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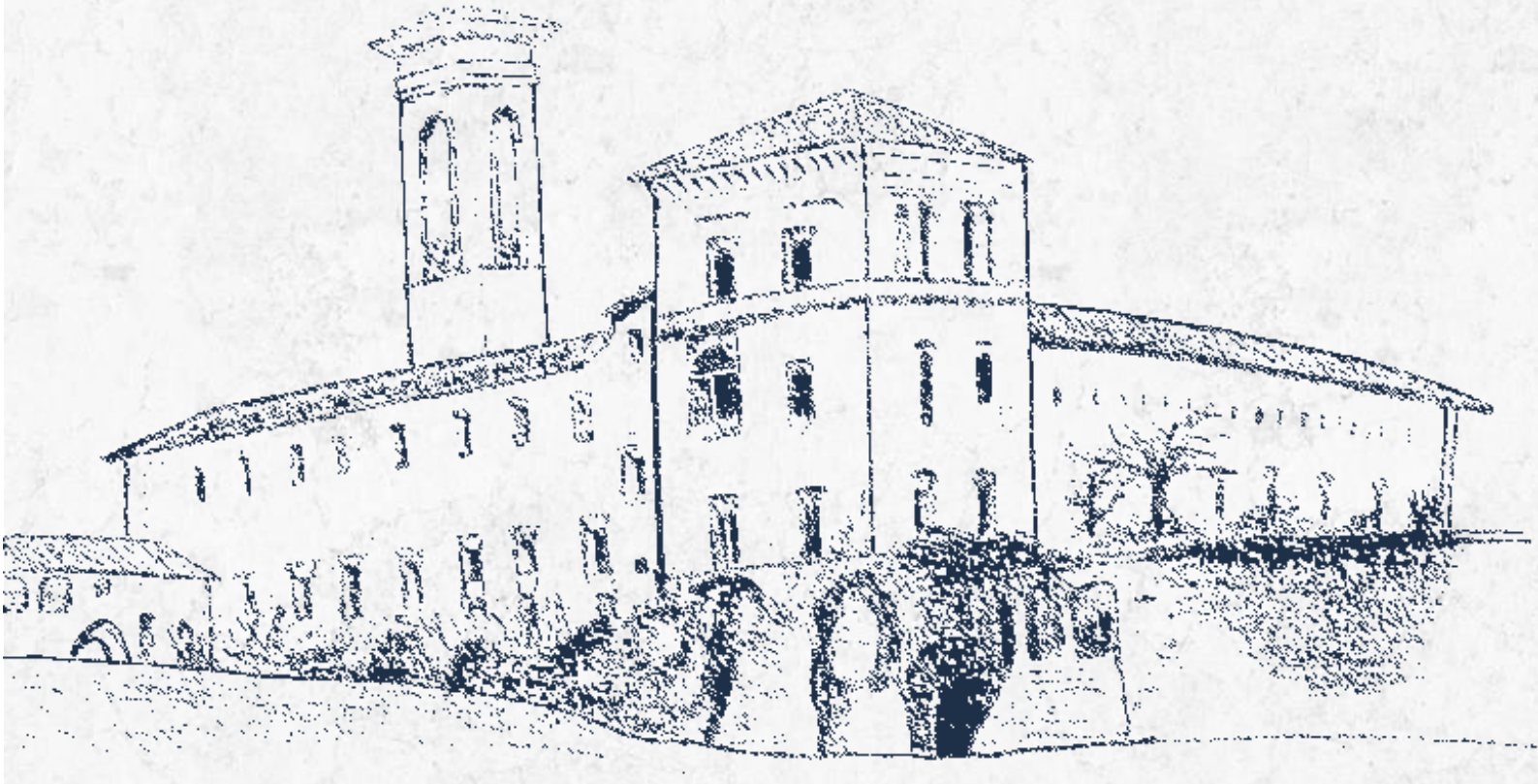

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Working Time Regulation in Georgia

Zakaria Shvelidze [*]

Introduction

In 2006, the Parliament of Georgia passed the new Labour Code. Before that, employment relations in the country were governed by the Soviet Labour Code, in force since 1 October 1973. However, and notwithstanding the amendments made in 1997, existing labour legislation faced serious difficulty in keeping up with recent developments within employment relationships. Starting from the period 2003-2004, a series of sweeping political changes led to the rise of the liberal economy, with trade liberalisation that significantly marked national labour laws. The newly-adopted Labour Code is mainly oriented towards favouring employers' interests, as it waters down regulatory restrictions and standardises labour law provisions. In passing employer-friendly laws, the Georgian government aims at creating a more attractive and liberal economic environment, which, in turn, should encourage job creation and employment. In this connection, this paper discusses the new patterns of working time regulation introduced by the Georgian Labour Code. A comparative analysis between the working time regulation now in place, the Soviet Labour Code previously in force, and the European Union Directive 2003/88/EC concerning certain aspects of the organisation of working time will be carried out. This is done to assess the harmonisation of the new Labour Code with the EU Working Time Directive, also as an instrument to facilitate European integration. On 1 July 1999, the Partnership and Cooperation Agreement (PCA) between Georgia, the European Communities, and their Member States entered into force. Parties to the PCA viewed the approximation of Georgian legislation with

