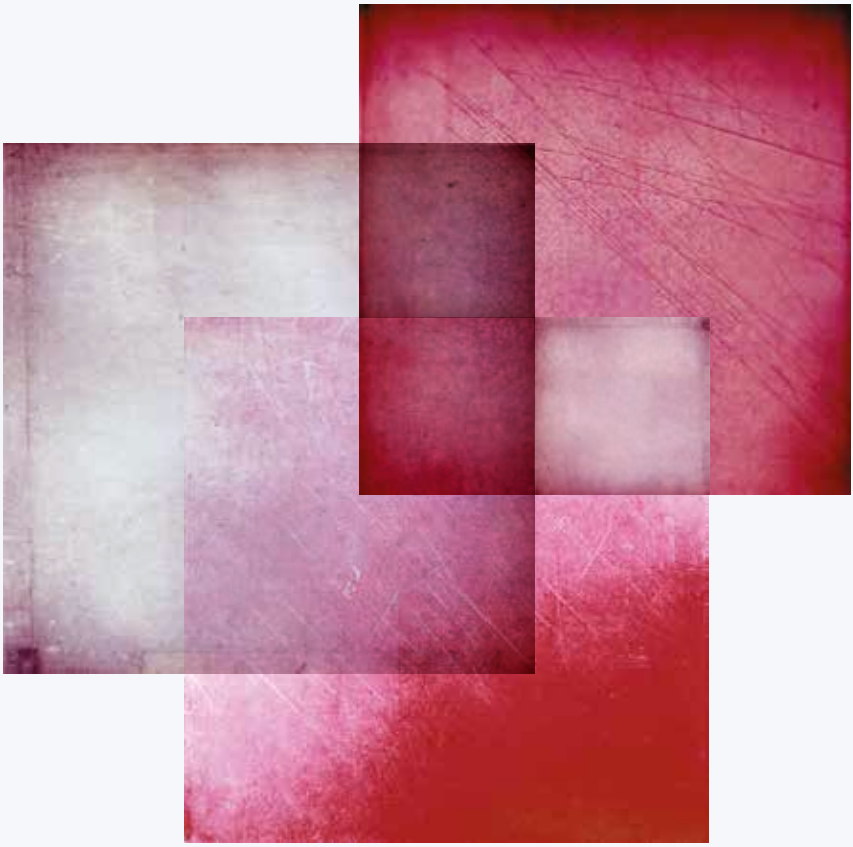
LEGAL AND SOCIOLOGICAL RESEARCH OF LABOR MEDIATION MECHANISM IN GEORGIA

Experience, Theory and Practice



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Legal and Sociological Research of Labor Mediation Mechanism in Georgia

Experience, Theory and Practice

Human Rights Education and Monitoring Center (EMC)

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Acknowledgement

Taking into consideration the fact that labor mediation is a relatively new mechanism in the sphere of labor administration, its presence in public and political discussions is limited. The lack of information and knowledge on labor mediation in academic and civil circles represented a significant challenge in the process of the research. The non-systemic character and scarcity of empirical data in government institutions represented a substantial barrier to achieving consistent results and thus complicated the research process and required accumulation of more knowledge or other resources. Against this background, we would like to express our gratitude to the experts, social partners, representatives of the professional unions and employers and business associations, former or current mediators and the employees, who have made significant contributions in the research process and shared their views, as well as their vast experience and knowledge, which is a considerable exception in the given circumstances.

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Introduction

Mediation as an alternative method for collective labor dispute resolution was introduced five years ago in the Georgian legislation with the aim to resolve the increasing number of collective disputes in labor relations in a short period of time with fewer court expenses. Considering the purpose and function of mediation, it was supposed to become an additional mechanism for the enforcement of labor rights along with labor inspection and courts.

Despite labor mediation coming into force in the framework of state institutions and the increasing use of this mechanism by employees, the current system of mediation has failed to turn into an effective measure for settling collective labor disputes in Georgia. Practice shows that in the context of structural challenges of labor and shortcomings of mediation, the mechanism was not able to gain the necessary trust of the social partners. The instances of repeated mediation, renewed collective disputes and strike actions following the failure of enforcement of agreements reached through meditation makes this evident.

In light of high expectations and the increasing disappointment with the malfunctioning of the mechanism, there is a need to study how mediation is applied, its challenges and prevailing concerns which will enable us to re-examine and explore opportunities for improvement. The research presented here sets out to serve this purpose. In addition to using the normative framework, practices and international standards, the research significantly relies on the experiences of individuals who took part in mediation as well as observations of social partners.

The legal analysis part of this study seeks to identify the legal and practical deficiencies of the mechanism, to look at international standards and practices in this regard, and by means of comparative analysis work out specific recommendations in administering the mechanism, as well as prevent collective labor disputes and improve the effectiveness of settlements reached through mediation. The sociological part of the research examines not only procedural and enforcement gaps of the mechanism, but also tries to tackle the challenges related to its incorporation in labor

politics and the consequences of structural factors on the performance of the mechanism. Importantly, both parts of the research analyze the labor mediation mechanism in a manner which does not isolate the mechanism from other developments in the field of labor, but rather explore it against the backdrop of existing labor policies, conditions of employees and other structural challenges.

The first chapter of the legal part analyzes the institutional framework of the mediation mechanism and the role of the government in its performance as well as the components in effective administration. The second chapter looks at preventive measures of mediation, while chapter examines the issues related to the enforcement of agreements reached through mediation.

The beginning of the sociological part of the study reviews existing international as well as local literature related to mediation and the main tendencies. Chapter one examines the historical aspects of the formation of labor mediation and the dynamics of its development at the international level and in the local context. The results of inclinations and attitudes study of the participants in mediation process are given in chapter two.

The publication closes with the conclusion and recommendations addressed towards institutions responsible for this mechanism as well as effective mediation. It aims to create a broader view of development of the mechanism where mediation is looked as part and parcel of larger labor policies and to formulate short and long term objectives for advancing mediation as an important instrument.

Part I
Legislative Research

Research Methodology

This section of the research will study the national and international legal framework for regulating the labor mediation mechanism using the following instruments: analysis of national legislation, policy documents and practices; Analysis of international acts and standards, studies of in-depth interviews, public information requests and secondary sources.

The research has some limitations that originate from the research objectives and the study question. In particular, this study analyzes the mechanisms of labor mediation in three areas: the institutional framework of the mediation mechanism and the role of the state in mediation administration; Prevention of collective labor disputes for effectiveness of mediation mechanism and effectiveness of enforcement of taken agreements through mediation. Consequently, the document does not discuss the techniques of mediation and methodology to be utilized by the mediator, as well as the contribution of the parties during the mediation.

The goal of the research is to study and summarize the views of social partners and other stakeholders on the functioning of the mediation mechanism, the challenges facing the system and the ability to solve them. Consequently, research in this section is entirely based on the views expressed by the parties in the interviews. Unfortunately, the Georgian Trade Unions Confederation (GTUC) did not agree to participate in the study. Thus, the opinions of the representatives of employed workers is expressed by the representatives of the "Railway Workers Trade Union", which is the Union member organization. Experience of trade unions and their role in system functioning is also assessed by independent labor experts. Employees' positions in the survey are also expressed by independent trade unions "Unity 2013" and "Solidarity Network-Workers' Center".

Analysis of national legislation, policy documents and practices

Within the scope of the study the framework of labor relations was analyzed and, specifically, the national legislative and regulatory acts regulating the mediation mechanism, in order to study their compatibility with international standards. In addition, the study of national legislation and practice aimed at identifying the shortcomings of the national legislative framework and policy that creates the basis for the inefficiency of the mediation mechanism in practice and fails to ensure adequate functioning of systems against existing challenges.

