to the lack of unemployment compensation, the inefficient and inflexible social assistance system, or the weakness of active employment policy instruments. Given that the pandemic and the accompanying economic crisis continues, and the one-time benefits provided by the anti-crisis package were not enough to meet the needs of people without income, the government should start thinking about fundamental social reform and active employment policy instead or in parallel with temporary measures. It is also important to set a minimum wage so that employees can accumulate savings both to deal with future crises and to more boldly defend their interests in dealing with employers.

As for informal employment, due to high labor mobility, extremely variable incomes, and vague administrative criteria or procedures, informal employees often fail to benefit from universal social assistance programs.¹²¹ Therefore, in order to support the workers involved in this sector, it is necessary to develop emergency programs tailored to their needs. These programs must, on the one hand, meet the new and acute needs arising from the pandemic and, on the other hand, address systemic failures in the sector.

According to the ILO recommendations,¹²² in response to reduced incomes in the informal sector during a pandemic, the government should be prepared to take emer-

120 Association Agreement between Georgia, on the one hand, and the European Union and the European Atomic Energy Union, and their Member States, on the other hand, - Article 349.

121 Extending social protection and facilitating transition from the informal to the formal economy: Lessons from international experience. ILO. 2019.

122 COVID-19 crisis and the informal economy Immediate responses and policy challenges. ILO. 2020.

gency steps for those affected, which may include providing them with food, informal work hotspots like street vending areas and transportation hubs, guaranteeing safe environments in order to prevent spreading the virus, expansion of the social protection system and maximizing its use. The ILO-prepared policy document also speaks to the fact that the COVID -19 pandemic has once again identified the problems caused by the informal sector's high share of the economy. According to the organization, in the long run, the COVID-19 crisis should be another impetus for the formalization process.

Several countries where the informal sector is particularly large have set up emergency funds to help informally employed workers.¹²³ These funds are used to provide temporary income for certain groups of workers, such as domestic workers, or to provide universal assistance.

In addition, new international liability - the total volume of new loans under the anti-crisis plan - exceeds 4 billion GEL, and new domestic debt, which, according to the Ministry of Finance, amounting to 600 million GEL, poses new risks to economic stability. It is still not studied today and unknown to the general public what impact these new credit commitments under the anti-crisis plan will have on the country's budget and the socio-economic situation of its citizens. Extreme opacity of the process carries the risk that the burden of funds spent today will be redistributed to the most vulnerable groups after the crisis. To prevent this, it is necessary to make known to the general public and to make the subject of public discussion the obligations that the state makes to international financial institutions, as well as future plans for their repayment.

123 COVID-19 and the Informal Economy: Impact and Response Strategies in Sub-Saharan Africa. Friedrich Ebert Stiftung, 2020.