Labour Law Reform in Georgia and EU Standards

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I. Introduction

In September 2003 a working group under the Ministry of Labour, Healthcare and Social Affairs published a draft Georgian Labour Code for broader discussion (see Georgian Law Review 6, No. 1, 2003, 26). This draft code is another important legislative step to modernise the Georgian economy, as the existing code adopted in 1973 despite significant amendments retains, in terms of contents and terminology, many characteristics of the Soviet approach to labour law.

As Georgia endeavours to approximate its legislation to that of the EU in many areas related to the internal market of the EU, among them being "protection of workers at workplace", it might be worthwhile to show the degree to which this draft code is compatible with European legislation and also to outline possible avenues for further approximation. The degree of reasonable approximation must be determined with a view of the purpose of the Partnership and Cooperation Agreement (PCA) and consequently should focus on those legal acts that could support the development of the Georgian economy and democracy, strengthen economic links between Georgia and the EU, foster economic growth and promote a sound business and investment climate.

Therefore, the approximation of labour law must first of all focus on the question whether or not the envisaged level of approximation would strike a balance of interests between employees and employers that is necessary to condition an optimum amount of economic growth while at the same time preserving social peace and in the second place whether it would bring benefits for Georgia's integration in the world economy and particularly for its economic cooperation with Europe. This question carries high significance, as labour legislation traditionally is a field of law that is complicated, costly, politically sensitive and more relevant for everyday life of the people. However, a deep economic analysis is not a subject of this article. The European standards that are discussed in this text mostly are minimum standards that in most cases do not impose extraordinary high costs for entrepreneurs, but could have a stimulating effect to legal culture and therefore deserve attention in the context of legal reforms in Georgia. At the same time it must be kept in mind that human capital is probably the most precious economic resource for Georgia at the time being. Therefore legal reforms of the labour market must be careful in order to give entrepreneurs

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the best access to this resource for the benefit of society. Too far reaching regulation easily can turn the intended protection of employees into an obstacle for economic development by reducing a strong comparative advantage of Georgia on the international markets and consequently could make the population's access to jobs more difficult.

II. EU Rules on Protection of Workers at Workplace

The term "protection of workers at workplace" as it is used in the PCA is not defined by the PCA itself nor it is by the EC Treaty (ECT), along the lines of which many provisions of the PCA are modelled and which could help to better understand the language of the PCA. The rules of the ECT that aim at the regulation of the legal status of workers are divided in the provisions on the free movement of workers, Artt. 39–41 and the provisions on social policy Artt. 136–145. Additional labour related citizens' rights are provided by the Charter of Fundamental Rights of the European Union of 2001.

1. Freedom of Movement

The freedom of movement of persons is one of the fundamentals of the EU's internal market, which has a strong labour related component. Art. 39 ECT rules that this freedom shall be secured within the Community and that it shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment. In parallel, the PCA has in its Title IV a Chapter on Labour Conditions where the parties to the PCA commit themselves to refrain from discrimination of nationals of the other part based on nationality as regards working conditions, remuneration or dismissal, Art. 20 PCA. While the ECT prohibits discrimination of workers at access and performance of work, the PCA prohibits discrimination at the performance of work only, and does not give rights of access to labour markets, free circulation of workers and mutual recognition of qualifications. The term "protection of workers at workplace" used in the PCA evidently aims at excluding issues related to the movement of persons as the PCA regulates this separately in a less far reaching manner than the ECT does.

2. Social Policy

The protection of workers in the EU is a broad one and does not only relate to labour law in its classical meaning as it is understood in some Member States. Whereas in a few Member Countries' legislation (e.g. Germany) labour and social law form two independent fields of law with independent judicial processes, European law sees labour law as a part of social law, which follows the French approach to legal

terminology and industrial policy. Therefore, the provisions of the ECT on social policy form a separate chapter of its Title XI on Social Policy, Education, Vocational Training and Youth, where the social and labour policies that the Community may launch are regulated (Artt. 136–145). These policies significantly changed from Maastricht to Amsterdam in terms of contents and procedures. Before Maastricht, the provisions of the ECT on social policy (Artt. 117– 122 ECT) were disputed in terminology and the requirement of decision–making in unanimity (Artt. 100, 235 ECT) or in qualified majority (Art. 118 a ECT) were obstacles for further legislative development.

The social policy of the EU received a greater dimension after Maastricht when all Member States apart from the UK signed an Agreement on Social Policy which was intended to implement the 1989 Social Charter of the Council of Europe on the basis of the acquis communautaire, to extend the social competencies of the Community and to enlarge the possibilities for decision–making with qualified majority and to lay a stronger legal basis for European collective agreements.

However, as it was not satisfactory to have two legal bases for social policy, the Treaty of Amsterdam restored coherence by incorporating the Agreement referred to above into the ECT. Today, Art. 136 (formerly Art. 117) ECT confirms that social policy falls under the joint responsibility of the European Community and the Member States. This provision emphasises the meaning of fundamental social rights such as those set out in the European Social Charter signed at Turin in October 1961 and in the Community Charter of the Fundamental Social Rights of Workers of 1989 for European social policy. Its objectives are the promotion of employment, improvement of living and working conditions, proper social protection, dialogue between management and labour forces, the development of human resources with a view to lasting high employment and the combating of social exclusion for all EU citizens. Thereby, it must be kept in mind that EU social policy originally aimed at protecting workers only (ex Art. 117), which is in contrast to the current version of the ECT, which aims at improving the living and working conditions of all EU citizens. The mentioned bundle of aims is limited by the obligation to respect the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain competitiveness of the economy.

Since Maastricht – and with slight restructuring and amendments done with the Treaty of Niece that came into force in 2003 – Art. 137 (formerly Art. 117) ECT rules that the Council may adopt directives with qualified majority, in co–decision with Parliament and after consulting the Economic and Social Committee and the Committee of the Regions, in the following sectors:

– Workers' health and safety;
– Working conditions;
– Information and consultation of workers;
– Integration of persons excluded from the labour market;

– Equality between men and woman with regard to labour market opportunities and treatment at work;
– Combating social exclusion;
– Modernisation of social protection systems.

However, unanimity in the Council remains mandatory in the following sectors:
– Social security and social protection of workers;
– Protection of workers where their employment contract is terminated;
– Representation and collective defence of interests of workers and employers, including co–determination;
– Conditions of employment for third country nationals legally residing on Community territory.

