

Committee on the Application of Standards

C.App./PV.16

Commission de l'application des normes

4.06.18

Comisión de Aplicación de Normas

107th Session, Geneva, May–June 2018 107^e session, Genève, mai-juin 2018 107.^a reunión, Ginebra, mayo-junio de 2018

Warning: this document is a draft and may contain omissions or errors. It is made available solely for the purpose of verification and correction. Persons referred to in this document are not to be regarded as bound by statements attributed to them. The ILO declines all responsibility for any errors or omissions which this document may contain, or for any use which may be made of it by third parties.

Avertissement: ce document est un projet, qui peut comporter des omissions ou des erreurs et n'est rendu public qu'à des fins de vérification et de rectification. Les mentions contenues dans ce document provisoire n'engagent pas les personnes dont les propos sont rapportés. La responsabilité du BIT ne saurait être engagée à raison des éventuelles erreurs et omissions entachant ce document, ou de l'utilisation qui pourrait en être faite par des tiers.

Advertencia: el presente documento es un proyecto y puede contener omisiones o errores. Sólo se publica a efectos de comprobación y rectificación. Las declaraciones que se atribuyen en el presente documento provisional a las personas citadas en él no comprometen su responsabilidad. La OIT queda exenta de toda responsabilidad respecto de cualquier error u omisión que pudiera figurar en el presente documento o que pudiera derivarse del uso del documento por terceros.

13th sitting, 4 June 2018, 3.15 p.m.

13^e séance, 4 juin 2018, 15 h 15

Decimotercera sesión, 4 de junio de 2018, 15.15 horas

Chairperson: Mr Rorix Núñez Morales

Président: M. Rorix Núñez Morales

Presidente: Sr. Rorix Núñez Morales

Work of the Committee

PVs 6, 7, 8 and 9 were adopted as amended.

Travaux de la commission

Les PV.6, 7, 8 et 9 ont été adoptés tels qu'amendés.

Trabajos de la Comisión

Las actas 6, 7, 8 y 9 fueron adoptadas con las enmiendas correspondientes.

Discussion of individual cases (*cont.*)
Discussion sur les cas individuels (*suite*)
Discusión sobre los casos individuales (*cont.*)

Georgia (*ratification: 1993*)

Equal Remuneration Convention, 1951 (No. 100)
Convention (n° 100) sur l'égalité de rémunération, 1951
Convenio sobre igualdad de remuneración, 1951 (núm. 100)

A Government representative (Ms BARKALAI) presented the measures undertaken to ensure gender equality and equal remuneration for men and women in the labour force. In line with international commitments, Georgia had made significant progress in adopting legislative changes and implementing policy reforms to foster gender equality and encourage economic empowerment of women. National laws and policies had been elaborated to ensure and promote gender equality, to prohibit all forms of discrimination towards women and girls, and to encourage women's participation in political, economic and social processes. National legislation protected gender equality in all spheres, including labour and employment. The Constitution recognized equality of all people before the law: (i) pursuant to article 14, everyone was free by birth and equal before the law regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, and place of residence; (ii) pursuant to article 38, all citizens were equal in social, economic, cultural and political life, irrespective of their national, ethnic, religious or linguistic affiliation; and (iii) article 30 specified that the protection of labour rights, fair remuneration, safe and healthy working conditions and the working conditions of minors and women were determined by the Labour Code.

The fundamental principles defined in the Constitution were further elaborated in different legal acts. Many of the rights and protections to enable gender equality in labour relations were provided for in the Labour Code and the Law on the Public Service, which determined equality in the public sector concerning access to employment, terms of employment and working conditions, including remuneration and career development. The Law on Gender Equality constituted a core legal instrument for fostering gender equality,

including equality in employment; the Law on the Elimination of All Forms of Discrimination was also an important mechanism for the protection of women and girls from direct and indirect discrimination and unequal treatment.

Nevertheless, there remained legislative and policy gaps related to gender equality. The Government continued to harmonize the legal framework with international standards, pursuant to the timeline for the transposition of European Union (EU) Directives, as agreed in the EU–Georgia Association Agreement. The Government had committed to implement the EU Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. The Directive defined that for the same work or for work to which equal value was attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration had to be eliminated. The Government, in close cooperation and consultation with the social partners, was working on the transposition of the Directive into national legislation. On 27 October 2015, a new Law on the Public Service had been adopted, which stipulated that the remuneration system for public servants was based on the values of transparency and fairness, grounded on the principles of equal pay for equal work.