Analysis of international acts and standards

The study also included the analysis of international practice and standards regulating labor relations and mediation mechanism as well as the study of policy documents, in order to identify the minimum international standards of labor mediation mechanism and the basis of effective functioning of mediation. The study also analyzed the experiences of labor mediation, which is regarded as good practice in terms of functioning and compatibility with standards.

In-depth interviews

Within the scope of the survey, in-depth interviews were conducted with various actors of the labor market, including trade unions, employers' associations, Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs, International Labor Organization, labor law experts, academics, international funds working on labor issues and registered mediators working in Georgia. The aim of the in-depth interviews was to study the experiences and observations of social partners regarding the functioning of the labor mediation mechanism. Also, it aimed to examine the opinions of other actors of the labor market regarding the challenges of the mediation system and the possibilities of its transformation / reform.

Public information requests

The study also included public information requests from various public institutions, which aimed at studying labor mediation practices by accessing information such as: detailed statistical information on mediation cases, reports on mediation cases prepared by the mediator and information on disputes at the system of common courts arising out of non-enforcement of labor mediation agreements, etc.

Analysis of secondary sources

For the purposes of the research, a number of reports, research, academic works and articles were studied in order to review the practice of mediation and study the challenges and solutions related to the efficient functioning of the mediation mechanism in national, regional or global contexts.

Chapter 1. The concept of mediation and the role of the state in its performance

Fair labor policies serve as a protection of social dimensions of public order and a demonstration of the responsibilities of the government in this regard. Strengthening dialogue between social partners and establishing legal and practical provisions of the most common method of dispute settlement – mediation, is exactly part of this framework. Participation of the state in mediation ensures fair balance and demonstrates responsibility of the state over the effectiveness of negotiations. Involvement of the state is particularly important for disputes, which may influence public interest[1].

Despite the fact that in compliance with international standards the mediation mechanism in Georgia operates under the supervision of the state, 5 years after its introduction it has failed to turn into an effective instrument for generating trust between disputing parties towards each other and settling collective disputes. The research has found that participation of the state in mediation causes mistrust among employers who argue that such mechanism contains elements of coercion and does not encourage expression of authentic will of parties.[2] Workers on the other hand believe that the mediation mechanism has turned into a bureaucratic pre-requisite for exercising the right to strike action and it does not intend to end negotiations effectively. Attitudes of social partners demonstrate that placing mediation within the state system does not ensure building of trust towards the mechanism and its effective performance, which in its turn points to the need for system reforms from the part of the government in order to improve the mechanism.

1 HIGH–LEVEL TRIPARTITE SEMINAR ON THE SETTLEMENT OF LABOUR DISPUTES THROUGH MEDIATION, CONCILIATION, ARBITRATION AND LABOUR COURTS Nicosia, Cyprus October 18th – 19th, 2007 Collective Dispute Resolution through Conciliation, Mediation and Arbitration: European and ILO Perspectives, ILO Office, Geneva. P.3.

2 Interview with Mikheil Kordzakhia, Vice President of Georgian Employers Association; interview date: 23/04/2018. Interview with Nikoloz Nanuashvili, Legal Analyst at Georgian Business Association; interview date: 20/04/2018.

1. The definition and essence of mediation

Establishment of the mediation mechanism sets out to settle collective disputes and is part of the process of collective dispute at workplace. Mediation is an alternative method for dispute settlement and facilitates negotiations where a neutral person – the mediator – helps disputing parties and/or their representatives to eliminate the dispute by reaching mutually beneficial agreements. Mediation is a structured process of negotiations, which is led by a professional mediator.[3] According to the international experience, most of the countries rely on mediation for dispute settlement as most of the disputes emerge regarding the terms of collective negotiations (interest disputes) or collective agreements (rights disputes) and these disputes are mainly between employers and employees. Mediation as an alternative method for dispute settlement is one of the most common ways to address collective disputes quickly, effectively and in a flexible manner, which saves financial and time resources needed for litigation[4].

In international practice the inception of mediation procedures is directly linked to exercising the right to strike. According to the International Labor Organization (ILO) standard, requirement to refrain from strike actions is acceptable with consent from all parties, or the state's initiative if the dispute is under mediation or other types of negotiations.[5] As clarified by the ILO expert committee, the purpose of this reservation is to allow more opportunities for negotiations to succeed before exercising the right to strike. In addition, the committee specifies that these procedures must take place within reasonable timeframe and in case of failure to reach agreement within the established timeframe, there must be no other obstruction to exercising the right to strike. The ILO considers it unacceptable to interpret ILO conventions and recommendations related to the

3 "Perspectives for Legal Regulations of Mediation in Georgia", National Center for Alternative Dispute Resolution, Tbilisi, 2013, pp. 14

4 HIGH–LEVEL TRIPARTITE SEMINAR ON THE SETTLEMENT OF LABOUR DISPUTES THROUGH MEDIATION, CONCILIATION, ARBITRATION AND LABOUR COURTS Nicosia, Cyprus October 18th – 19th, 2007 Collective Dispute Resolution through Conciliation, Mediation and Arbitration: European and ILO Perspectives, ILO Office, Geneva. P.2

5 R092 - Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92) Article I, II.

right to strike action in a manner, which allows for restriction of this right.[6] According to the ILO, "procedures restricting the right to strike must not be so slow or complicated that it makes it impossible to organize a strike or they must not create conditions where strike action will no longer be effective".[7]

Discussions on how to address collective disputes started in Georgia in 2011; however, agreement regarding this issue could not be reached at the time due to extremely tense relations between the government and social partners.[8] Establishment of the mediation mechanism is associated with the regime change in the government of Georgia and the labor legislation reform implemented by the new government in 2013 which, among others, introduced the institute of mediation in the country. It has to be noted that by this time the importance of and need for mediation had been highlighted in numerous international conventions and treaties that Georgia had recognized. More specifically, certain articles of the European Social Charter which have been recognized by Georgia as obligatory, requires the states to strengthen collective negotiations and establish related mechanisms.[9] Georgia has undertaken the responsibility to enhance labor laws with new institutions and procedures and develop the culture of dispute settlement and negotiations in the EU-Georgia Association Agreement as well.[10]

Pursuant to the Georgian legislation, mediation is a negotiation process with participation and leadership of the mediator appointed by the Minister,[11] which aims to resolve the dispute between the employer and a group/unity of employ-

6 R092 - Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92) Article IV.

7 Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution) Third item on the agenda: Information and reports on the application of Conventions and Recommendations Report III (Part 1A) General Report and observations concerning particular countries, ILO Office, Geneva. P 125.

8 Evaluation and Improvement of the Mediation Mechanism in Georgia". Report to be submitted to the Tripartite Commission of Social Partnership. Roger Lekuri, International Labor Organization expert, Tbilisi, June 27, 2016. pp. 2

9 Article 6, European Social Charter.

10 Article 2.1, EU-Georgia Association Agreement, Chapter: "Rights of trade unions and basic labor standards"

11 November 25, 2013 Resolution of the Government of Georgia regarding "Review and resolution of collective disputes with mediation procedures", #301, Art. 3, par. 8.

ees within the boundaries of legal interests of disputing parties.[12] Similar to international practice, the Georgian legislation leaves the settlement of collective disputes to mediation. According to the national legislation, the disputing parties are: the employer and the workers group (consisting of at least 20 workers) or a workers union (trade union),[13] and settlement of dispute between them is ensured by means of direct negotiations and mediation.[14]

As in international practice, mediation in Georgian legislation is directly connected with the right to strike action as the process of mediation has been defined as a pre-requisite for the right to strike to emerge[15]. The strike in its turn is a fundamental right recognized in Georgia's constitution and Labor Code. In the event of collective disputes the right to strike arises from the moment of submitting a written request to the Minister or as soon as 21 (twenty-one) calendar days expire after the appointment of the mediator by the Minister,[16] which according to the international practice[17] and social partners[18] is a reasonable standard for setting

12 November 25, 2013 Resolution of the Government of Georgia regarding "Review and resolution of collective disputes with mediation procedures", #301, Art. 3, par 7.