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the European Union (EU) regulations as an important condition for strengthening the economic links between Georgia and the EU. The PCA listed the fields of integration among which employment relationships are to be included. Additionally, pursuant to the 1997 Parliament Resolution, all normative acts issued from 1 September 1998 shall comply with EU norms and standards. In the context of this paper, the conformity of Georgian Labour Code with the EU standards and the European Social Charter, and rules on working time therein, will also be investigated. To some extent, this work will contribute to enhance international awareness of labour laws enforced in this post-Soviet country, even more so because of the peculiar nature of the working time arrangements implemented nationally. This might be regarded as one of the first attempts to provide an analysis of the liberal stance on working time regulation which emerges from the investigation of the Georgian Labour Code.

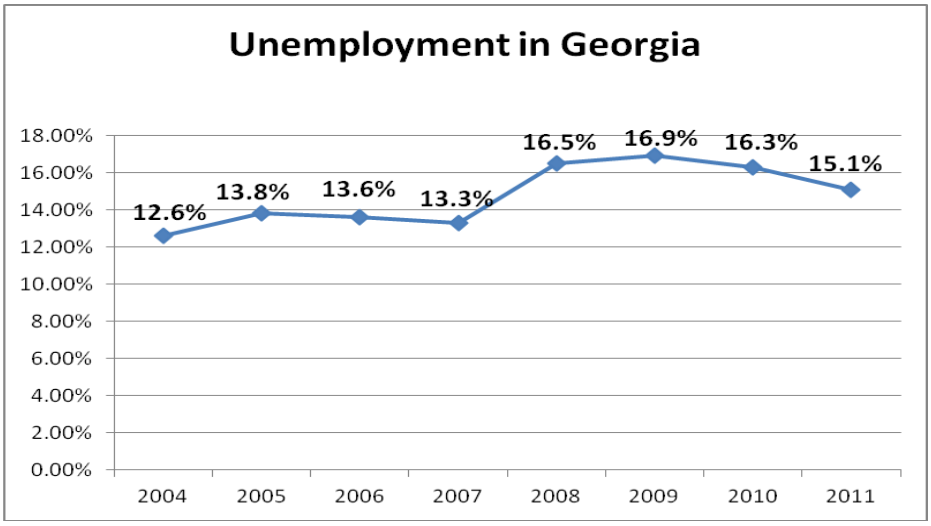
1. The Duration of the Working Week in Georgia

The way working time is regulated varies across countries, and the setting of a maximum number of working hours should, among other things, safeguard workers' health and safety. According to the traditional doctrine, the origins of Labour Law in modern society are to be found in the need of protection towards working people. In an attempt to balance the two parties to the contract, the legislator has deemed it necessary to intervene by envisaging provisions of public law which oblige the employer to abide by certain rules—e.g. standardized maximum working time.[1] The limit set on working hours is regarded as an important restraint mechanism against employers, and the Preamble of the Working Time Directive specifies that all workers should be entitled to adequate rest periods. The concept of "rest" must be expressed in units of time. Workers must be granted minimum daily, weekly and annual periods of rest and adequate breaks. It is also necessary to place a maximum limit on weekly working hours.[2] One of the main characteristics of labour law is its reliance on different economic, political, and ideological aspects, which evidently influence the devising of relevant provisions, this being the result of different factors. The question at issue here cannot be dealt with at an abstract level and without taking into account the current economic

[1] A. Berenstein, and P. Mahon, *Switzerland*, in *International Encyclopaedia for Labour Law and Industrial Relations*, ed. R. Blanpain, 2001, Vol.13, 30.
[2] N. Foster, *Blackstone's Statutes EC Legislation*, 17th Edition, 2006/2007, 382.

scenario.[3] Since 2006—that is when labour law reform took place—the high unemployment rates facing Georgia have been an enormous problem.

Table No. 1—Unemployment Rate in Georgia for 2004-2011.



Source: official information of National Statistics Office of Georgia.