In 2018, in order to further strengthen anti-discrimination and equal rights at work, amendments to the following laws had been elaborated with active participation of the social partners, and submitted to Parliament: the Labour Code; the Law on the Elimination of All Forms of Discrimination; the Law on the Public Service; and the Law on Gender Equality.

The legislative framework alone did not guarantee enjoyment of equal rights and non-discrimination and without effective enforcement mechanisms the progress could not be achieved. The main institutional frameworks to promote and enhance gender equality were the Council for Gender Equality in the Parliament and the newly established Inter-Agency Commission on Gender Equality, Violence Against Women and Domestic Violence, within the executive branch. Both institutions were in charge of inter-agency coordination, monitoring the implementation of laws and development of national action plans on gender

equality. In this respect, a two-year work plan on gender equality had been adopted recently with a special focus on awareness-raising campaigns. In addition, the Gender Equality Department of the Public Defender's Office served as an independent monitoring body on gender issues. Finally, the Government representative reiterated the commitment to steady progress towards achieving gender equality and complying with international labour standards.

The Employer members recalled that this fundamental Convention had been ratified by Georgia in 1993. Since 2002, the Committee of Experts had repeatedly expressed concerns at the absence of national legislation giving full expression to the principle underlying the Convention. It was the first time that the application of the Convention by Georgia was examined by the Conference Committee. They recalled that the Convention required, by means appropriate to the methods in operation for determining rates of remuneration, to ensure the application to all workers of the principle of equal remuneration for men and women for work of equal value. According to the Committee of Experts, while the Constitution, the Labour Code, the Law on Gender Equality and the Law on the Elimination of All Forms of Discrimination included certain provisions relating to equality, they did not specifically commit to the principle of equal remuneration for men and women for work of equal value, and the Government had not advised whether any consideration was being given to reviewing the relevant provisions in this respect.

Observing the existing legal prohibition of discrimination of women and girls and the adoption last month of an Action Plan referred to by the Government, the Employer members appreciated the Government's recognition of legislative gaps and its reaffirmed commitment to work on the issues raised by the Committee of Experts, to implement related EU Directives and to undertake tripartite consultations in this respect with the social partners and the Council for Gender Equality. The Employer members encouraged the Government to take steps without delay to ensure that national legislation committed to the principle of equal remuneration for men and women for work of equal value. As regards the gender pay

gap in Georgia, however, its root causes remained unclear, and it appeared to prevail in the public sector. They encouraged the Government to provide information to the Committee of Experts of the work undertaken to implement the 2014–16 National Action Plan on Gender Equality, which, inter alia, aimed at promoting gender equality in the economic sphere. Information should also be provided on the steps taken to better understand the source of the gender pay gap and on concrete measures adopted to tackle it. The Employer members concluded by expressing their appreciation with the Government's commitment and invited the Government to continue to work with the ILO in a constructive manner.

The Worker members recalled that, over the years, the Committee of Experts had noted shortcomings with respect to Georgia's implementation of the Convention in practice, highlighting specifically the incompatible legislative framework and severe inequalities. In 2012, the Public Defender had exposed the persistent gender segregation in the labour market. The situation clearly had not improved since. The labour market participation rate for women between the ages of 15 and 64 stood at about 60 per cent, 18 to 20 percentage points below male participation rates. Records showed that traditional household responsibilities, especially childcare, reduced female labour force participation significantly. Despite relatively similar levels of education between men and women, occupational segregation remained rife, with certain sectors predominantly female (education, health and social services) and others predominantly male (transportation, construction, public administration and manufacturing). They regretted that the gender pay gap between men and women remained high, around 37 per cent, and was clearly attributable to the industrial and occupational sex segregation, both vertical and horizontal, within and across establishments and sectors. Even at the enterprise level, the Bureau of Statistics had found that 60 to 67 per cent of eligible men received bonuses, premiums or health insurance under various conditions, whereas the rate was between 33 and 41 per cent for women in similar situations. Female representation in decision-making positions remained shockingly low.