13 Labor Code of Georgia, Art. 481, , par. 1

14 November 25, 2013 Resolution of the Government of Georgia regarding "Review and resolution of collective disputes with mediation procedures", #301, Art. 3, par. 1. Also, Labor Code of Georgia, Art. 47, par. 1.

15 Labor Code of Georgia, Art. 48^1, , par. 2.

16 Labor Code of Georgia, Art. 49, par. 3

17 In Norway, the allowed period to restrict the right to strike is 14 days for workers in private sector and 21 days for public sector employees; Denmark has 28-day period and strikes can start after 30 days since the appointment of the mediator by the state in Czech Republic. HIGH–LEVEL TRIPARTITE SEMINAR ON THE SETTLEMENT OF LABOUR DISPUTES THROUGH MEDIATION, CONCILIATION, ARBITRATION AND LABOUR COURTS Nicosia, Cyprus October 18th – 19th, 2007 Collective Dispute Resolution through Conciliation, Mediation and Arbitration: European and ILO Perspectives, ILO Office, Geneva. P.3

18 It is important to consider arguments of social partners and other actors regarding the timeframes for restricting the right to strike. The interview with the New Railway Workers Union has revealed that the 21-day "cooling period" can also be useful to prepare for the strike as the disputing parties are allowed time to better identify their strategies, come up with clearer formulations of their demands and modify their action plans in line with the information acquired during the mediation. According to the employers' associations, if mediation is effective, the 21-day period can also be useful, however, they also argue that this time is not enough for employers to prepare for addressing the results of the strike. The interview with the ILO expert has demonstrated that 21-day "cooling period" is an important time to allow the disputing parties to find space for negotiations. According to their clarification, this period cannot be seen as weakening the enthusiasm for strike which is the result of a much stronger discontentment and can therefore easily endure the 'cooking period' if mediation fails.

the negotiations timeframe. Importantly, without undergoing these procedures, exercising the right to strike may be considered as unlawful. Illegal strikes can lead to dismissal of workers from their jobs on the one hand or depending on circumstances, can lead to criminal law punishment on the other[19].

Based on the connection between the right to a strike action and mediation and the need to maintain balance between them, the state must ensure the validity and effectiveness of the mediation mechanism on the one hand and respect for the right to strike on the other, in order to make sure that the mandatory requirement of mediation does not obstruct enforcement of the right to strike.

2. The role of the state in the performance of mediation

Institutional frameworks and models of the mediation mechanism differ across the world by the degree of the state's involvement in the system. In some cases the states establish special structural units, which operate under corresponding branches (ministries) of the government.[20] Such model exists in many European countries including Belgium, Finland, Denmark, Estonia, Cyprus and Malta, where mediation is a public institution operating within the central government system and constitutes its department or agency. There are other cases when independent mediation agencies are created by legislative initiatives under sustainability policies.[21] The mediation mechanism in the United Kingdom, Ireland, Sweden and Hungary performs as an independent agency, which is a public law body and is accountable to the corresponding body of the central government. Mediator in Estonia is an independent official with a unit of 24 moderators. They are sometimes called Public Mediator and their mandate covers both central and

19 Criminal Code of Georgia, Article 348.

20 HIGH–LEVEL TRIPARTITE SEMINAR ON THE SETTLEMENT OF LABOUR DISPUTES THROUGH MEDIATION, CONCILIATION, ARBITRATION AND LABOUR COURTS Nicosia, Cyprus October 18th – 19th, 2007
Collective Dispute Resolution through Conciliation, Mediation and Arbitration: European and ILO Perspectives, page 11.

21 "Systems of workplace disputes". Handbook of International Labor Organization for increased effectiveness. 2013. Chapter 4, pp. 79

local levels. They operate under the parliamentary supervision and perform as a constitutional body.[22]

The International Labor Organization (ILO) which defines the key labor standards views alternative mechanisms for dispute resolution in terms of free will expression of disputing parties; however, it also stresses that mediation, arbitration and other alternative forms of dispute resolution must be developed and ensured as a result of regulations of government units responsible for administering labor issues. According to this standard, the state must create adequate legal and practical mechanisms in order to enable disputing parties to implement negotiation procedures freely and fairly.[23] In this regard, the national institutional framework of the mediation mechanism complies with international standards. The national legislation has established mediation which operates under the state supervision and is initiated by the state in exceptional cases, which is also in adherence to the international standard. The organizational matters of the mediation mechanism are undertaken by the Labor and Employment Policy Department of the Ministry of Labor, Healthcare and Social Affairs, which provides organizational and technical support to the mechanism.[24] In instances of collective disputes, the Labor Code entitles the disputing parties to appeal to the Ministry of Labor, Healthcare and Social Affairs to request appointment of a mediator.[25] Another novelty introduced by the law is the right of the Minister to assign a mediator to a collective dispute due to high public interest in the dispute, without the preliminary written request of parties, who should be informed in writing about the appointment of the mediator.[26] Written request to appoint a mediator or the Minister's order to do so is processed by the organizational unit of the mediation mechanism, which examines the assignment of the mediator and/or the existence of "high public interest" and nominates a candidates for the mediator's position to the Minis-

22 The mandate was established in Estonia in 1995. It reviewed 300 cases during 10 years since its establishment. 80% of the reviewed cases have been settled.

23 R163 - Collective Bargaining Recommendation, 1981 (No. 163), article 3.

24 November 25, 2013 Resolution of the Government of Georgia regarding "Review and resolution of collective disputes with mediation procedures", #301, Art. 3, par. 8.

25 Labor Code of Georgia, Art. 48[1], par. 3.

26 Labor Code of Georgia, Art. 48[1], par. 4.

ter.[27] The Tripartite Commission of Social Partners including the government of Georgia, associations of employers of different sectors and workers unions, also recommend a specific individual to act as a mediator[28] and the final list of recommended candidates is submitted to and approved by the Ministry.

1.3. Effective government administration of the mediation mechanism

The role of the state in operating mediation does not end with locating the mechanism within its institutional framework. The state is responsible to ensure effective performance of the mediation system on all levels. The research has found that a number of challenges of the mediation mechanism are related to its administration. The system is not functioning properly, which diminishes the belief of parties in the system and increases the responsibility of the state to ensure effective administration of the mechanism.

The research has demonstrated that there is a lack of in-depth analysis of the mediation mechanism in Georgia that would identify its gaps, bring the legislation closer to the practice and offer solutions for its improvement. The need for continuous analysis of mediation is clearly demonstrated by a whole range of gaps in the system, which hinder the functioning of the mechanism and generates mistrust in parties. Based on the practice, it can be argued that one of the impeding factors of the mechanism is the lack of mediators which is caused by the lack of mandatory agreement schemes on the one hand and inadequate remuneration policies on the other. These issues significantly affect the process of assigning mediators to disputes in a timely manner. Other challenges include: appointment of the mediator according to individual criteria and with full involvement of parties; lack of a system of continued education program and training of mediators which would improve qualifications of mediators and ensure consistency of their qualifications to the specific nature of collective disputes. It is also

27 November 25, 2013 Resolution of the Government of Georgia regarding "Review and resolution of collective disputes with mediation procedures", #301, Art. 5, par. 1.