According to Table No. 1[4], starting from 2005, the unemployment rate in the country faced a significant decrease, particularly as a result of the dynamic nature of the economy in the period 2005-2007. However, the Russian invasion and the financial crisis had a detrimental effect on the Georgian economy and in 2008 and 2009, the percentage of unemployed recorded a 3 percent increase. In 2010, the rate fell by 0.6 percent and stood at 16.3 percent.[5] In 2011, the positive trend continued and the rate decreased by 1.2 percent, now corresponding to 15.1 percent. In October 2011, that is at the time the National Democratic Institute Survey was conducted, 62 percent of the interviewees considered the issue of unemployment as being more serious than the national territorial integrity

[3] M. Despax, and J. Rojot, copy-editing assistance F. Millard, *France,* in *International Encyclopedia for Labour Law and Industrial Relations*, ed. R. Blanpain, 1987, Vol. 6, 39.

[4] Author's own elaboration based on the data of National Statistics Office of Georgia, www.geostat.ge.

[5] Georgia reported the highest unemployment rates of the region. In Armenia, Azerbaijan and Turkey, the share of the unemployed was 6.9, 6, and 12.5, respectively.

or Euro-Atlantic integration.[6] As noted in the introductory section, the new Labour Code was passed as an instrument to enhance job creation and reduce unemployment. To this end, and for the first time in the history of Georgian labour legislation—the Labour Code laid down a number of novelties, such as the employment contract to be concluded orally, at-will employment relationship that can be terminated for any reason or for no reason, and the deregulation of working time. In Europe, and for a long time now, the trend has been towards a progressive regulation and a shortening of the full-time working week. At the end of the 20th century, the emphasis has shifted in favour of more flexible and individualized working hours. In this sense, legislation has focused on allowing tailor-made solutions within the boundaries of a commonly agreed-upon framework.[7] The Georgian Labour Code is in line with this tendency, however failing to set the maximum limit of working time. Pursuant to Article 14.1 of the provision "the regular working hours are up to 41 hours a week, however the parties are free to set different regular working hours under the employment contract". The Labour Code has maintained the 41-hour threshold already envisaged by Soviet labour legislation, yet an article has been introduced that entitles parties to the employment relationship to increase the 41-hour threshold in the employment contract. It is therefore important to determine the scope of an agreement of this kind. In other words, it is decisive to understand the extent to which parties are free to bargain on the duration of statutory working time exceeding 41 hours. In considering the subordinate position of the employees, scholars in the field regard labour law to have a "mandatory"[8] nature for employers, as the main idea is to safeguard the weaker party to the contract. In general terms, labour regulations set minimum standards that can be improved through private agreements.[9] This means that parties cannot deviate from the law, neither by individual

[6] L. Navarro, and I. Woodwar. 2011. *Public Attitude in Georgia: Results of a September 2011 Survey Carried out for NDI by CRRC*, (accessed February 27, 2012).

[7] J. Plantenga, and C. Remery, *Flexible Working Time Arrangements and Gender Equality,* in *Comparative Review of 30 European Countries*, 2009, 7, http://ec.europa.eu/social/BlobServlet?docId=6473&langId=en (accessed February 27, 2012).

[8] On some occasions, Labour law is referred to as a set of rules carrying out a protective function, as it sets minimum standards to safeguard employees. S. Gimpu, and A. Ticlea, *Romania,* in *International Encyclopaedia for Labour Law and Industrial Relations*, ed. R. Blanpain, 1988, Vol.12, 22.

[9] T. Treu, *Italy*, in *International Encyclopaedia for Labour Law and Industrial Relations*, ed. R. Blanpain, 1998, Vol.8, 20.

nor collective agreement, save for when the law sets minimum standards which can be amended *in melius*.[10] Amendments to these standards shall be acceptable only if benefitting the employee.[11] The parties to the employment contract are free to regulate their own relationship, as long as this is done within the limits of what is permitted by the law. This theoretical assumption implies that the statutory weekly 41-hour limit should only be modified in such a way to favour the employee (e.g. working time equal to 38 hours per week). Yet this approach is poorly supported in practical terms, for the reason that labour laws are often employer-oriented—that is that the rights were vested only upon employers—and there are no legal grounds to allow such an interpretation. In effect, the Labour Code does not envisage any mandatory rule laying down restrictions on labour standards as a result of an individual agreement.[12]

A different stance was taken by the Soviet Labour Code, pursuant to which clauses that worsen the conditions already set in employment contracts—the so-called *reformatio in peius*—were deemed null and void. Accordingly, and "unless otherwise addressed by the employment contract", the freedom on the signatories to agree upon a higher number of hours is left unrestricted. Employers can establish less favourable conditions for the employees, but such deviations from the contract will be considered illegal. Given this situation, one might question the existence of the 41-hour statutory requirement. It could be said that such a maximum provides the general framework in arranging the working hours, which becomes compulsory if parties fail to agree on matters of working time. As a result of this state of affairs, even though the mandatory upper limit for working time is set at 41 hours per week, parties are free to bargain and extend working time beyond this statutory limit. It follows that the Labour Code contravenes the EU Working Time Directive. Article 6 of the Working Time Directive requires that the

[10] R. Blanpain, *Belgium*, in *International Encyclopaedia for Labour Law and Industrial Relations*, ed. R. Blanpain, 2001, Vol.3, 39.