Other fields of social policy that are addressed are:
– Recognition of social partners, Artt. 138,139;
– Promotion of cooperation among Member States, Art. 140;
– Equal treatment of men and women, Artt. 2, 141;
– Paid holiday, Art. 142.

The Treaty recognises that the Member States have primary responsibility for social policy and authorises the Community only to support. Insofar one could speak of a shared responsibility and not of an exclusive responsibility of either the Community or the Member States.

However, the amount of salaries, right of association, the right to strike and the right to impose lockouts, are still not subject to Community competence. The mentioned European Charter that to a limited extend deals with these issues is an exemption, and it is important to note that the differences within Europe are larger than is usually thought. This makes it difficult to identify universal international legal standards that are of wide authority. The differences between the levels of regulation in the Southern European countries and in Britain, Ireland and Denmark are greater than the differences between levels in the U.S.A and those of the UK and the Nordic Countries. This is a result of different regulatory approaches, which must be considered as a whole and in terms of their interrelations. Statutory rights against unfair dismissal could serve as an example for the various approaches taken by European countries to labour market regulations. While the continental and, especially, southern countries of the EU make largely use of statutory provisions that aim at preventing job losses for core workers, in the UK and, especially, Scandinavian countries emphasis is put on supporting mobility rather than on guaranteeing jobs. This is done primarily by granting financial compensation for job loss combined with an active labour market policy, rather than focusing on job preservation.

One important characteristic of many European countries' labour policy is that since the nineties many of them saw the need for structural changes in their labour market policy in order to reduce economic pressure on the welfare state. The endeavour was and still is to find a third way between strong deregulation – such as in the USA – and complete regulation. Hereby different approaches were chosen, but mostly in the framework of the following four dimensions:

– The basic system of employment protection is preserved in order to provide protection against unfair behaviour;
– Atypical contracts – fixed–term, temporary and part–time contracts are liberalised and their conclusion is encouraged;
– The regulation of wages and working time is left to collective bargaining, which in turn becomes more decentralised, hence allowing for greater flexibility;
– The level and duration of income support to the unemployed is reduced, eligibility conditions tightened and resources shifted towards active labour market measures in order to enhance job search activity.

Overall and despite many differences, EU labour and social law significantly influences the conditions of the labour markets, protects employees against economic risks and corrects the competitive distribution of income. The overwhelming majority of labour legislation is still dominated by the Member States themselves, who have different policy approaches to preserve the welfare state and to enable best access of industry to the labour market.

In contrast to the ECT the PCA has chosen a somewhat different terminology focusing on protection of "workers at workplace", and not on social policy in all its nuances as the ECT does. It is a matter of fact that the PCA with this provision is based on the old version of the ECT and focuses on the protection of workers only. But the term protection of "workers at workplace" might as well imply that the approximation of legislation in contrast to what has been agreed among the Member States in the ECT shall only relate to those issues that are directly concerned with the concrete place where work is executed. A somewhat similar expression used in Art. 137, Par. 1, a) ECT is "working environment", which is used in the context of protection of health and safety and which also refers to the location, but in a wider sense. But even in this context the European Court of Justice has ruled that protection of workers has to proceed from the term of health as stipulated by the Charter of the World Health Organization, where it is said that health is a state of "complete well being in physical, mental and social terms", which implies a broad understanding of protection of workers that includes social labour protection and working conditions, which in fact means that the working environment does not end at the place where work is executed (workplace), but extends to all issues that have a labour related impact on the health and safety of employees. The same must be true for the general – not only health and safety related – protection of workers at workplace as it is made subject to regulation in the PCA. The PCA does not limit the protection of workers at workplace against their exposure to risks that originate at the location where work is

executed (working environment), but all risks that are related to the performance of labour, which would be identical with the EU concept of social protection with the exception that it extends to workers only.

Consequently, the different terminology used in the PCA and the ECT does not suggest a different scope of protection apart from that the social policy of the EU in some aspects is wider, as it covers social protection of all citizens, whereas the PCA aims at approximation of those laws of the EU's social policy that aim at protecting workers. Moreover, the principle of equal treatment (free movement) is dealt with differently in the PCA and the ECT, which have different purposes. The ECT aims at establishment and protection of the internal market and the PCA, at stimulation of economic growth and consolidation of democracy.

Respectively, the "protection of workers at workplace" under the PCA will have to focus on EU rules on social policy, wherever they protect workers against the labour related risks they face and wherever this can contribute to stimulating economic growth. EU rules on social policy that are related to the protection of workers are now reviewed.

III. General Principles of Social Policy

1. Equal Treatment of Men and Women

The Treaty of Amsterdam has added the achievement of equality between men and women to the list of Community objectives. ECT provides explicitly that in all its activities, the Community must aim to eliminate existing inequalities, and to promote equality, between men and women. Moreover, Art. 141 ECT renders more support to equal treatment of men and women and to equal opportunities than the former corresponding Art. 119, which was dedicated to issues of equal pay for the two sexes for the same work only. Art. 141 ECT enables the Council, after consulting the Economic and Social Committee and in accordance with the co–decision procedure, to take active measures to ensure that the principle of equal treatment is applied.

This approach is made more concrete by a set of directives, the first of which is Council Directive 75/117/EEC of February 1975 relating to the application of the principle of equal pay for men and women. It requires that the same workplace, same work and same working procedures have equal payment for both genders. If the fixing of the wages depends on a system of equal qualification, this system has to apply the same criteria for male and female employees. Moreover, Council Directive 76/207/EEC of February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, stipulates that the principle of equal treatment for men and women is to be implemented as well as regard to these principles. The application of the principle of equal treatment means that there shall be no discrimination whatsoever on the grounds of sex in the working conditions, including selection criteria, for access to all jobs or

posts, whatever the sector or branch of activity, and on all levels of the occupational hierarchy. Any provision contrary to the principle of equal treatment, included in collective agreements, individual contracts of employment, and internal rules of undertakings or in rules governing the independent occupation and professions shall be declared null and void or may be amended.

Moreover, Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes extends those principles on social security schemes that are granted on an enterprise level, with respect to conditions of access, duties to contribute, calculation of duties and conditions concerning duration, whereby the directive lists a number of conditions that are discriminating. In this respect the Draft Code provides basic protection as it prohibits rules that are discriminating of any reason, including gender, that are established under individual or collective labour contracts.