28 November 25, 2013 Resolution of the Government of Georgia regarding "Review and resolution of collective disputes with mediation procedures", #301, Art. 5, par. 2.

a problem that workers do not have access to the commercial information of employers, which would enable them to offer reasonable arguments and adequate demands during collective negotiations.[29]

a) Participation of social partners in the selection and appointment of mediators

Active participation of social partners in developing a list of mediators as well as assigning a mediator to a specific dispute is one of the ways to reduce their mistrust towards the process of mediator appointment. According to the ILO standard, appointing mediators should take place with close cooperation of and consultations with parties in a way which ensures equality of social partners.[30] The international practice highlights that for different disputes it is important to assign a mediator who is familiar with the industry principles and will be able to easily understand the specific nature of the dispute; therefore, it is necessary to select mediators for certain cases based on individual and adequate criteria[31].

The research has found gaps in this aspect of the national practice of mediation. Namely, candidates to mediate disputes in Georgia are selected from the registry of mediators which is developed in consultations with the Tripartite Commission of Social Partners; however, the mediator for collective disputes selected from the registry is approved by the Minister[32] without taking into account the opinions of disputing parties[33]. Consequently, social partners are involved in creating the

29 Evaluation and Improvement of the Mediation Mechanism in Georgia". Report to be submitted to the Tripartite Commission of Social Partnership. Roger Lekuri, International Labor Organization expert, Tbilisi, June 27, 2016. Chapter 2.5; pp. 14-15. According to the report, most of the cases during 20150-2016 were assigned to the Ministry employee, Levan Zhorzholiani. The report also shows that during 2014-2016 it took an average of 10 days for the Minister to appoint a mediator after the inception of the collective dispute.

30 R092 - Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92)*Recommendation concerning Voluntary Conciliation and ArbitrationAdoption: Geneva, 34th ILC session (29 Jun 1951) - Status: Request for information. Article 2.*

31 Labour Legislation and Arbitration Project EuropeAid/113649/C/SV/Ru Mediation in Labour Relations: What Can Be Learned From the North American and EU Example? P.5.

32 November 25, 2013 Resolution of the Government of Georgia regarding "Review and resolution of collective disputes with mediation procedures", #301, Art. 5, par. 1.

33 November 25, 2013 Resolution of the Government of Georgia regarding "Review and resolution of collective disputes with mediation procedures", #301, Art. 5, par. 1

list of mediators but the practice of approving the mediator singlehandedly by the Minister contradicts the ILO standard[34] and does not encourage trust of social partners in the appointed mediator.

b) Ensuring adequate number of mediators and their fair remuneration

As demonstrated in international practice, in order to ensure good performance of the system, it is important to create a diverse list of mediators working with different levels of time effort and establish long-term labor relations with them. Forms of cooperation with mediators may be determined by the institutional arrangements of the mediation mechanism. In Sweden and Norway, for example, the job of the mediator (head of the office) is a public position, which oversees mediators appointed on central and local level. The agency responsible for supervising labor policies selects and appoints mediators in close cooperation with social partners. In addition to full time mediators, the agency also keeps a registry of part time and ad-hoc mediators and establishes contractual relationship with them in order to respond to the increasing number of collective disputes by means of creating and maintaining a diverse list of mediators.[35] The strategy for retaining diverse professionals in the mediator registry is to offer fair wages to them. According to the ILO standard, the mediator remuneration should be unbiased, fair and adequate to the salaries of similar professions on the market[36].

Ensuring appropriate number of mediators in the mediators' registry is a significant challenge in Georgia. Official statistics demonstrate the increase in the number of disputes in labor relations. According to the statistics, there have been 32 mediation cases in Georgia during 2013-2017[37]. In addition, the practice has demonstrated many instances where there was a shortage of mediators who could

34 Interview with lawyer Raisa Liparteliani, 4/07/2018.

35 Mediation in Collective Interest Disputes. Torgeir Aarvaag Stokke P 144-145.

36 Perspectives for Legal Regulations of Mediation in Georgia, (selection of articles) „Remuneration for mediation". pp. 154.

37 Sociological research, p. 13.

be assigned to collective disputes[38], which impeded effective administration of the process and delayed the timely assignment of the mediator to a dispute. The existing registry of mediators consists of 11 individuals[39], which cannot ensure flexible operation of the system, considering the increased demand for mediation. Mediators listed in the registry also often refuse to participate in the dispute resolution as they do not have preliminary agreement about the obligatory participation in the process and the salaries offered to them is not adequate to the job they have to perform. Moreover, the shortage of mediators does not allow for assigning such a mediator to the case who is familiar with its industry and specific nature and will be able to grasp the circumstances of the case more easily.

The ILO recommends recommends the Ministry of Labor, Healthcare and Social Affairs to use a combined system of mediator registry where mediators will have preliminary agreements and will be required to commit several days in a year to the dispute resolution in return for payment. In addition, the ILO advises the Ministry to hire full time and part time mediators (two mediators) and secure the reserve of mediators by means of signing agreements with them.[40] With regard to the low wages of mediators, an interview with one of the acting mediators has revealed that refusal to undertake the case is most often caused by low payment, along with other reasons[41]. The Georgian legislation establishes a daily payment of 60 (sixty) Georgian Lari for mediation service.[42] The mediators' registry mostly consists of barristers who work full time and whose regular salaries are mostly much higher than the mediator fee offered by the legislation which, when in conflict with their major occupation, becomes the reason for refusing to

38 Evaluation and Improvement of the Mediation Mechanism in Georgia". Report to be submitted to the Tripartite Commission of Social Partnership. Roger Lekuri, International Labor Organization expert, Tbilisi, June 27, 2016. Chapter: 2.4., pp. 12

39 Minister of Labor, Healthcare and Social Affairs Decree #01-54/o regarding "Determining the registry of mediators to ensure mediation of collective disputes", March 1, 2017.

40 Evaluation and Improvement of the Mediation Mechanism in Georgia". Report to be submitted to the Tripartite Commission of Social Partnership. Roger Lekuri, International Labor Organization expert, Tbilisi, June 27, 2016. Chapter: 4.1., pp. 28

41 Interview with mediator, Irakli Kandashvili. 11/05/2018.

42 November 25, 2013 Resolution of the Government of Georgia regarding "Review and resolution of collective disputes with mediation procedures", #301, Art. 6, par. C

engage in mediation.[43] Thus, ensuring adequate number of and fees for mediators is crucial for effective functioning of the mediation system.

c) Qualification requirements of mediators

In order to conduct high quality mediation, it is important to put in place qualification requirements for mediators, which would include professionalism and independence as most important criteria. According to the international practice, professionalism of the mediator is determined by their experience and striving for continued improvement of their qualifications[44] and their independence is evaluated by their detachment from the interests of the government or political parties.[45] The international standard does not put forward specific and essential qualifications of mediators; however, in practice much emphasis is placed on educating mediators in labor law and human resource management and on their knowledge of industries/fields of work related to their mediation activity.[46] It is also important to ensure continued and unimpeded education of mediators.[47]

Pursuant to Georgian legislation the mediators registry in Georgia contains unbiased and independent individuals who have expertise in labor law or related fields, demonstrate specialized knowledge and/or experience of negotiations in labor relations and who, based on their requests, are recommended by the Tripartite Commission of Social Partners[48]. The legislation also defines mechanisms to prevent conflict of interests: an individual who is a family member or relative

43 Interview with mediator, Irakli Kandashvili. 11/05/2018.

44 BEST PRACTICES IN RESOLVING EMPLOYMENT DISPUTES IN INTERNATIONAL ORGANIZATIONS, Conference Proceedings, ILO Geneva, 15–16 September 2014. REFLECTIONS ON ILO EXPERIENCE: HOW CAN THE EFFECTIVENESS OF DISPUTE RESOLUTION SYSTEMS BE ASSESSED? Corinne Vargha. P. 6.