[11] L. Adeishvili, and D. Kereselidze, *Draft Labour Code of Georgia and Some Basic Principles of Labour Law in Continental European Countries,* in *Georgian Law Review*, 2003, vol. 6, No1, 11.

[12] The only exception in this connection is the regulation of minimum annual paid leave. Under the Labour Code "an employee is entitled to fully paid leave of not less than 24 working days and unpaid leave of not less than 15 calendar days per year. An employment contract may define terms and conditions differently from those addressed in the present article, which shall not worsen the employee's conditions". This special provision automatically excludes modification of minimum paid leave term whereas worsening previously agreed terms of employment.

period of weekly working time shall be limited by means of laws or by any other admissible legal instrument. Further on in the same article, it is stated that working time for each seven-day period, including overtime, should not exceed 48 hours on average.[13] The report produced by the Civil Society Institute (CSI) on the Georgian Labour Code has confirmed that this legislative approach legitimates actors in the labour market to conclude employment contracts which exceed statutory upper limits concerning working time. The survey found that employees who have concluded employment contracts on an oral basis work more than 41 hours a week. Some of those who have been interviewed explained that, because of the higher levels of unemployment reported in Georgia, employers take advantage of their rights and, by a "take it or leave it" approach, force employees to work for more than 60 hours per week in return of low pay. Consequently, employees believe that the statutory limits of 41-hour week could put a break on this situation.[14]

2. Indirect Working Week Limits

Apparently, the Labour Code provides the parties with a certain degree of autonomy at the time of negotiating their contractual arrangements, however indirectly imposing the maximum working week. Pursuant to Article 14.2, "the length of rest time between the working days (shifts) shall not be less than 12 consecutive hours".[15] This provision is a mandatory one and the signatory parties are not in a position to deviate from the law—unless derogation from the employment contract is *in melius,* in the sense that it favours employees. It is noteworthy that, by establishing minimum daily rest periods at 12 hours, the Labour Code provides higher standards than those laid down by the Working Time

[13] N. Foster, *op. cit.*, 384.

[14] The Civil Society Institute (CSI) Monitoring Report on Georgian Labour Code, 16, http://www.civilin.org/pdf/r2.pdf (accessed February 27, 2012).The report is available only in Georgian.

[15] The old Soviet Labour Code laid down a convoluted set of rules on minimum daily rest period: for 5-day working weeks, daily working hours were defined in accordance with a set of guidelines which was agreed upon between the employers and the trade unions. For 6-day working weeks: (i) when the working week was limited to 41 hours, daily working hours were reduced to 7 hours; (ii) when the working week was 36 hours long, the daily working hours were capped at 6 hours; (iii) when the working week was limited to 24 hours, daily working hours were restricted at 4 hours. In addition, the hours worked on the day before the rest day and official holiday were shortened by one hour.

Directive, according to which a daily rest period consists of at least 11 consecutive hours over a 24-hour period.[16] The Labour Code does not regulate the right to rest breaks during the working day,[17] with employees that are not guaranteed minimum rest breaks under Georgian labour law. On the contrary, Article 4 of the Working Time Directive specifies that every worker is entitled to a rest break, whereas the working day is longer than six hours. Additionally, and unlike the Labour Code previously in force,[18] current legislation does not ensure minimum rest periods for a working week. The Working Time Directive provides that per each seven-day period, every worker is entitled to a minimum uninterrupted rest period of 24 hours, plus the 11 hours' daily rest.[19] As it appears, the determination of all those essential components of the employment relationship is subject to the will of the parties. The sole restriction observed here is the statutory maximum for a working day that derives from the regulation on minimum daily rest periods. Since employees have the right to at least 12 consecutive rest hours over a 24-hour period, the daily limit for working time is thus set at 12 hours. As the law does not regulate statutory daily rest break and minimum rest periods for the working week, hypothetically one is allowed to work 7 days a week with 12-hour working days, which add up to 84 hours of the maximum statutory weekly working hours allowed by the Labour Code (see Table No. 2). Yet indirectly, the Labour Code caps the maximum weekly working time at 84 hours.

[16] N. Foster, *op. cit.*, 384.

[17] The old Labour Code did not fix the exact duration of daily rest breaks, while the maximum period for rest break was limited at four hours.