In addition to the rules on labour contracts, the Council Directive 79/7/EEC of December 1978 on the progressive implementation of the principle of equal treatment of men and women in matters of social security extends the principle of equal treatment to the state systems of social security. It applies to the working population – including self–employed persons – whose activity is interrupted by sickness, invalidity, old age, accidents at work and occupational diseases and unemployment. Equal treatment means that there should not be discrimination as concerns the scope of the schemes and the conditions of access thereto, the obligation to contribute and the calculation of contributions, the calculation of benefits including increases due in respect of a spouse and for dependents and the conditions governing the duration and retention of entitlement of benefits. In this respect the Draft Code would not be applicable as the employer–employee relation is not concerned, but the relation of the employee towards the state who established a certain social benefit scheme. Art. 14 of the Georgian Constitution that demands equality before the law implicitly protects women by prohibiting any kind of gender related discrimination by the state, including those that concern the social benefit system.

Council Directive 86/613/EEC of December 1986 on the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self–employed capacity and on the protection of self–employed women during pregnancy and motherhood extends the protection that is available to employees also to self–employed persons. It rules that as regards self–employed persons, Member States shall take the necessary measures to ensure elimination of all provisions, which are contrary to the principle of equal treatment, especially in respect of the establishment, equipment or extension of a business or the launching or extension of any other form of activity. This topic is not the subject of labour law by definition, but it is important to note that many self–employed are dependent on one economic entity as employees are, which according to EU rules justifies a similar protection by the law in certain

aspects. In this respect the Draft Code would not be applicable as it follows the traditional line of labour law protecting employees only.

Important for the discussion of gender discrimination is Art. 2, Par. 8 of Directive 76/207/EEC as well as Art. 141, Par. 4 ECT, which allow the possibility of positive support of the lawmakers of the Member States to women (so–called positive discrimination). Member States may maintain or adopt measures providing specific advantages in order to make it easier for the under–represented sex to pursue a vocational activity or to prevent or to compensate for disadvantages in professional careers. However, such measures may not take the form of strict quotas, which were rejected by the Court of Justice in its rulings in Kalanke in 1995 and Marschall in 1997. Art. 5 Draft Code prohibits any kind of discrimination specifying various reasons including gender discrimination, so that a respective measure would be void and in this sense does not allow for positive measures that give advantages to women and other discriminated groups to decrease discrimination. However, if Georgian law decides to start a policy initiative to render structural support to female employees, it would not require an amendment of the labour code as the rules of the code are not binding for the state, but only for employees, employers and their unions, Art. 4 Draft Code.

EU legislation does not have a uniform approach concerning the legal consequence of a violation of the principle of equal treatment. The ECJ ruled in its Defrenne decision that members of a discriminated group may ask for the same treatment as all other employees. The criteria has to be found in every case in the principle of protection of good faith and legal positions, as sometimes the voidance of violations may lead to unjust results and adjustment may better suit the interests of the parties. Art. 5 Draft Code does not specify the legal consequence of its violation, but the general rules of Georgian civil law would allow an analogous solution.

Moreover, the European Court of Justice has ruled that “where financial compensation is the measure adopted to achieve the objective (of real equality of opportunity), it must be adequate, in a sense that the loss and damage actually sustained as a result of the discriminatory dismissals but also of the other actions such as recruitment and harassment is compensated”. The award must take into account factors such as the efflux of time, and so include interest equated in the British context with injury to feelings and also “moral damage”. Art. 18 Georgian Civil Code provides an opportunity to grant compensation for moral damages that are suffered as a consequence of violation of personality rights. However it is doubtful whether this provision is applicable in the context of gender discrimination.

Moreover, Council Directive 97/80/EC of 1997 on the burden of proof in cases of discrimination based on sex improves the implementation of the principle of equal treatment. The directive implies the reversal of the burden of proof, which means that the plaintiff (employee) does not have to prove discrimination, but the defendant (employer), what resolves significant practical problems related to discrimination. It might be useful to intro-

duce a respective provision in the Georgian Civil Procedural Code, which applies as well to labour law disputes.

2. Equal Treatment of Other Groups

In order to extend protection against discrimination the Directive 2000/42/EC on application of equal treatment regardless of racial differences or ethnical belonging and Directive 2000/78/EC were adopted in 2000. These Directives determine a general framework for the implementation of equal treatment in occupation and profession. The explicit purpose of both directives is to establish a general framework to combat discrimination for reasons of race or ethnical origin as well as religion, belief, handicap, age or sexual orientation in occupation and profession, with a view to putting into effect in the Member States the principle of equal treatment. Direct and indirect discrimination are prohibited, as it is in the context of gender discrimination.

Art. 4 of both directives, as well as Art. 6 of Directive 2000/78/EC allow Member States to establish exemptions that acknowledge specific professional needs. For example, they may regulate that different treatments due to age are no discrimination as long as they are objective and adequate (acceptable) and serve a legitimate policy purpose under national law (employment policy). Both directives allow as well measures for positive support of disadvantaged groups (affirmative action). Apart from that, the directives establish minimum standards and prohibit a reduction of already existing levels of protection in the Member States.

Moreover, in addition to what is regulated by the Draft Code, Member States are requested to provide adequate legal protection for discriminated persons possibly with supporting organisations and have to provide adequate measures to protect persons from disadvantages that are a reaction of the pursuit of their rights, so called victimisation.

IV. Rules on Labour Contracts

Rules on the contents and the procedure of the conclusion of a labour contract are not regulated in great detail by the EU's directives or the ECT. Inasmuch as the establishment of employment relations with a view to cross border occupation of workforces is concerned, Artt. 48–51 ECT provide some principles on how to proceed. These provisions prevent restrictions of the choice of workplace, occupation, remuneration or claims to services of employees among EU Member States but not in relation within these states. Apart from that, several directives regulate specific issues related to information of employees, termination of contracts and working time. But EU law does not deal with requirements for the amount of remuneration, because economic conditions within Member States are too different. The jurisdiction of the European Court of Justice is significant because it ruled on fundamentals

like the application of labour law. Respectively, employees in the sense of European labour law are all employees outside the public service that perform services for someone else during a certain period according to his instructions. According to Art. 3 of the Draft Code employees perform work in a subordinated position, which implies the right of the employer to give instructions. The Draft Code does not exclude those employed in the civil service from application, but provides for a rule that other laws could provide special rules.