The Worker members underlined the legislative and regulatory gaps in relation to the Convention, as highlighted by the Committee of Experts: (i) section 2(3) of the Labour Code of 2006 prohibited discrimination of any kind in employment relations but this was not sufficient because the principle of “equal pay for men and women for work of equal value” went beyond that of “equal pay for equal work”, in order to allow comparisons between work of a different nature by determining their value. This facilitated the entrance of women into male-dominated occupations, which were usually of a higher economic value, instead of just ensuring that pay was equal in a particular job or sector of work; (ii) recognizing the persistence of social and cultural inequalities between men and women, sections 4 and 6 of the Law on Gender Equality of 2010 specifically guaranteed gender equality; prohibited workplace violence, intimidation, and harassment; and ensured equal opportunity in employment. This was good but not sufficient. Ensuring equal opportunity did not guarantee equal remuneration for work of equal value, nor did it guarantee the enhancement of the capabilities of women to take advantage of the opportunities granted; (iii) the Law on the Elimination of All Forms of Discrimination provided for the elimination of all forms of discrimination to ensure equal rights for natural and legal persons; (iv) article 38 of the Constitution, as well as the Law on the Public Service and the future law on remuneration for public institutions, protected the equality of all citizens and created the framework for addressing the issues of sex-based discrimination in employment without, however, addressing the principle of equal remuneration between men and women for work of equal value specifically.

As indicated, these laws were necessary to address the inherent biases of discrimination but not sufficient to ensure equal pay for men and women for work of equal value. Indeed, reports revealed that substantial gender gaps in average monthly nominal wages existed even in female-dominated sectors. Even among men and women with similar levels of education, significant inequality remained in the average salary distribution, notably because men

mostly occupied private sector jobs, whereas women were more evenly distributed in the private and public sectors.

The Government was encouraged to review and amend these laws, in consultation with employers' and workers' organizations, in order to promote more proactive measures for raising awareness on, and enforcing the application of, the principle of equal remuneration for men and women for work of equal value, including through legally established or recognized machinery for wage determination and job evaluation and/or collective agreements at the national, sectoral and enterprise level. The Worker members noted the adoption of the 2014–16 National Action Plan on Gender Equality and the establishment of both the Inter-Ministerial Commission on Gender Equality and Women's Empowerment and the Inter-Agency Coordinating Council for the Government's Action Plan on the Protection of Human Rights. Despite these efforts, the systemic nature of the situation had not changed: institutions for the enforcement of measures to address gender equality and anti-discrimination remained weak or non-existent. The abolition of the Labour Inspection Services raised concerns about institutional inefficiency and ineffectiveness, despite the National Programme for Monitoring Labour Conditions and the Department of Inspection of Labour Conditions set up under the auspices of the Ministry of Labour, Health and Social Affairs. This new Department's mandate focused on safety conditions and related complaints and did not specifically address sex-based occupational segregation and pay gap concerns. There were no adequate and effective enforcement mechanisms to apply the principle of equal remuneration between men and women for work of equal value despite the endemic and persistent nature of sex-based occupational discrimination and inequalities. She recalled that, according to the Public Defender, the recommendations of the Labour Inspectorate had to be made binding in the Labour Code to ensure that recommendations were enforced.

The Worker members urged the Government to realize the full scope of the Convention and to take concrete steps to review the national framework in order to address the root

causes of gender discrimination, gender stereotypes regarding women's aspirations, preferences and capacities, as well as the promotion of women's access to a broad range of employment opportunities at all levels.

The Employer member of Georgia (Mr MELADZE) stated that the gender policy had always been one of the top priorities of the Georgian Employers Association (GEA), but that it needed joint efforts. The GEA intended to develop the adequate approach through specific activities. First, it was necessary to conduct surveys in the business world to find out the real situation with regards to payment policies, careers and social conditions. Based on the result of these surveys, the adequate activities and measures could be implemented, such as education on the best international practices related to the implementation of the Convention and the ensuing determination of possible steps and measures in Georgia; training activities at company level; and conducting social and gender audits with a view to developing action plans for tackling gender issues. Secondly, a special working group should be established within the Government, where adequate legislative proposals could be developed supporting the social conditions of employed women. Specific activities should also be conducted together with trade unions in certain sectors with respect to management and trade union leadership, and local gender policies should be developed in collaboration with the local authorities. Thirdly, youth entrepreneurship and related education with a focus on social and gender thematics should be supported. The speaker finally expressed his belief that, together, the social partners could devise and implement actions that would lead to a tangible improvement of the situation.