[18] According to the Soviet Labour Code, employees usually worked 5 days per week (and rested for two rest days as per required). However, in establishments where 5-day working week was not regarded as feasible, another working day was added. Employees were not allowed to work on Sundays.

[19] N. Foster, *op. cit.*, 384.

Table No. 2—Proposed Method of Calculation of Maximum Weekly Working Time.

max. daily limit 12	-	min. rest break 0	=	Permitted hours during work day 12	12 X = 7	Max. weekly working time 84 Hours
7 max. workday per week	-	0 min. rest day(s)	=	7 permitted workdays during work week		

Source: Author's own elaboration.

In contrasting what has been discussed so far with the Japanese practices of *Karoshi*—death by overwork—and *Karojisatsu*—suicide by overwork—a working week of a maximum of 84 hours might potentially produce a risk of fatal injuries. *Karoshi* refers to fatigue accumulated by excessive workloads, which might cause the workers to die. The primary cause of *Karoshi* and *Karojisatsu* was extremely long working hours,[20] and, in this regard, a survey of grievances filed in the past showed that the victims worked 3,000 hours a year or more.[21] In Georgia, a worker might work for 84-hour working weeks—excluding 17 public holidays and 24 working days (*circa* 31 calendar days) of annual paid leave as defined by the Labour Code. This means that annual working hours for employee working 84 hours per week might amount to more than 3,200 hours (see Table 3).

[20] M. Ishida, *Death and Suicide from Overwork: The Japanese Workplace and Labour Law,* in *Labour Law in an Era of Globalization, Transformative Practices and Possibilities,* ed. J. Conaghan, M.F. Richard, and K. Klare, 2002, 223.

[21] Article 32 of the Japanese Labour Standards Act limits working time to forty hours a week, yet with one exception. Article 36 of the same law sets forth that whereas the representative of a trade union composed of over half of the workers, or the representative of over half the workers enters into an agreement with the employer, and the employer pays a 25 percent overtime premium, then working hours may be lengthened over the legal limit of forty hours per week and employees may have to work on holidays too. As a result, overtime work is performed upon an agreement between employers and representatives of trade unions or of over half the workers, thus not necessarily with the consent of workers on an individual basis. Ibid. 219-225.

Table No. 3—Proposed Method of Calculation of Annual Working Time.

84 hours	**X**	**52 weeks**	**-**	**(17days x 24hours) Public holidays**	**-**	**(31days x 24hours) annual paid leave**	**=**	**3216 hours annual working hours**

Source: Author's own elaboration.

Evidently, the upper limit of 84 hours of weekly working time envisaged by the Labour Code contravenes the EU Working Time Directive. The trend towards diversification and individualization of working time are evident in most European Member States. The same cannot be said of Georgia, where much still needs to be done in this connection.[22] Existing working time regulation also fails to conform to Article 2.1 of the European Social Charter, especially taking account that "with a view to ensuring the effective exercise of the right to just conditions of work, the parties undertake to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit". The Conclusions of European Committee of Social Rights (ECSR) underlined how the Labour Code provides the parties with maximum freedom in determining both the duration and conditions of working time.
The ECSR recalls that the aim of providing for reasonable daily and weekly hours in Article 2.1 is to protect the health and safety of workers. Under all circumstances, it should be ensured that no employee works more than 60 hours in a week. Given that Article 14 of the Labour Code permits employers and employees to agree on working time without fixing a maximum limit on weekly working hours, the ECSR is of the opinion that this is not in conformity with Article 2.1 of the Revised Charter.[23]

[22] J. Plantenga, and C. Remery, *op. cit.*
[23] European Committee of Social Rights, Conclusions 2010, (Georgia), 5, (accessed February 27, 2012).

3. The Employer's Right to Extend Working Hours

According to an agreed upon definition, employees are obliged to work under the command, authority and supervision of the employer. They are at the employer's disposal, to comply with and follow his instructions concerning the way the work should be done. Simply put, employees shall perform their duties at the time agreed upon, in the place agreed upon, and in the manner and conditions agreed upon.[24] Pursuant to the Labour Code, and within the framework of his right to "instruct", the employer is allowed to increase mutually agreed working hours. In this sense, the control of working hours on the part of employer refers to the possibility to change established maximum hours. From where the employee stands, this total lack of control refers to a situation in which the employer can unilaterally change the day–hour combination.[25] Employees in Georgia are not allowed to reduce scheduled working time. For their part, employers can increase the working day hours unilaterally, by virtue of the Labour Code and because of the foregoing right to "instruct". In this respect, Article 11 specifies that "the employer is permitted to instruct the employee with reference to special conditions of the work to be performed that however shall not amend the terms of an agreement substantially. Insubstantial amendments to the employment contract are those that modify the working day for not more than 90 minutes". Following this line of reasoning, the set of instruction provided by the employer also contemplates the right to increase the working day up to a maximum of 90 minutes. The length of the weekly working time is an important element of the employment contract and is one of the aspects the parties negotiate on, yet the employer has the last say on the matter.