1. Fixed Duration Employment

The Council adopted two directives that provide rules on fixed duration contracts. The first is Council Directive 91/383/EC of June 1991 on supplementing measures to encourage improvements in the safety and health conditions at work of workers with a fixed duration employment or a temporary employment relationship. This assumes that employees that are employed in fixed duration or temporary employment are to a higher degree exposed to the danger of work accidents and diseases, which could be reduced by an appropriate instruction and information at the beginning of labour relations. This is why Art. 3 obliges Member States to ensure that before an employee takes up any activity, he must be informed by the undertaking and/or establishment making use of his services of the risks which he faces and that such information covers, in particular, any special occupational qualifications or skills or special medical surveillances required, as defined in national legislation, and states clearly any increased specific risks, as defined in national legislation, that the job may entail.

According to Art. 4 of this directive, Member States shall take the necessary measures to ensure that each worker concerned receives sufficient training appropriate to the particular characteristics of the job, taking account of his qualifications and experience. In addition, Art. 7 demands that in temporary employment relationships, where employees are temporarily transferred from one undertaking to another, Member States shall take the necessary steps to ensure that before these workers are supplied, the user undertaking and/or establishment shall specify to the temporary employment business, inter alia, the occupational qualifications required and the specific features of the job to be filled and that the temporary employment business shall bring all these facts to the attention of the workers concerned. Art. 5 allows Member States to prohibit the use of such workers in cases that would be particularly dangerous to their health and safety. Art. 6 requires that protection and prevention services are put in place and Art. 8 establishes that the liability for the conditions governing performance of work lies with the user undertaking, in case of transfer of employees from one enterprise to another.

The second directive is Council Directive 98/23/EC that is based on Art. 139, Par. 2 ECT. It serves to implement a framework agreement that has been concluded between the Euro-

pean social partners: Union of Industrial and Employers' Confederations of Europe (UNICE), European Centre of Enterprises with Public Participation (CEEP), and European Trade Union Confederation (ETUC). In essence it rules that fixed term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed term contract or relation unless different treatment is justified on objective grounds.

To prevent abuse arising from the use of successive fixed term employment contracts or relationships, Member States shall determine, in a manner, which takes account of the needs of specific sectors and/or categories, one or more of the following:

– Objective reasons justifying the renewal of such contacts or relationships;
– The maximum total duration of successive fixed term contracts or relationships;
– The number of renewals of such contracts or relationships.

Member States shall determine under which conditions fixed term employment contracts or relationships shall be regarded as successive and/or shall be deemed to be contracts or relationships of indefinite duration and employers should give consideration to the provision of appropriate information to existing workers' representative bodies about fixed term work in the undertaking.

Art. 34 Draft Code establishes restrictions for fixed duration employment in terms of the need for justified reasons and maximum duration, which is compatible with EU rules. This provision permits a contract with a fixed term of no longer than five years and enumerates various reasons, for the purpose of which such a contract is admissible, like substituting an employee with whom employment is suspended for a definite time, performance of seasonal work, performance of work needed for preventing extraordinary events (accidents) or for eradicating results thereof or for works whose period or performance is known in advance. However, the Draft Code imposes specific training and information obligations on the employer as EU rules do. Additional protection of the employee is provided by Art. 35 Draft Code, where it is ruled that if a new contract is not fixed upon the expiry of the contract of employment and employment continues, the contract shall be deemed prolonged for an indefinite time.

2. Part-Time Work

Council Directive 97/81/EC is another directive that has been adopted following the procedure of dialogue of the European social partners. It is related to the framework agreement on part–time work concluded by UNICE, CEEP and ETUC (extended to the UK with Directive 98/23/EC from April 1998) and aims at combating discrimination against part-time workers, to improve the quality of part-time work and to facilitate the development of part–time work on a voluntary basis. Moreover, it contributes to the

flexible organisation of working time in a manner, which takes into account the needs of employers and workers. Thus, Clause 4 of the Agreement stipulates the principle of non-discrimination according to which part-time workers may not become discriminated only because they are part-time workers, unless objective reasons justify a different treatment. However, Member States may restrict access to special occupational conditions dependent on seniority of membership in a company, working time or salary conditions. Its Clause 5 contains conditions of promotion of part time work, e.g. the employer should facilitate a change from full time to part-time work by specified measures.

Art. 50 Draft Code regulates that part time work can be agreed as an agreement of employer and employees, whereby the remuneration shall be proportional to the worked hours or the work done. Art. 50, Par. 3 Draft Code says that part time work shall not cause any restriction of labour rights, but does not provide for an escape clause that allows discrimination if there is an objective reason for doing so. Facilitation of part time work is not subject of the Draft Code, apart from in the case of being pregnant, nursing a minor under the age of 14, a disabled or family member who is sick, the employee is entitled to request the employer to grant him/her part time working day or part time working week, which appears to be a rather strong right of the employee that significantly exceeds EU rules.

3. Information Rights

Council Directive 91/533/EEC of October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract of employment relationship bases on the assumption that a lack in knowledge about working conditions may restrict the mobility of workers and respectively first of all stipulates for the duty of the employer to inform employees accordingly. The intention of this directive consequently is on the one hand an approximation of the differing rules of the Member Countries that could be an obstacle for the internal market and on the other hand to improve the standard of living and working conditions of employees. In particular, this directive stipulates an obligation of the employer to inform employees of the conditions applicable to the contract or employment relationship. In general, the employer carries the obligation to inform employees in writing about the conditions that are valid with regard to the essential conditions of the labour relations. This information must cover at least the following:

– The identities of the parties;
– The place of work, where there is no fixed or main place of work, the principle that the employee is employed at various places and the registered place of business or, where appropriate, the domicile of the employer;
– The title, grade, nature or category of the work for which the employee is employed; brief specification or description of the work;
– The date of commencement of the contract or employment relationships, the expected duration thereof;

– The amount of paid leave to which the employee is entitled, or where this cannot be indicated when the information is given, the procedures for allocating and determining such leave;
– The length of the periods of notice to be observed by the employer and the employee should their contract or employment relationship be terminated or, where this cannot be indicated when the information is given, the method for determining such periods of notice;
– The initial basic amount, the other component elements and the frequency of payment of the remuneration to which the employee is entitled;
– The length of the employee's normal working day or week;
Where appropriate:
– The collective agreements governing the employee's conditions of work; or
– In the case of collective agreements concluded outside the business by special joint bodies or institutions, the name of the competent body or joint institution within which the agreements were concluded.