The Worker member of Georgia (Mr PETRIASHVILI) appreciated the consideration given to the issue by the ILO and its constituents and stated that without due attention from international labour institutions and the democratic community, problems that were perceived as of little relevance at the moment, tended to gradually and extensively erode standards and conditions of work.

The current problem of imbalance in wages between men and women remained more than alarming. Even despite positive trends over the past decade, the wage difference remained 52 per cent, whereas it had reached 104 per cent in 2006. The factors that had resulted in such a huge wage gap were clear and obvious: the year 2006 was the exact year the labour inspection had been abolished. The absence of an authority in charge of supervision of labour relations implied the lack of compliance with basic labour standards and rights, including the principle of equal pay. Although, due to a commitment under the EU–Georgia Association Agreement, the labour inspection had been re-established, its current mandate did not comply with ILO standards since it did not have the power to conduct inspections to monitor compliance with requirements of labour legislation. Moreover, the speaker emphasized that the most pressing issue remained the lack of a real and effective social dialogue which would facilitate the resolution of many existing problems hampering the prosperity and economic stability of the country. Despite the fact that the Convention had been ratified in 1993, the persistence of such a large wage inequality demonstrated that international Conventions were being ratified only formally. Over the past twenty years no working mechanisms to define “work of equal value” had been established, and no relevant policies or awareness-raising campaigns had been undertaken to address issues on equality and protection of women’s rights in labour relations. With respect to equal pay, it should also be noted that the current legal instruments determining the minimum wage, had been adopted back in 1999. Thus, in the private sector, the minimum wage amounted to US\$8 per month, and in the public sector to about US\$55. Notwithstanding years of constant demands to establish an adequate minimum wage level, the authorities had persistently ignored the numerous appeals from trade unions, human rights activists, non-governmental organizations and even large transnational corporations.

On the basis of official data provided by the Statistical Department of Georgia, it was possible to evaluate the real picture at national level of gender inequality in the world of work. For example, in 2016, the average monthly nominal salary of men had been about

US\$450, and for women US\$295. The speaker emphasized that although the Government committed to radically change the current situation, the trade unions did not have illusions regarding elimination of gender discrimination through a one-time solution. That required an integrated approach and a long-term and active policy. It was necessary that societies in the whole world, especially conservative and traditional ones with obsolete stereotypes, including in Georgia, reconsider their views on the role and rights of women in modern life. That goal could be achieved only with the joint efforts of all national and international institutions, and the entire civilized world, in order to eradicate all forms of discrimination, and above all, violations of women's rights and freedoms everywhere.

The Government member of Bulgaria (Ms PARAPUNOVA), speaking on behalf of the EU and its Member States, as well as Bosnia and Herzegovina, Montenegro and Norway, stated that national legislation did not give full expression to the principle of equal remuneration for men and women for work of equal value, and expressed concern over the fact that this issue had been raised several times by the Committee of Experts without being addressed by the Government. The legislative package submitted to Parliament at the end of 2017, which included amendments to the Labour Code, the Law on Gender Equality, and the Law on the Elimination of All Forms of Discrimination, should address the gaps identified by the Committee of Experts and by the Public Defender. Measures should be taken in consultation with the social partners without delay, in order to further review the legislation, including section 57(1) of the Law on the Public Service, and bring it in full compliance with ILO Conventions, in particular with the principle of equal remuneration for men and women for work of equal value.

The gender wage gap was persistent and significant in every sector of the labour market, including in female-dominated sectors. This phenomenon did not only concern wages, but also social benefits and bonuses. The underlying causes were perhaps linked to occupational gender segregation and gender discrimination. Despite existing legal provisions, gender-

based discrimination was still very common in practice at the recruitment stage and in job advertising.