3.1 Overtime Work

There are two main aspects to consider at the time of examining the regulatory framework governing overtime. First off, the law should set the maximum length of normal working hours in order to clarify when overtime begins. Second, thresholds on overtime should also be statutorily established. As for the first point, the maximum weekly

[24] R. Blanpain, *op. cit.,* 142.

[25] P. Berg, E. Appelbaum, T. Bailey and A. Kalleberg, *Contesting Time: International Comparisons of Employee Control of Working Time,* in *Industrial and Labor Relations Review,* 2004, vol.6, n.1, 333-334.

working time is 41 hours, unless differently specified in the employment contract. According to Article 17.1 of the Labour Code: "The carrying out of work on the part of an employee during a period of time that exceeds the number of working hours provided under the employment contract is regarded as overtime work. If the employment contract does not specify the maximum number of hours to be worked, then work exceeding 41 hours a week shall be considered as overtime work". As for the second point, the Labour Code does not set a limit to the maximum number of overtime hours,[26] yet in certain situations the daily limit of 12 hours apply. As a result, the Labour Code provides some restrictions upon overtime work only on a daily basis. Overtime hours are those worked above a certain threshold of working time, for which workers must be remunerated either by extra pay or time off.[27] As a rule, employees consider working overtime as a valuable source of additional income, although the Georgian Labour Code does not provide solid legal basis for an arrangement of this kind. Indeed, Article 17.4 only sets forth that "the terms and conditions of overtime work should be agreed between the parties to the employment contract", with overtime that is therefore a matter of bargaining that is left entirely to the parties' discretion, and with employers bearing the obligation to remunerate overtime work if agreed so. If this is not the case, workers are not entitled to remuneration nor compensation for performing overtime work. In this sense overtime work is not regulated, but it is up to workers to negotiate overtime pay. It should be noted, however, that Article 4.2 of the European Social Charter specifies that "with a view to ensuring the effective exercise of the right to a fair remuneration, the Georgian Republic has undertaken to recognize the right of workers to an increased rate of remuneration for overtime work". This implies that employers have now the obligation not only to pay workers for overtime labour, but to do so at a higher remuneration rate. ECSR refers to its conclusion on Article 2.1 of the same document, where it was argued that the freedom given to the parties in determining both working hours and conditions for overtime work does not provide employees working excessively long hours sufficient safeguards. In the

[26] In general terms, the Soviet Labour Code prohibited overtime labour. The employer could resort to it only under special circumstances and upon the consent of the trade unions. Pregnant workers, breast-feeding females, female taking care of an infant under twelve months, individual up to eighteen years, people who had been diagnosed with active tuberculosis, and employees in education while working were not allowed to perform overtime work. The overtime limit for consecutive working hours was set at four. Annual limit for overtime work was defined at being at 120 hours.

[27] J. Plantenga, and C. Remery, *op. cit.*

context of Article 4.2, overtime should only refer to maximum weekly working hours, which is not the case under overtime regulation of the Labour Code, since the parties are free to arrange working hours and overtime practically without any limitations. Further, the ECSR recalls that, within the meaning of Article 4.2 of the Revised Charter, workers are entitled to remuneration for overtime work, which is higher than the regular wage rate. Remuneration for overtime may be also granted in the form of time-off, provided that this time is longer than the additional hours worked. The right to a higher remuneration rate for overtime work should apply to jobs, although exceptions may be allowed for certain positions, namely senior state officials or senior managers. The ECSR also pointed out that the Georgian Labour Code does not regulate any of the foregoing matters, leaving the parties free to define terms and conditions of overtime. As a result, since there is no guarantee that employees performing overtime work will be paid at higher remuneration rates or granted compensatory leave, the ECSR found that this state of play is not in conformity with Article 4.2 of the Revised Charter. [28] In the context of this paper, it might be worth mentioning that the Soviet Labour Code previously in force provided the following remuneration scheme for overtime work: the first two hours of overtime work were compensated with one half of the hourly rate, while remuneration for the following hours was doubled. Overtime remuneration could be also provided in the form of periods of leave. Pursuant to the CSI Report, most of the employees interviewed worked overtime, and none of them had ever requested remuneration for overtime work. In addition, only 1 percent of interviewees were granted time off in lieu of monetary overtime compensation.[29]