The information referred to may be given to the employee, not later than two months after the commencement of employment in the form of a written contract of employment and/or a letter of engagement and/or one or more written documents, where one of these documents contains at least all the information referred to. Information concerning paid leave, periods of notice, remuneration and working time may, where appropriate, be given in a form of reference to the laws, regulations and administrative or statutory provisions or collective agreements governing those particular points. Additional information must be provided to expatriate employees.

Art. 29 Draft Code which to a significant extent follows the line of the Council directive requires that a contract of employment shall provide for the following essential terms:
– Date of commencement of the work and length of employment relationships;
– Position and type of work to be performed;
– Amount of remuneration or rule of its calculation and payment;
– Length of remunerated leave.

As the rules of the draft code require that a labour contract necessarily has to be concluded in writing, Art. 28 Draft Code, the Code satisfies an important requirement of the directive. However, it might be useful to extend this duty also on other circumstances like information on collective agreements applicable, periods of notice, length of working day, etc.

Moreover, Art. 21 Draft Code stipulates the obligation to provide information to those who are applying for a workplace about the type of work to be performed, working conditions, his/her status within the organisation and essential terms and conditions of a collective agreement.

4. Insolvency

In October 1980, the European Council adopted Directive 80/987/EEC on the approximation of laws of Member States relating to the protection of employees in the event of the insolvency of their employer, which was based on Art. 100 ECT (ex Art. 94). This directive aims at protecting employees against insolvency of the employer by the requirement to establish institutions to guarantee payment of outstanding claims resulting from contracts of employments or employment relationships.

According to Art. 2, Par. 1 of the Directive an employer has to be considered as insolvent when a request for the opening of insolvency proceedings has been filed in involving the employer's assets to satisfy collectively the claims of creditors and which make it possible to take into consideration the claims and where the competent authority has either decided to open procedures or established to close down the undertaking of the employer due to insufficient means. According to its Art. 3, Par. 1 Member States shall take the measures necessary to ensure that institutions guarantee payment of employees' outstanding claims resulting from contracts of employment or employment relations and relating to pay for the period prior to a given date. It is up to the discretion of the Member States to regulate the particulars about the structure, the raising of means and the way of work of the institutions.

The Draft Code does not provide for the establishment of such an institution nor do other legislative acts, which is probably reasonable as the respective costs would be significant and impose an additional financial burden on employers. However, in the long term Georgia could definitely benefit from introducing a similar system in order to ease hardships arising from economic constraints.

5. Working Time

Council Directive 93/104/EEC of November 1993 regulates certain aspects of the organisation of working time. In doing so it establishes the general framework conditions and authorises social partners to implement several measures to make this directive more concrete. It provides minimum rules on safety and protection of health related to organisation of working time, Art. 1, Par. 1, daily (Art. 3) and weekly (Artt. 5, 16 No. 1) minimum rest periods, minimum yearly vacation (Art. 7), breaks (Art. 4), and weekly maximum working time (Artt. 6, 16 No. 2) as well as certain aspects of night and shift work (Artt. 8–12, 16 No. 3) and working rhythm (Art. 13). Member States may deviate from these rules under certain conditions that are fixed in Art. 17.

Employers are obliged to provide a minimum rest period of eleven consecutive hours for every 24 hours and a minimum uninterrupted rest period of 24 hours for every seven–day week. Moreover, a break has to be granted during a daily working time of more than six hours. The Draft Code establishes a higher level of protection compared to the rules of the directive as it requires that an employee shall be given a break during a working day or shift after already every four hours, Art. 58 Draft Code. The length of a break shall not be

less than 45 minutes and more than two hours and in that length of the rest time between the working days shall not be less than 12 hours and finally that the length of the uninterrupted weekly rest time shall not be less than 40 hours. Art. 61 Draft Code rules that Sunday is a common rest day.

The directive fixes an average maximum amount of working time per seven day period of 48 hours including overtime. Art. 47 Draft Code stipulates that working time set by the employer shall not exceed 39 hours a week. Art. 56 Draft Code provides for the possibility of increases due to overtime not exceeding 9 hours.

The directive furthermore requires that every employee may claim a minimum of four weeks of paid yearly vacation, which shall not be replaced by reimbursement. In this regard the Draft Code requires a minimum of 20 days of vacation for a five day week and for a six days week, the latter being the rule according to the Draft Code, 24 days of yearly vacation are required, which exceeds the minimum EU standards for the benefit of employees.

Normal hours of work for night workers must not exceed an average of eight hours in any 24 hours period. Night workers whose work involves special hazards or heavy physical or mental strain shall not work more than eight hours in any period of 24 hours during which they perform night work. For this purpose work involving special hazards or heavy physical or mental strain shall be defined by national legislation and/or practice or by collective agreements concluded between the two sides of industry, taking account of specific effects and hazards of night work. Art. 98 Draft Code has available a general provision on labour protection. However, further action would be needed to cover these detailed aspects of protection of employees.

The Draft Code does not extend to the directive's requirement that night workers are entitled to a free health assessment before their assignment and thereafter at regular intervals. Moreover, the Draft Code does not reflect the requirements of the directive that those employees who are suffering from health problems that are officially recognised as being connected with the fact that they perform night work should be transferred whenever possible to day work to which they are suited. The same is true for the work of certain categories of night workers that may be subject to certain guarantees, under conditions laid down by national legislation and/or practice, where workers incur risks to their safety or health linked to night time working. Moreover, the requirement of the directive that an employer who regularly uses night workers must bring this information to the attention of the competent authorities, if they so request, is not in the Draft Code.

In contrast to the Draft Code, the directive requires that night workers and shift workers have safety and health protection appropriate to the nature of their work and appropriate protection and prevention services or facilities with regard to the safety and health of night workers and shift workers that are equivalent to those applicable to other workers and are available at all times.

Moreover, the directive rules that an employer who intends to organise work according to a certain pattern takes account of the general principle of adapting work to the worker. In particular, he must take the necessary measures to alleviate monotonous work and work at a predetermined work rate, depending on the type of activity, and safety and health requirements, especially as regards breaks during working time.