The speaker called on the Government to take measures to reduce the gender pay gap and address its underlying causes, and to promote women's access to a wider range of job opportunities at all levels, including management. She also called for concrete follow-up to the recommendations made by the Public Defender, in particular to improve awareness among employers. Finally, the speaker called on the Government to take measures to ensure effective enforcement of the principle of equal remuneration for work of equal value, including adequate labour inspections, awareness-raising campaigns on the laws and procedures available, and strengthening the capacity of judges and other authorities to detect and address pay inequalities between men and women.

The Worker member of Norway (Mr JONSRUD), speaking on behalf of the Worker members of the Nordic countries, expressed his deep concerns regarding the absence of legislation giving full expression to the principle of equal remuneration for men and women for work of equal value in Georgia. The Georgian Trade Union Confederation (GTUC) had actively worked to improve the conditions for women in the workplace and had encouraged women to increase their trade union participation. Statistics and facts regarding gender equality in the country were lacking, and the level of awareness around gender issues and women's rights needed to be increased. Available statistics showed that women's position in the labour market was very precarious: women were the first to lose their jobs when companies fired people, they often took jobs far below their skill level, and earned only about 60 per cent of what men earned. In the informal sector, where women constituted 50 per cent of the workers, the protection mechanisms were virtually absent, and workers were particularly vulnerable to discrimination. Women in the informal sector had to survive on very low wages and were often subjected to sexual harassment. Considering that there was widespread discrimination in employment in Georgia, both in terms of recruitment, selection and wages, the speaker urged the Government to give full legal expression to the principle

of equal remuneration for men and women for work of equal value, therefore strengthening women's economic freedom, ensuring women a place in law-making processes and participation in the labour market on equal terms with men. In Georgia, a substantial gender gap in average monthly nominal wages existed in every sector of the labour market, including in female-dominated sectors such as education and health care, and even among men and women with similar levels of education. The Government had not indicated whether any consideration had been given, in consultation with the social partners, to reviewing the provisions of the Constitution, the Labour Code and the Law on Gender Equality. Moreover, the Law on the Elimination of All Forms of Discrimination, while including a general prohibition of discrimination based on sex, did not refer to the principle of equal remuneration for men and women for work of equal value. The speaker appealed to the Government to enforce the conclusions to be adopted by the Committee and to amend the national legislation so as to ensure conformity with the Convention.

The Worker member of the United States (Mr FINNEGAN) indicated that there were problems in law and practice. The principle of equal remuneration for men and women for work of equal value was not sufficiently reflected in the general prohibition of discrimination contained in existing labour legislation, including the Law on the Elimination of All Forms of Discrimination of 2014. The lack of a systematic approach, in law and in practice, to ensuring equal remuneration for men and women for work of equal value was illustrated by the statistics on wages and other compensation reported by the Committee of Experts. For example, in 2016, women earned on average 65 per cent of men's salary, while men were approximately two times as likely as women to receive bonuses, premiums and employer-paid health insurance.

The solution to the problem was not only a legislative matter. With respect to enforcement, the Labour Inspection Service had been dismantled in 2006 and reconstituted in 2015. Since 2015, a sufficient labour inspectorate (beyond the monitoring of health and safety conditions and forced labour), had not been established. Its mandate was still

insufficient to monitor compliance with a full range of labour standards, including those covered by the Convention. As a result, there was no adequate and effective enforcement mechanism to ensure the application in practice of the principle of equal remuneration for work of equal value. Labour inspection institutions had to be rebuilt for ensuring compliance with new legislation that would define equal pay clearly and in compliance with the Convention, articulating the key concept of “work of equal value”. The methodological shortcomings to evaluate the value of jobs were a challenge not only for legislators, but also for the labour inspectorate charged with monitoring compliance.

It was therefore necessary to aim at full compliance with the Convention for public and private sectors, as the Government implemented its “State Strategy of Labour Market Formation and its Implementation Action Plan 2015–18” by amending the Labour Code to align it with international labour standards. In addition, it was necessary to provide the labour inspectorate with sufficient methodology guidance, training and budget to ensure that the new legislation was applied in practice.