45 BEST PRACTICES IN RESOLVING EMPLOYMENT DISPUTES IN INTERNATIONAL ORGANIZATIONS, Conference Proceedings, ILO Geneva, 15–16 September 2014. REFLECTIONS ON ILO EXPERIENCE: HOW CAN THE EFFECTIVENESS OF DISPUTE RESOLUTION SYSTEMS BE ASSESSED? Corinne Vargha. P.7.

46 What Qualifications Does a Mediator Need? by Alaska Judicial Council August 1998: https://www.mediate.com/articles/quals.cfm

47 Interview with mediator, Irakli Kandashvili. 11/05/2018.

48 November 25, 2013 Resolution of the Government of Georgia regarding "Review and resolution of collective disputes with mediation procedures", #301, Art. 5, par. 2.

of one of the disputing parties or who performed a paid job for any of the parties or their representatives during the last 3 years or who has other grounds to take sides with any of the parties cannot be appointed as a mediator.[49] In the interview the Head of the Labor and Employment Policy Department under the Ministry of Internally Displaced Persons from Occupied Territories, Labor, Health and Social Affairs describes that mediators in Georgia are provided with qualification trainings with the support of International Labor Organization of the ILO[50], however, the trainings are not provided regularly and these instances do not represent the institutional practice of the state. The interview has also revealed the plans of the Ministry to conduct a public education campaign for employers and workers about the mediation mechanism, however, there has been no information campaign yet and it is unclear as to with what frequency and scale the Ministry will educate potential parties of collective disputes about the mechanism.

d) Reimbursing mediation expenses

Based on the ILO standard, the mediation process must be free (of charge) for disputing parties and they should not be required to pay for the mediator fees and other related expenses.[51] Employees who are not members of trade unions, worker unities or are employed in an informal economy sector should also be freed from payment.[52] By establishing this standard and obligating the state to cover mediation expenses, the ILO aims to ensure accessibility of mediation for all parties.

Pursuant to national legislation, the Ministry pays for mediator's fees and other related expenses within the budget amounts allocated to the Ministry from the

49 November 25, 2013 Resolution of the Government of Georgia regarding "Review and resolution of collective disputes with mediation procedures", #301, Art. 5, par. 3.

50 Interview with Elza Jgerenaia, the Head of the Labor and Employment Policy Department under the Ministry of Internally Displaced Persons from Occupied Territories, Labor, Health and Social Affairs. 04/05/2018.

51 R092 - Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92) Recommendation concerning Voluntary Conciliation and ArbitrationAdoption: Geneva, 34th ILC session (29 Jun 1951) – *Article 3 (1).*

52 HIGH–LEVEL TRIPARTITE SEMINAR ON THE SETTLEMENT OF LABOUR DISPUTES THROUGH MEDIATION, CONCILIATION, ARBITRATION AND LABOUR COURTS, Nicosia, Cyprus October 18th – 19th, 2007; Collective Dispute Resolution through Conciliation, Mediation and Arbitration: European and ILO Perspectives, page 9.

central budget for the given year which is in compliance with the international standard.[53]

e) Access to financial and other types of information

According to the ILO standard the state should introduce provisions in the legislation to ensure access of employees to economic and other types of information of the enterprise which is important for productive completion of negotiations.[54] In addition, the standard also establishes that the disputing parties can agree to keep the information confidential and protect it from disclosure to third parties.[55]

The Georgian legislation does not provide opportunities for employees to access commercial information of the company; thus, workers involved in disputes in most cases cannot access important information such as actual economic and profitability situation of the enterprise, which prevents them from adequate reasoning with regard to finances during the dispute. As the interview with the New Railway Workers Union has revealed, isolated cases of granting access to certain information of the company are caused by escalation of the situation when the dispute enters a strenuous phase and workers are forced to take radical actions in order to demand access to certain financial information for them to be able to adequately formulate their demands during negotiations. The information provided as a result of such escalations is usually fragmented and does not paint a comprehensive picture of the company, which in the long term complicates the process of agreement and reduces the trust between the parties.[56]

f) Conducting analytical work

For effective functioning of the mediation mechanism it is important to observe performance of the mechanism and examine and analyze challenges, which can serve

53 November 25, 2013 Resolution of the Government of Georgia regarding "Review and resolution of collective disputes with mediation procedures", #301, Art. 6.

54 R163 - Collective Bargaining Recommendation, 1981 (No. 163) *Recommendation concerning the Promotion of Collective Bargaining Adoption: Geneva, 67th ILC session (19 Jun 1981). Article 7 (1).*

55 R163 - Collective Bargaining Recommendation, 1981 (No. 163) *Recommendation concerning the Promotion of Collective Bargaining Adoption: Geneva, 67th ILC session (19 Jun 1981). Article 7 (1).*

56 Interview with deputy chairman of New Railway Workers Union, Ilia Lezhava. 17/05/2018.

as a foundation for improving its performance. It implies the requirement for the state to introduce methodology and system for data collection and evaluation and build policy improvements on evidence collected through regular research.[57]

In international practice, information collected through analysis of mediation outcomes is the basis for lawmakers to improve management of labor disputes.[58] The state should also assess the appropriateness of the duration of dispute resolution and if necessary, ensure compliance of practice with legislation.[59] It is important that state collects data about specific industrial sectors.[60] Furthermore, analysis should also include examination of interaction between the mediation mechanism and the court system as precise evaluation of the balance between mediation and the court can underpin correct policy planning and increased effectiveness of the mechanism.[61]

In order for the state to adequately assess gaps in mediation agreements and establish the actual number of fulfilled agreements it is important to analyze the challenges using a methodology tailored to the local context.[62]

57 DIRECTORATE GENERAL FOR INTERNAL POLICIES POLICY DEPARTMENT C: CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS LEGAL AFFAIRS The Implementation of the Mediation Directive WORKSHOP 29 November 2016 Compilation of In-depth Analyses, THE NEED TO MEASURE THE BALANCED RELATIONSHIP BETWEEN MEDIATION AND COURT PROCEEDINGS, P 24.

58 HIGH–LEVEL TRIPARTITE SEMINAR ON THE SETTLEMENT OF LABOUR DISPUTES THROUGH MEDIATION, CONCILIATION, ARBITRATION AND LABOUR COURTS; Nicosia, Cyprus October 18th – 19th, 2007; Collective Dispute Resolution through Conciliation, Mediation and Arbitration: European and ILO Perspectives, page 12.

59 International Institute for conflict prevention and resolution. CPR mediation procedure. "Length of Mediation" : https://www.cpradr.org/resource-center/rules/mediation/cpr-mediation-procedure

60 R163 - Collective Bargaining Recommendation, 1981 (No. 163) *Recommendation concerning the Promotion of Collective Bargaining Adoption: Geneva, 67th ILC session (19 Jun 1981). Article 7 (2).*

61 DIRECTORATE GENERAL FOR INTERNAL POLICIES POLICY DEPARTMENT C: CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS LEGAL AFFAIRS The Implementation of the Mediation Directive WORKSHOP 29 November 2016 Compilation of In-depth Analyses.