Member States may derogate from some principles, when this is required by social necessity, which is specified in detail in the directive. In this respect the Draft Code does not provide sufficient flexibility to allow for exemptions for activity that are essential to keep social life going, apart from the provision of Art. 57 Draft Code, which allows overtime in certain cases.

6. Data Protection

Specific rules for data protection of employees have not been adopted by the European Union, but the recommendation for protection of processing of personal data from 1999 and Council of Europe Convention No. 108, and finally Directive 95/46/EC of the European Parliament and the Council of October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data which both have available standards for data protection that concern labour relations matter, as employers, must be seen as processors of personal data as well.

The Draft Code in Art. 23 deals only with personal data of a candidate who is applying for a position. An employer shall be entitled to receive, process and use the data concerning the candidate's personality needed for making the decision on his/her employment. Such information shall not be available for persons not participating in making the decision on employment. Such data may be handed to third persons only with the candidate's consent. If the employment contract is not concluded, an employer shall return – or if the return of data is not technically available – destroy all documents if the candidate does not give the consent of their further keeping.

The principal of consent is incorporated in this provision, however the directive additionally contains detailed requirements for principles relating to data quality, criteria for making data processing legitimate, information to be given to the data subject, data subject's right to access to data, data subject's right to object, confidentiality and security of processing, notification, judicial remedies, liability and sanctions codes of conduct that are applicable with respect to the processing of data of all employees (and not solely candidates).

7. Tranfer of Enterprise

EU rules on transfer of enterprises carry great practical importance. They have recently been consolidated by Council Directive 2001/23/EC of March 2001 on the approximation

of the laws of the Member States relating to the safeguarding of employees rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, which replaced Council Directive 77/187/EEC of February 1977 and Directive 98/50/EEC which amended 77/187/EEC for reasons of clarity. The purpose of this directive is to guarantee that restructuring of enterprises within the territory of the EU does not bring about negative impacts on the employees of the concerned enterprises.

According to Art. 2, the directive shall apply to the transfer of an undertaking, business or part of a business to another employer as a result of a legal transfer or merger. In essence, it stipulates that the transferor's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer shall be transferred to the transferee. The transferee shall continue to observe the terms and conditions agreed in any collective agreement on the same terms applicable to the transferor under that agreement. Thereby it includes a twofold ambition, on the one hand protecting employees against a change of the owner of the enterprise and to approximate Member Countries legislation in order to eliminate obstacles for the proper functioning of the common market.

Following the manifold jurisdiction of the ECJ Art. 1, Par. 1, Lit. b defines "transfer" as a "transfer of an economic entity which retains its identity, meaning an organised grouping of resources which has the objective of pursuing an economic activity whether or not that activity is central or ancillary. It shall apply to public and private undertakings whether or not they are operating for gain."

In essence the principles of the directive are included in Art. 124 Draft Code, where it is said that the transfer of an ownership right of an undertaking or its part to a new owner based on transaction or the law, shall not constitute grounds for the modification or rescinding a valid employment contract. A new owner shall observe the provisions of collective agreement concluded by the previous owner and shall not deteriorate the employee's state for at least one year. However, it is important that the rules of the directive in contrast to the provisions of the draft underline that they are not intended to stand in the way of dismissals that may take place for economic, technical or organisational reasons entailing changes in the work force.

8. Collective Redundancies

In order to protect employees against mass dismissals and to do away with impacts on the internal market due to differing regulations thereof, the Council adopted Directive 75/129/EEC to approximate Member Countries' legislation on mass dismissal, which has been modified by Directive 92/56/EEC of June 1992. In the meantime both directives were replaced by Directive 98/69/EC of July 1998, which exclusively sets the rules of the Member States on mass dismissals.

Art. 1 of the directive defines collective dismissals as those that are effected by an employer for one or more reasons that are not related to the individual workers concerned,

where, according to the choice of the Member States, the number of redundancies is either over a period of 30 days:

– At least 10 in establishments normally employing more than 20 and less than 100 workers;
– At least 10 % of the workers in establishments normally employing more than 300 workers;
– At least 30 in establishments normally employing 300 workers or more;
or over a period of 90 days at least 20, whatever the number of workers normally employed in the establishment in question is.

The directive does not apply to:
– Collective redundancies effected under contracts of employment concluded for limited periods of time or for specific tasks except where such redundancies take place prior to the date of expiry or the completion of such contracts;
– Workers employed by public administrative bodies or by establishments governed by public law;
– Crews of seagoing vessels.

If an employer intends to initialise mass dismissals he has to comply with duties to inform and consult with the representatives of employees and the competent authorities. Consultations must extend to the opportunity to avoid mass dismissals or to reduce its social impact or to accompany them with social measures. The intended mass dismissals can become valid only 30 days after their indication at the competent authority.

Art. 126 Draft Code largely reflects the principles of the directive and selected first alternative for determination of number of relevant redundancies, but does not specify the time period, which would be applicable for counting the dismissals. Moreover, the Draft Code might specify rules on how to calculate compensation for job loss or to indicate that this would be fully up to an agreement between the social partners.

9. Labour Safety

Art. 137 ECT gives authority to the EU to adopt rules on the "improvement in particular of the working environment to protect the health and safety of workers". This area extends to technical labour safety, protection against dangerous substances and social safety of labour. It has to be kept in mind that a number of labour related directives concerning technical work equipment and substances that are not mentioned in this text do not primarily have their purpose in protecting health and safety of workers, but are in the first place product oriented and aim at establishing a "level playing field" within the internal market and therefore are based on Art. 95 ECT, which has the consequence of different procedures for their adoption. These rules do not matter in the context of approximation of labour rules in the framework of the PCA.

a) Technical Labour Safety

In the area of technical labour safety Council Directive 89/391/EC of June 1989 requires emphasis. It is often referred to as a "Constitution of labour protection at the production plant". It contains general requirements on rights and duties of employees and employers and assumes a wide notion of labour safety extending to all measures that protect the life and health of employees, to preserve their workforce and establish human like working conditions. According to Directive 89/391/EC the employer has to observe the following principles:

– Avoidance of risks;
– Calculation of unavoidable risks;
– Combat of dangers at the source;
– Consideration of the human factor at the workplace;
– Considerations of the level of technique;
– Avoidance or reduction of sources of danger;
– Planning of prevention of danger;
– Priority of collective protection against dangers;
– Granting of adequate instructions to employees.