3.2 Special Regulation of Working Time

The Labour Code does not regulate and allow for reduced working hours for special categories of workers, such as women and young workers. By way of example, one is not allowed to work less than the statutory working time for delivering or adopting children. However, according to the Labour Code, female employees who are in need of breast-feeding an infant up to twelve months of age, are entitled to break hours not less

[28] The European Committee of Social Rights, *op. cit.*
[29] The Civil Society Institute (CSI) Monitoring Report on Georgian Labour Code, *op. cit.* 15.

than one hour per day. Breast-feeding breaks are counted as regular working hours and are therefore subject to remuneration.[30] The Labour Code does not provide alternative working time arrangements for young workers either. More specifically, whereas the Soviet Labour Code laid down special working time schemes for young workers,[31] labour legislation currently in place only prohibits night work—that is from 22.00 pm to 6.00 pm—in the case of minors, pregnant women, breast-feeding females or employees taking care of newly-born children. In 2009, at the time of assessing Labour Code compliance with the Convention No. 138 on Minimum Age, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), issued a report considering allegations made by the Georgian Trade Union Confederation (GTUC) that extended working hours also applied to young workers. The government made reference to Article 18 of the Labour Code which prohibits night work for young persons and Article 4.2 which lays down the conditions of employment of children between 14 and 16 years. The latter sets forth that "children below 16 years shall only be allowed to work upon consent of their legal representative, tutor or guardian, if it is not against their interests, does not affect their moral, physical or mental development and does not limit their right and ability to obtain elementary and basic education". In this regard, the CEACR observes that the Labour Code does not contain provisions setting a limit to the number of working hours during which young persons have to perform their work. The Committee also recalls that—according to section 7.3 of the Convention—the competent authority shall determine the activities in which employment or work may be permitted and shall prescribe the number of hours during which such employment or work may be undertaken. The CEACR thus urged the government to take the necessary steps with regard to the hours during which light work may be performed by young persons of 14 years of age and above, in conformity with the ILO Convention No. 138.[32] In the CEACR 2011 Report, the GTUC also made a proposal to reduce the working hours of young

[30] By force of the Soviet Labour Code, employers were under the obligation to provide part-time working day or working week for pregnant and female workers who were taking care to kids up to 12 years or disabled family members.

[31] Working time for 16 to 18 year-olds did not exceed 36 hours, while those in the 15 to 16 age group were allowed to work up to a maximum of 24 hours a week. Additionally, working weeks of 36 hours were established for employees in hazardous jobs.

[32] International Labour Conference, 98th Session, 2009, Report of the Committee of Experts on the Application of Conventions and Recommendations, 335, (accessed March 1, 2012).

persons and to make provision for rest periods, breaks and holidays. In this sense, the CEACR noted that Article 18 read in conjunction with Article 4.2 of the Labour Code implies that children may work for about eight hours per day, excluding school hours and night work. In this context, the CEACR refers to par. 13.1.b of Recommendation No. 146 Minimum Age, according to which a strict limitation should be put upon the hours spent by children at work in daytime and over a week, and overtime work should be also prohibited, so as to allow children to dedicate enough time to education and training (e.g. homework), for rest, and for leisure activities.[33]

The Labour Code does not regulate different forms of flexible work that are well established in Europe, such as telework, staggered working hours, job-sharing, and working time accounts. This omission can be explained by the fact that more flexible working time arrangements are not widespread within the national labour market. However, parties are free to negotiate working conditions, be it reduced work hours for young people and pregnant women or any other form of flexible working time. The general principle of Georgian Civil law shall apply here, whereby people can take any action which is not prohibited by law, including those which are not expressly mentioned.

4. Conclusion

The Labour Code limits weekly working time at 41 hours, but parties are free to agree and increase this threshold up to 84 hours. This maximum is the result of the minimum daily rest period, that is at least 12 consecutive hours. The Labour Code does not make provision for rest breaks in the working day or rest periods over the week. The daily limit of working hours is the only restriction within working time regulation, wherefrom the 84-hour limit emerged, causing the annual working time to exceed 3,200 hours. Furthermore, employers are allowed to extend agreed-upon hours of a working day by a further 90 minutes, without the employees' consent. The Labour Code does not set a limit for overtime work, with a 12-hour daily limit that is thus the only statutory restriction. As far as overtime work is concerned, no mandatory provisions are laid down, so the employer is not obliged to remunerate workers if they perform extra

[33] International Labour Conference, 100th Session, 2011, *op. cit.*, 332, (accessed March 1, 2012).