62 The method can be taken from the established formula according to which there must be one successful case against at least two cases filed in courts (50% rate). In addition, the total number of mediation cases per year must also be taken into account as compared to court cases and the total number of successful mediations. DIRECTORATE GENERAL FOR INTERNAL POLICIES POLICY DEPARTMENT C: CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS LEGAL AFFAIRS The Implementation of the Mediation Directive WORKSHOP 29 November 2016 Compilation of In-depth Analyses, THE NEED TO MEASURE THE BALANCED RELATIONSHIP BETWEEN MEDIATION AND COURT PROCEEDINGS, P. 18.

The research has found that there is no system for studying and evaluating the performance of the mediation mechanism in Georgia. Furthermore, reports submitted by mediators to the Ministry are the only source of information for the Ministry.[63] Due to the lack of analytical activities, there is no research of interaction between mediation outcomes and the court system either.

It is impossible to rely on the reports of mediators – the only source of information about the performance of mediation – in order to depict a comprehensive and adequate picture. Analysis of the mediators' reports requested from the Ministry demonstrates that the data provided in these reports is scarce and fragmented; therefore, there is a need to develop a standardized reporting form for mediators. The legislation requires mediators to provide information[64], however, it does not provide reporting templates and a list of essential data to be addressed in the reports.[65] Finally, the lack of analytical activities contributes to the inconsistencies between the practice and the legislation, including noncompliance of the actual duration of mediation with the timeframe determined by the legislation.[66]

63 February 27, 2018 correspondence # 01/11528 of the Ministry of Labor, Healthcare and Social Affairs.

64 November 25, 2013 Resolution of the Government of Georgia regarding "Review and resolution of collective disputes with mediation procedures", #301, Art. 7, par. 1, c.

65 Interview with Elza Jgerenaia, the Head of the Labor and Employment Policy Department under the Ministry of Internally Displaced Persons from Occupied Territories, Labor, Health and Social Affairs. 04/05/2018.

66 The allowed timeframe for mediator's activities is limited to 7 days in the legislation which can be extended for another 7 days (additional time for dispute resolution); as for settling the terms of collective agreements, the total number of paid days of the mediator must not exceed 14 days. November 25, 2013 Resolution of the Government of Georgia regarding "Review and resolution of collective disputes with mediation procedures", #301, Art. 6, par. B and C). The report produced by International Labor Organization (ILO) demonstrates that it took the mediators 262 days to resolve the 13 disputes which took place before December 31, 2016, which means that an average of 20 workdays are needed per case. Evaluation and Improvement of the Mediation Mechanism in Georgia". Report to be submitted to the Tripartite Commission of Social Partnership. Roger Lekuri, International Labor Organization expert, Tbilisi, June 27, 2016. Chapter: 2.3., pp. 10.

Summary

Participation of the state in mediation and the obligations that arise as a result should not be understood as contradictory to the two main elements of the process of collective dispute settlement: autonomy and voluntarism[67] of disputing parties. Involvement of the state in mediation is a way to make sure that realistic decisions are made as a result of mediation and expression of their will by the parties.[68] Engagement of the state in this process should ensure availability of all necessary mechanisms which will enable the parties to express themselves freely; it should balance the negotiating powers and ensure protection of public interests[69].

According to the ILO report, the mediation model which provides equal opportunities for disputing parties to select and recommend mediators acceptable to them is a means to achieve party balance and create an independent mechanism for dispute resolution.[70] At the same time, the state should ensure that the mediation mechanism does not turn into the means for restricting the right to strike and that it actually serves as an effective instrument for dispute resolution before the exercise of the right to strike action.

The research has revealed a number of flaws in the administration of mediation which are associated with the shortage of adequate research into mediation and labor policies and lack of planning on the one hand and challenges which directly affect the performance of the mediation on the other. In order to address these

67 HIGH–LEVEL TRIPARTITE SEMINAR ON THE SETTLEMENT OF LABOUR DISPUTES THROUGH MEDIATION, CONCILIATION, ARBITRATION AND LABOUR COURTS Nicosia, Cyprus October 18th – 19th, 2007 Collective Dispute Resolution through Conciliation, Mediation and Arbitration: European and ILO Perspectives, ILO Office, Geneva. P. 18.

68 HIGH–LEVEL TRIPARTITE SEMINAR ON THE SETTLEMENT OF LABOUR DISPUTES THROUGH MEDIATION, CONCILIATION, ARBITRATION AND LABOUR COURTS Nicosia, Cyprus October 18th – 19th, 2007 Collective Dispute Resolution through Conciliation, Mediation and Arbitration: European and ILO Perspectives, ILO Office, Geneva. P.19.

69 HIGH–LEVEL TRIPARTITE SEMINAR ON THE SETTLEMENT OF LABOUR DISPUTES THROUGH MEDIATION, CONCILIATION, ARBITRATION AND LABOUR COURTS Nicosia, Cyprus October 18th – 19th, 2007 Collective Dispute Resolution through Conciliation, Mediation and Arbitration: European and ILO Perspectives, ILO Office, Geneva. P.4

70 Evaluation and Improvement of the Mediation Mechanism in Georgia". Report to be submitted to the Tripartite Commission of Social Partnership. Roger Lekuri, International Labor Organization expert, Tbilisi, June 27, 2016. Chapter: 2.3., pp. 3.

gaps it is important that that state becomes proactive in the administration of the mechanism. More specifically, it is crucial to monitor mediation constantly through regular research and analysis, which can be used as the basis for improving the state approaches and policies in this direction. In addition, the state should take the following actions in order to tackle the identified challenges: diversify the mediators' registry and increase the number of full time and part time mediators; introduce adequate remuneration policy for mediators; ensure active participation of social partners in the assignment of mediators to disputes; ensure regular improvement of qualifications of mediators and improve mediation by granting access to company information to disputing parties. Taking these steps will in the short term remove barriers for the mediation mechanism which will diminish the mistrust of parties towards the mechanism and the critique of the state-funded model while in the long term they will provide opportunities for ongoing monitoring and improvement of the system.

Chapter 2. Collective dispute prevention mechanisms for the effectiveness of mediation

In order for mediation to be effective, it is critical to include the kind of mechanisms in labor relations which will reduce the number of collective disputes on the one hand, and increase the trust of social partners towards the mediation process on the other hand, and consequently, give weight to the agreement reached through mediation.

The absence of appropriate preventive mechanisms in labor relations before the formation of a collective dispute leads to the weakening of social partnerships at the time of the dispute and reduces the possibility of reaching an agreement as a result of the mediation process. Practice shows that the weakness of preventive mechanisms and, in some cases, their absence removes all of its content from the mediation mechanism itself and turns it into a formal process, which is especially problematic considering the weak negotiating power of the employees and dominant positions of employers in labor relations.[71]

Georgian legislation does not establish strict guarantees of reaching a collective agreement and its implementation, which means that the agreement and its content solely depends on the will of the parties and because of the weakness of the workers' negotiating power the existing collective agreements do not ensure the proper protection of the interests of employees and pushes the parties to get involved in labor disputes. At the initial stage of labor relations, the absence of legislative guarantees supporting collective agreement practically excludes reaching a substantial agreement on guarantees of fair and dignifying labor relations at the dispute stage. This problem is further complicated by the absence of effective mechanisms for the examination of fair human resource management policies and study of employee concerns, which, in turn, accumulate dissatisfaction arising from labor relations and promote labor disputes. Thus, it is important that the state understands these risks and ensures their prevention by creating appropriate legislative and practical mechanisms.