In implementation of this framework directive more than a dozen single directives have been adopted concerning production plants and groups of labour forces that are exposed to special risks. They concern among others protection of health, equipment, protection equipment, ergonomics, transport, work with computer screens, mining and fishery.

B) Rules on Dangerous Substances

Another sub–sector of labour safety concerns the protection of workers against dangerous substances at the workplace. The basic directive in this area is Council Directive 88/642/EEC of December 1988 amending Directive 80/1107/EEC on protection of workers from the risks related to exposure to chemical, physical and biological agents at work. There are additional directives on medical services or dangers deriving from various substances (asbestos, lead, carcinogens). These are Council Directive 98/24/EC of April 1998 on the protection of health and safety of workers from risks related to chemical agents, which establishes threshold values, Directive 2002/44/EC on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise protection) and Council Directive 96/29/EEC laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation. In this regard the draft code entails basic principles that would have to be supplemented by specific regulations regulating the issues, which would have to base on thorough medical and economic review.

All in all the Draft Code has available basic rules on labour protection covering technical labour safety and protection against dangerous substances in its chapter VIII. However, the rules of the EU are far more detailed. In order to be compliant with the directive, the Draft Code would need substantial amendment, whereby thorough economic cost and benefit analysis would be needed in order to identify topics that are suitable for approximation in the short to medium term.

C) Social Labour Safety

aa) Pregnant Employees

Another essential aspect of social labour protection is dealt with in Council Directive 92/85/EEC from October 1992 on the introduction of measures to encourage improvements in the safety and health work of pregnant workers and workers who have recently given birth or are breastfeeding, which also concerns earlier mentioned protection of women at workplace. Protection extends first of all to protection of exposure to toxic agents. The directive obliges employers to assess the nature, degree and duration of exposure in the undertaking and or establishment concerned with regard to risks for safety or health and any possible effect on the pregnancies or breastfeeding workers. If the adjustment of the working conditions and of working hours is not feasible, the exposure is prohibited when pregnant workers or those who are breastfeeding would be obliged to perform duties for which the assessment has revealed a risk of exposure, which would jeopardize safety or health, to the agents and working conditions listed in an Annex to the directive.

Art. 113 Draft Code requires that on the basis of a medical certificate a pregnant or a nursing woman shall be transferred to another job, where harmful influence or industrial factors do not exist, at the same time guaranteeing previous remuneration. This provision basically is compatible with the rules of the directive. However, the adoption of a list of dangerous agents and the proposals of the guidelines could help to facilitate implementation of this provision.

Member States are required to take necessary measures to ensure that concerned female workers are not obliged to perform night work during their pregnancy and for a period following childbirth, which shall be determined by the national authority competent for safety and health, subject to the submission, in accordance with the procedures laid down by the Member States, of a medical certificate stating that this is necessary for the safety or health of the worker concerned.

The measures must entail the possibility of:
– Transfer to a daytime work;
– Leave from work or extension of maternity leave where such a transfer is not technically and/or objectively feasible or cannot reasonably be required on duly substantiate grounds.

According to Art. 52, Par. 1 Draft Code a minor as well as a pregnant woman, who has recently given birth to a child, or breastfeeding woman, shall not be assigned for night

work, and in the case of an employee who takes care of a child under the age of three – without his/her consent. This provision reflects the provisions of the directive, but it is important the law to specify the "period following childbirth".

Moreover, the directive obliges Member States to grant maternity leave. In particular, it requires that Member States shall take the necessary measures to ensure that workers within the meaning of Art. 2 are entitled to a continuous period of maternity leave of at least 14 weeks allocated before and/or after confinement in accordance with national legislation and/or practice.

According to Art. 91 Draft Code, an employee in the period of pregnancy or giving birth shall be entitled to leave in the amount of 70 calendar days before confinement and 60 calendar days after confinement or in case of complication of confinement or birth of two or more children – 70 calendar days. The pregnancy and childbirth leave shall be granted to the employee in total, despite the actually used days before the confinement. Leave shall be remunerated from the funds of social insurance. In this respect the draft code establishes a higher level of protection than the directive of the EU. Moreover according to Art. 94 Daft Code, an employee upon request shall be entitled to leave without remuneration uninterruptedly or in parts for taking care of a child until the child reaches the age of three.

Additionally, Member States are required to grant appropriate time off for antenatal examinations and they shall take necessary measures to ensure that pregnant workers within the meaning of Art. 2 are entitled to time off, without loss of pay, in order to attend antenatal examinations, if such examinations have to take place during working hours.

Art. 60 Draft Code stipulates that an employee who takes care of a child under three years of age shall be given additional breaks for not less than 30 minutes every three hours for feeding and caring for the child. If an employee takes care of two or more children under three years of age the break shall not be less than one hour, but does not provide for leave for ante–natal examinations.

The Directive requires as well a protection against dismissal. Art. 10 stipulates that Member States shall take necessary measures to prohibit the dismissal of concerned female workers, during the period from the beginning of their pregnancy to the end of the maternity leave, except for cases not connected with their condition which are permitted under national legislation and/or practice and, where applicable, provided that the competent authority has given its consent. If such a worker is dismissed during the period referred to, the employer must cite duly substantiated grounds for her dismissal in writing.

An employment contract with a pregnant or nursing woman, a parent who takes care of a child under three years of age, a single parent who takes care of a child under 14 years of age, a guardian of an adolescent with limited abilities under sixteen years of age or with a minor employee shall not be dissolved due to industrial necessity or reasons deriving out of an employee's reasons. Employment rights including the maintenance of a payment and or entitlement to an adequate allowance must be ensured in accordance with national legislation or practice.

The allowances referred to in point 2 shall be deemed adequate if it guarantees income at least equivalent to that which the worker concerned would receive in the event of a break in her activities on grounds connected with her state of health, subject to any ceiling laid down under national legislation.

Finally, the Member States are obliged to introduce into their national legal systems such measures as are necessary to enable all workers, who suffer from a failure of an employer to comply with the obligations arising from this Directive, to pursue their claims by judicial process or by recourse to other competent authorities. According to Art. 193 Draft Code, which responds to this requirement, the courts of general jurisdiction and labour dispute commissions are assigned to deal with labour disputes.

bb) Protection of Young People at Work

Directive 94/33/EEC regulates the adoption of minimum protection standards to protect minors, which are largely transposed by the draft Code in its Artt. 24-26. The concept of the EU's directive on protection of young people at work is that employers shall adopt measures necessary to protect the safety and health of young people (under 18), taking particular account of the specific risks of young people.