work. Nor does the Labour Code include special regulation for women and young workers concerning their working time arrangements—save for night work prohibition and an additional break hour for breast-feeding employees of infants up to twelve months. Accordingly, the Georgian Labour Code does not comply with both the EU Working Time Directive and the European Social Charter. Hence, EU Commission Progress Report on "Implementation of the European Neighbourhood Policy in 2007" stated that the 2006 labour legislation is not in line with EU standards, nor with the European Social Charter that Georgia ratified in July 2005".[34] The principle of "freedom of labour" allows an individual to enter into bargaining and willingly accept employment conditions established by the employer. Taking into consideration the specifics of the domestic labour market and the position of employers therein, it is mostly the employer who sets the employment conditions at the time of negotiating the terms of the contract. The majority of jobseekers do not possess enough legal knowledge or economic ability to impact the formulation of the proposed conditions and—since they are often put forward on a take-or-leave-it basis—and they are obliged to accept this state of affairs. In this sense, the role played by the labour standards becomes crucial. It should be also noted that setting a statutory maximum for working time has some negative aspects too—e.g. institutional constraints for the parties' discretion. Further, and as stated in the Communication "Towards common principles of flexicurity: More and better jobs through flexibility and security", issued by the Commission in 2007, there is evidence that that stringent employment protection legislation reduces the number of dismissals, however decreasing the entry rates into the labour market. Relevant studies suggests that although the impact of strict employment protection legislation on total unemployment is limited, it can negatively impact on those groups that are most likely to face problems at the time of accessing the labour market, such as young people, women, older workers and the long-term unemployed.[35]

On the other hand, opposite vector of working time regulation promotes higher levels of freedom for working time allocation. Such policy is put

[34] EU Commission Staff Working Document Accompanying the Communication from the Commission to the Council and the European Parliament, Implementation of the European Neighbourhood Policy in 2007, Progress Report Georgia, Brussels, 3 April 2008, (accessed March 1, 2012).

[35] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Towards common principles of flexicurity: More and better jobs through flexibility and security, Brussels, 27 June 2007; (accessed March 1, 2012).

forward by countries where the regulated and centralized labour market has come into disfavour, particularly in ideological terms. From where the employees stand, deregulation of working time may negatively affect their working conditions. Additionally, and drawing on the Japanese experience, excessive freedom in working time arrangements might also lead to new and serious labour issues, such as *Karoshi* (death from overwork) and *Karojisatsu* (suicide from overwork). Ideally, the amendments made to working time arrangements shall be oriented towards balancing the objective interests of both parties. On the one hand, it shall enable employers to laid down flexible working time regulation that will be easily adaptable to the new economic trends. On the other hand, the regulatory framework shall improve employees' labour conditions, conferring the ability to reconcile work and family commitments. The ultimate goal of labour legislation in this area is to combine flexible arrangements with some form of shared control that serves the interests of both sides, or that at least promote the interests of one without harming those of the other.[36] Decision-making at the national level should ensure the adoption of legislation that rationally benefits all those involved, and which definitely comply with the economic reality of particular society at a particular time. As for unemployment rates, it is not easy to scrutinize the practical effects of current working time regulation on unemployment trends. Although in the period 2005-2007 the rate of unemployment was reported to decrease, the effectiveness of the new Labour Code in respect to job creation deserves a closer economic analysis, even more so in consideration of the negative events that took place in the period 2008-2010. It can be concluded that, in terms of benefits, the Labour Code further encourages an imbalance of interests in the employment relationship rather than a win-win situation. It seems that Georgian labour legislation tips a balance in favour of the employer. The policy adopted towards deregulation is a move towards the free market, and minimizing the state interference in private relationships seems to be the main goal. From the employees standpoint, existing regulation of working time is in need of substantial amendments, particularly as regards overtime remuneration. On the other side, granting employers higher degrees of autonomy it will definitely promote their interests, which to some extent may positively affect employees well being, and labour market in general.

[36] P. Berg, E. Appelbaum, T. Bailey, and A. Kalleberg, *op. cit*. 333.

The aim of Georgia is to join the EU. In this sense, harmonisation of national labour standards with the EU Directives would accelerate the long process of integration. At this point, it seems appropriate to demonstrate that all efforts in legal and economic terms are aimed at striking a balance between the legitimate interests of both the employers and the employees. The European Union decided to find mutually beneficial solutions, by introducing flexible and individualized forms of working hours. This is something Georgia is attempting to achieve, although national labour legislation fails to adjust the reasonable maximum limit of working time. By setting the limit of the working week at 84 hours, there might be the risk of bearing an identifiable label, admitting that such a liberal approach negatively affects employees. The signs of transition from soviet to progressive labour law are already quite evident, and likewise evident is the fact that this irreversible process was successfully completed in 2006. It is now time to conform to the European context of flexibility. Until that, the ongoing debate on the adequacy of present labour legislation remains outstanding, as both sides have sufficient grounds for legal arguments supporting their interests.

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