71 Sociological research of the mediation mechanism. "The attitude after the end of the labor mediation: *[Employers side] are stronger than us, they have all the resources – money, professional lawyers, powe" pg.81*

1. Legal obligations of collective bargaining and collective agreements

In the literature reviewed, a collective agreement is considered to be the means of protection of the rights of workers, and at the same time, it is an important way to increase productivity. It is considered that in the workplace where relations are regulated by collective negotiations, there is a space for the establishment of fair and regulated labor conditions for employees, and in case of a dispute, the possibility of realistic and practical settlement on the essential terms of the agreement.[72] The ILO considers reaching a collective agreement and guaranteeing a timeframe as mechanisms for enhancing the effectiveness of the mediation process.[73] The means of implementation of this standard is the guarantee of special norms in national legislation, which ensures the obligation of reaching a collective agreement in large industrial enterprises. In addition, the ILO recommends that the law establish a condition according to which a collective agreement is enforced if the parties have taken into account the clear mechanisms to resolve the dispute[74] In addition, it is important that the legislator should reinforce the terms of the collective agreement, according to which the collective agreement should establish better conditions for the employee than what it is specified by the individual agreement or labor legislation.[75]

The sociological survey of the labor mediation mechanism shows that from 2013 to 2017, the primary demand for the employees who participated in the mediation process was to reach a collective agreements or ensure changes[76]. In addition, according to the research, reaching agreement in the mediation process occupied the leading place as the most difficult issue.[77] Despite the fact that the

72 „Changes to the Labor Code of 4 June 2013 regarding collective labor relations. " Maia Liparteliani, "Legal Aspects of the Recent Changes of Labor Law" GIZ, 2014. pp. 208-209. Maia Liparteliani.

73 COLLECTIVE BARGAINING, POLICY GUIDE, ILO, 2015. P.70.

74 COLLECTIVE BARGAINING, POLICY GUIDE, ILO, 2015. P.80.

75 „A principle of favorability", COLLECTIVE BARGAINING, POLICY GUIDE, ILO, 2015. P.66.

76 24 Protocols from the Ministry of Internally Displaced Persons from Occupied Territories, Labor, Health and Social Affairs of Georgia, which does not include all the mediation cases of 2014-2017. In spite of this, the content of the dispute matters outlined in the protocols still demonstrates the general trends that have taken place in the case of collective disputes.

77 Sociological research of the mediation mechanism. Ranking of Requirements for Labor Mediation in 2014-2017 Annex 3, pg. 100

nonexistence of collective agreements and/or its conditions is the major source of labor disputes in Georgia, national law does not establish firm guarantees on reaching a collective agreement or ensuring fair conditions. The legislation envisages that the collective agreement that is set for the limited period of time, should refer to the term within which it will be enforceable[78] although it does not establish the obligation of reaching collective agreements in separate cases or guaranteeing better labor conditions through collective agreement. Additionally it places the full responsibility of reaching a collective agreement and guaranteeing its conditions on the parties[79].

2. Guaranteeing Fair Labor Policy at the Enterprise Level

An important component of effective mediation is the introduction of legal mechanisms that encourage fair labor policies at the workplace and ensure prevention of collective disputes through continuous investigation of employee grievances,.[80] According to the ILO, the government should create legal mechanisms, structures and procedures for the purpose of establishing fair work practices at the workplace.[81] The transparent and fair human resource management policy in the workplace is reflected in the introduction of efficient and rapid internal mechanisms for appealing and solving labor issues, which will ensure that grievances and dissatisfaction are revealed and structured in a way as to make the possibility to discuss and resolve them, that is widely implemented and practiced. Therefore, in such internal structures it is important for the workers to participate on equal footing. [82] An example of such a structure is the body of settling disputes

78 Georgian Labor Code, Article 43, Part 3.

79 Georgian Labor Code, Article 41, Part 3.

80 C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (Entry into force: 18 Jul1951)Adoption: Geneva, 32nd ILC session (01 Jul 1949). Article 1.

81 ILO Collective Bargaining Convention, 1981 (No. 154). Article 5.2 (e).

82 R130 - Examination of Grievances Recommendation, 1967 (No. 130) Recommendation concerning the Examination of Grievances within the Undertaking with a View to Their Settlement Adoption: Geneva, 51st ILC session (29 June 1967) article 2 (a,b).

in the workplace in UK tasked with systematically identifying and solving important concerns by studying the grievances of the employees.[83] Similar committees at the workplace exist in Denmark as well. The main goals of the committees are to conduct systematic research of the attitudes of the employees and their main problems and prevent collective disputes in the work process. [84] In addition, they are tasked with informing all employees including vulnerable groups, the mechanisms for realizing their labor rights in the clearest and easy to understand manner. [85] In this case, usually these are government services which offer social partners legal consultation, trainings, retraining, provide additional information during the negotiation process, advisory services to the preconditions of the disputes and the ways of resolving them.[86]

Georgia law does not necessarily determine the need to develop internal mechanisms for workers' rights protection by the employers in the corporate management process. The interviews conducted for the study showed that the introduction of such mechanisms depends entirely on the will of the employer. Practice shows that in the cases when these types of internal mechanisms are established, the employer sets out their own framework and objectives, and as a rule, the contents of these mechanisms are limited only to defining internal regulations and imposition of disciplinary penalties for various misconduct.[87] The research affirms the inefficacy of internal mechanisms for negotiation and dispute settle-

83 In the long term, the number of collective disputes has been reduced by 80% and the component of confidence between employees and employers has been clearly identified as a result of the implementation of the Councils. Conflict Management and Prevention The UK Advisory, Conciliation and Arbitration Service (Acas) Conflict Advisory Services Provided to Bradford Metropolitan District Council.

84 O. Hasselbalch: "Denmark", in Labour Law and Industrial Relations, International Encyclopaedia of Laws (The Hague, Kluwer Law International, 2005).

85 BEST PRACTICES IN RESOLVING EMPLOYMENT DISPUTES IN INTERNATIONAL ORGANIZATIONS. Conference Proceedings, ILO Geneva, 15–16 September 2014. REFLECTIONS ON ILO EXPERIENCE: HOW CAN THE EFFECTIVENESS OF DISPUTE RESOLUTION SYSTEMS BE ASSESSED? Corinne Vargha. P 35.

86 BEST PRACTICES IN RESOLVING EMPLOYMENT DISPUTES IN INTERNATIONAL ORGANIZATIONS. Conference Proceedings, ILO Geneva, 15–16 September 2014. REFLECTIONS ON ILO EXPERIENCE: HOW CAN THE EFFECTIVENESS OF DISPUTE RESOLUTION SYSTEMS BE ASSESSED? Corinne Vargha. p 33.

87 Interview with Nikoloz Nanuashvili, Legal Analyst of Georgian Business Association. Interview Date: 20/04/2018.

ment in the company.[88] In our reality, the employees are often excluded from an organizational and human resource management processes, disallowing them to express their concerns in fair and objective environment. Meanwhile human resource management structures at the enterprise level are mostly controlling organs of workers' discipline, prohibiting a thorough examination of the concerns and needs of workers employed in labor relations and onsite resolution, which becomes the basis for a collective labor dispute.

Summary

The lack of adequate legal regulations for collective agreement in labor law and policies cannot ensure the prevention of collective disputes. This problem is particularly acute in the mediation process, as the weakness of the worker's negotiating power and the mistrust between the parties minimize the possibility of reaching a fair and effective agreement through the mediation process.