Member States shall prohibit the employment of young people for:
– Work which is objectively beyond their physical or psychological capacity;
– Work involving harmful exposure to agents which are toxic, carcinogenic, cause heritable genetic damage, or harm to the unborn child or which in any other way chronically affect human health;
– Work involving harmful exposure to radiation;
– Work involving the risk of accidents which it may be assumed cannot be recognised or avoided by young persons owing to their insufficient attention to safety or lack of experience or training;
– Work where there is a risk to health from extreme cold or heat, or from noise or vibration;

Non–exhaustive list of agents, processes and work that is dangerous is attached to the directive.

Work of children (less than 15 years) is prohibited as a rule. The exceptional employment of children for the purposes of performance in cultural, artistic, sports or advertising activities shall be subject to prior authorisation to be given by the competent authority in individual cases. In the latter case Member States shall by regulatory or legislative provision lay down the working conditions for children and the details of the prior authorisation procedure, on condition that the activities are not likely to be harmful to the safety, health or development of children and are not such as to be harmful to their attendance at school, their participation in vocational guidance or training programmes approved by the competent authority. Member States that make use of this option shall adopt measures to limit the working time of children with special provisions on rest time, night work, annual rest, breaks.

The draft code fixes in its Art. 24 the minimum age of employment as 16. In exceptional cases, a minor under 16 years may be employed with the consent of a lawful representative and body of custody and guardianship unless employment damages the minor's morality, physical or mental development. A contract of employment with a minor under 14 years of age may only be concluded for the performance of work related with culture, education, sport, art or advertising. The protection of work of children is slightly deeper in the EU, where children are recognised those under 15.

Art. 26 regulates that an employment contract shall not be concluded with a minor or a pregnant or breastfeeding woman for hard, harmful and dangerous work. An employment contract shall not be concluded with a minor for work related to gambling, night clubs, manufacturing, transportation and the sale of pornographic goods, narcotic and toxic substances.

V. Collective Labour Law

In the area of collective labour law the European Union has only a limited competence. According to Art. 136 the competence referred to in Art. 137 ECT does not extend to the law on salaries, coalitions, right to strike and lockout. However, European collective labour law is gaining more and more significance. The unions of employees and employers of the Member States already founded roof organisations at a European level. The most important are UNICE, CEEP and ETUC cooperation of which was constituted in 1985 at Val Duchesse and since then is continued in regular meetings. Collective agreements with normative power haven not yet been concluded. However the introduction of the social dialogue is a first step in this direction.

According to Art. 137, Par. 6 ECT the rules on coalitions, on strike and lockout are explicitly exempted from the EU's competence for social policy. The competence in the field of participation of workers has certain significance. According to Art. 137, Par. 1 ECT, the EU has regulatory competences to establish directives in the area of information and consultation of workers, whereby Par. 3 clarifies that the representation and collective defence of the interests of workers and employers, including co–determination, requires an unanimous decision of the Council. In the framework of this competence, the EU adopted directives on the European Workers' Council, workers' codetermination in the European Joint Stock Company as well as one concerning information and consultation of workers. All these do not carry superior importance for approximation of Georgian legislation, because they aim at facilitating those institutions in those companies that operate in various Member States and therefore have a cross border component.

1. Workers Participation, Codetermination

In some EU Member States, workers participation or co–determination do not exist (UK, Greece), in other Member States they are high developed (Sweden, Germany). This is why this topic turns out to be problematic for approximation at an EU level. However, the adoption of Directive 94/45/EEC in September 1994 on the Establishment of a European Workers' Council or a procedure in Community–scale undertakings and Community–scale groups of undertakings for the purposes of informing and consulting employees was the first that followed the Agreement on Social Policy. It deals with the establishment or a European body for the representation of employee's interests in a company with cross border activity. The directive confers certain information and hearing rights but no participation rights.

2. Workers' Participation in European Joint Stock Company

Since the beginning of 2004 it is possible to found a European Joint Stock Company (Societas Europaea, SE). After 30 years of negotiations the European Council adopted a regulation on the statute of a European Joint Stock Company. The reasons for the long lasting negotiations were disputes about the form of participation of workers. There are different approaches in the various Member States. The directive emphasises in the first place voluntary agreements in the concerned companies on the establishment of a representative body between representatives of workers and the management. If these negotiations fail the regulation has a default rule available.

In view of the manifold possibilities that the Member States have to implement this directive it is not expected that a unified participation system will develop in the EU. The efficiency of participation consequently will to a large extend depend on the individual situation of a particular company.

3. Information and Consultation of Employees

Directive 2002/13/EC of March 2002 (to be implemented by the Member States until March 2005) does not establish new institutions for employees. However it gives the right to Member States to establish rules on the information and consultation with employees. According to the discretion of the Member States the rules concern enterprises with at least 50 employees or enterprises with at least 20 employees. The Member States have to establish measures for the case of violations and make available appropriate legal remedies with a court or administrative procedures.

4. Collective Labour Rights

The Charter of Fundamental Rights of the European Union establishes the prohibition of forced labour and slavery, Art. 5, freedom to found association, including trade unions, Art. 12, freedom of profession and right to work, Art. 14. Particularly Chapter IV of the

Charter, which is dedicated to solidarity, shall provide protection against unjustified dismissal, Art. 30, just and adequate working conditions, Art. 31, prohibition of work of children and protection of juveniles at the working place, Art. 32, social protection and social support, Artt. 28, 34, right to collective bargaining and collective measures, including strikes, and Art. 29 establishes a right to access of a service for employment placement service.

VI. Conclusion

Overall the Georgian draft labour code is to a wide extend compatible with those standards that have been set up by the EU. In some aspects it even provides for a higher level of protection. This first of all concerns the areas of non–discrimination, working time and organisation and protection of minors. Hopefully this will not be perceived to be a burden for investment. In the areas of health and safety a lot remains to be done in order to replace numerous Soviet based labour standards, with rules that are affordable and efficient. It must be stressed that apart from the establishment of a proper legal framework it is necessary to set up a proper institutional framework to guarantee a proper implementation of the rules. This extends to unions of employers' and employees' and a sound labour inspectorate to implement rules governing health and safety.