In addition to these measurable quantifiable challenges on wages and benefits, the country faced cultural challenges in addressing entrenched and often implicit bias against women. The underlying causes of those inequities, had to be addressed by recognizing them and engaging in awareness-raising activities. According to national trade unions, many employers treated women as “problem-causing” workers, who would often be absent and demanding additional privileges, such as maternity leave. Such situations led to gender discrimination in employment, retribution and career advancement. The underlying causes of those inequities were a concern for everybody. There were no concrete policies in place to provide meaningful assistance to all workers regarding work–life balance and the combination of family responsibilities with occupational duties. Until such measures were taken, women were often charged with family responsibilities and expectations in practice, which entailed lower levels of promotion and remuneration.

The Government representative, duly noting the valuable comments of the Committee, reiterated that her Government acknowledged the existence of legislative and policy gaps and was taking significant steps and measures to harmonize national legislation with international labour standards and international best practices. However, the root causes of the established gender pay gap lay in gender discrimination, the social norms of society and the social role of women therein. The speaker highlighted the ensuing importance of developing strategies and awareness-raising campaigns with a view to changing attitudes and to mainstreaming gender into social and labour policies. The Government was taking action to foster women's participation in the labour market and had already determined women and youth as the target population for empowerment. She highlighted the Government's readiness to work towards improving the legislative framework and institutionalizing the implementation mechanisms in the area of gender equality, in particular by strengthening the capacity of the newly established labour inspection and by gradually broadening its mandate to a fully-fledged labour inspectorate that would also cover issues such as the gender pay gap and women's rights at the workplace.

The Worker members stated that, when examining cases on the application of the Convention, the larger context of women's empowerment and gender non-discrimination should not be forgotten. The Convention rightly placed remuneration at the heart of combating discrimination against women. Historical attitudes and stereotypes had consigned women to certain jobs, and this kind of segregation had traditionally subordinated women's aspirations to that of men and lowered their social and economic standing. As a result, jobs predominantly performed by women were undervalued in comparison to work of equal value performed by men. To tackle this, the Convention required that wage rates be determined according to objective criteria, free from gender bias, and that these rates be established excluding any consideration related to the gender of the worker. Achieving this would serve as an important contribution in combating occupational gender segregation and other forms of unequal treatment.

They called on the Government to take concrete steps in order to give full legislative expression to the principle of equal remuneration for men and women for work of equal value by amending the Labour Code, the Law on Gender Equality, the Law on the Elimination of All Forms of Discrimination, and the Law on the Public Service. Moreover, adequate and effective enforcement mechanisms should be put in place to ensure that the principle of equal remuneration was applied in practice, and awareness-raising measures should be adopted to ensure that workers could avail themselves of the rights they had under the Convention. The Worker members hoped that more detailed information would be received from the Government about the specific measures taken in order to reduce the gender pay gap and to address its underlying causes. In that regard, it would be beneficial for the Government to avail itself of ILO technical assistance.

The Employer members welcomed the Government's efforts and its constructive approach to the issue of gender equality at the workplace as regards equal opportunity and treatment. However, they concurred with the Worker members that the main obligation under the Convention, over and above gender equality, was to ensure the application to all workers of the principle of equal remuneration for men and women for work of equal value. Therefore, the Employer members encouraged the Government to take steps to ensure, in consultation with the social partners, that national legislation committed expressly to the principle of equal remuneration for men and women for work of equal value; and to provide a full report to the Committee of Experts on the legislative amendments envisaged to this end. They further encouraged the Government to supply information concerning the recently adopted National Action Plan on Gender Equality, in particular its impact on the efforts to ensure respect for the principle of equal remuneration for men and women for work of equal value.

Noting the concerns raised by the Committee of Experts and the interventions made concerning the gender pay gap, the Employer members believed that a better understanding of the root causes of the gender pay gap in Georgia would be helpful, and cautioned that

some of the causes could be extraneous to the principle underlying the Convention and rather be related to occupational gender segregation, distinct participation of men and women in the private and public sectors, or discrimination in employment based on sex, as covered by the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Lastly, the Employer members expressed their optimism and encouraged the Government to avail itself of ILO technical assistance and to continue the implementation process in close cooperation and consultation with the social partners.

(...)

DRAFT