At the same time, the lack of legal guarantees for fair labor policy mechanisms at the shop floor level promotes collective disputes, since the accrual of worker grievances over a long period of time grow into systemic dissatisfaction and lead to complicated labor disputes.

It is important for the government to identify the stated risks originating in labor disputes and respond by legislating adequate preventative mechanisms. Research and response to the origins of collective labor disputes would ensure the formation of preventive policies against collective disputes, increase confidence among the parties involved, and raise the level of reaching an agreement and enforcement of the mediation process.

88 Research of the mediation mechanism. "The Attitude and Experience of Employees in the Pre-Mediation Period". Page 69.

Chapter 3. Enforcement of Mediation Agreements

The efficacy of the mediation process essentially determines not only the quantitative indicators achieved through mediation, but also the existence and effectiveness of legal and practical guarantees to ensure execution of agreements reached through mediation. The current mediation service does not administer statistical information about the implementation of mediation agreements. The statistics provided by them is limited to the quantitative data if the agreement was reached or not. However, one of the main problems articulated by social partners is the extremely low rate of enforcement of agreements reached through mediation.

The lack of enforcement of the agreements was confirmed by research which was conducted to study the mechanism of mediation. A large part of the participants in the survey indicate that employers most often do not fulfill the agreements achieved through mediation, which results in the strike of workers or a repeated mediation over the same dispute[89]. Strikes resulting from noncompliance with the agreement show that mediation often fails to achieve its objective, and in the cases of repeated mediation, the mechanism is turned into a formal process and essentially excludes mutual trust between social partners.[90]

The study shows that despite the employers' failure to fulfill their part of the obligation, as a rule the employees/unions do not initiate legal proceedings. The research team requested information from six city / district courts from various regions of Georgia. The data shows that none of them have reviewed any cases

89 Sociological Study of Mediation Mechanism, "Since the implementation of the agreement reached by the mediation mechanism and its related legislative framework is not regulated, and as practice shows, there are frequent cases of recurrent mediation due to the non-enforcement of the undertaken obligations or violation of the agreement provisions, this circumstance, in turn, negatively affects the credibility of the mechanism and strips it of the function to provide real contribution in the sphere of labor relations."

90 Interview with the vice president of the New Trade Union of Railways, Ilia Lezhava. Date of the interview: 17/05/2018.

involving a violation of the mediation agreement.[91] In the experiences of the trade unionists and employees interviewed in the study, there is no mention of any precedents in appealing to the court to enforce the mediation agreement.[92] According to them, the reasons for this is due to missing the statute of limitations of common courts and the typical acute delays in court proceedings which is related to a long period of time and financial costs. Another problem cited is also a lack of specialization of judges in the field of review and settlement of labor disputes[93].

1. Effective enforcement mechanisms of mediation agreement in international practice

Mediation, as a process of negotiation of willing parties and the necessary prerequisite for the right to strike, can turn into a mere formal mechanism if the reached agreement is violated over and over again and the effective mechanisms for enforcement of these agreements are not guaranteed by law. In addition, ensuring the efficiency of the mediation mechanism and strengthening the trust of the parties towards it may involve a number of institutions. Moreover the participation of various authoritative instances in the enforcement process of mediation is essential.[94] European practice of enforcement of mediation agreements is di-

91 Tbilisi City Court letter. March 21, 2018. # 03-0437/2359198; Zestaponi Regional Court letter, 26 March, 2018 # 9-65; Poti City Court letter, 23 March, 2018; Gori City Court letter, 26 March, 2018; Rustavi City Court letter, 23 March, 2018 # 159/c; Kutaisi City Court letter, 27 March, 2018, # 3526-3, Batumi City Court Letter 27 March, 2018 # 228c/k.

92 Sociological Study of Mediation Mechanism. "Attitudes and experiences of employees during the post-mediation period" pg. 69: "The demand for enforcement of agreements through court and launching of the dispute is also problematic for the workers because it involves a lot of time and financial resources:" Mediation agreements, are legally binding. However, the enforcement service does not do the monitoring, whether the conditions and deadlines were met? You address the court and the process is prolonged for years. Because on the one hand there is no specific labor court and also the court does not have specific deadlines to accept the case proceedings."

93 Interview with a lawyer, labor law expert, Raisa Liparteliani. Date of the interview: 25/07/2018.

94 DIRECTORATE GENERAL FOR INTERNAL POLICIES POLICY DEPARTMENT C: CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS LEGAL AFFAIRS The Implementation of the Mediation Directive WORKSHOP 29 November 2016 Compilation of In-depth Analyses, THE NEED TO MEASURE THE BALANCED RELATIONSHIP BETWEEN MEDIATION AND COURT PROCEEDINGS P. 28.

verse: In some European countries, there is a principle of notarized enforcement of the mediation agreements,[95] though a more in-depth and more frequently used model of approach to enforcement is the system of specialized labor courts and integrated rapid enforcement models into the general courts system.

a) Specialized labor courts. According to the ILO standard, where all efforts to settle the dispute have failed, there should be an opportunity to appeal to the court, including labor court[96]. The main characteristic of specialized labor courts is the existence of special terms for rapid review of disputes, the direct rule of enforcement of decisions made by the specialized court, and the specialization of judges in the field of labor disputes.

b) Integration of rapid enforcement mechanisms in the system of common courts. The most common model for the implementation of the mediation agreements in European states is the integration of rapid enforcement mechanisms of the mediation agreements in the common courts. Under the minimum standards set by the European Parliament regulations, the Common Courts shall verify compliance of the mediation agreement with the law and the possibility of its enforcement.[97] In the above-mentioned mode, instead of reviewing the case, the court assigns a mandatory mediation session for the parties, if the study of the case circumstances shows that there is a perspective of reaching a mediation agreement.[98]

Such restrictions serve the idea that transferring the case to the mediation should not become a formal mechanism for offloading from courts, and only

95 Esplugues, C. (2014), 720-727; European Commission, Study for an evaluation and implementation of Directive 2008/52/EC – the 'Mediation Directive', Publications Office of the European Union, Luxembourg, 2014, p. 27. 22 European Commission (2014), pp. I & 27.

96 R130 - Examination of Grievances Recommendation, 1967 (No. 130), article 17. (c).

97 DIRECTORATE GENERAL FOR INTERNAL POLICIES POLICY DEPARTMENT C: CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS LEGAL AFFAIRS The Implementation of the Mediation Directive WORKSHOP 29 November 2016 Compilation of In-depth Analyses, THE NEED TO MEASURE THE BALANCED RELATIONSHIP BETWEEN MEDIATION AND COURT PROCEEDINGS, P.80.

98 DIRECTORATE GENERAL FOR INTERNAL POLICIES POLICY DEPARTMENT C: CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS LEGAL AFFAIRS The Implementation of the Mediation Directive WORKSHOP 29 November 2016 Compilation of In-depth Analyses, THE NEED TO MEASURE THE BALANCED RELATIONSHIP BETWEEN MEDIATION AND COURT PROCEEDINGS P. 13.

such cases that have clear perspective of reaching an agreement should be transferred to mediation. When enforcing the mediation agreement, the court shall examine the possibility of execution of the agreement achieved through mediation. The judge is obliged to examines the agreement on the basis of two tests in order to make sure that, on the one hand, it is in compliance with the law, and on the other hand, there is a practical opportunity to enforce it. If the mediation agreement confirms the existence of both factors under the test, it is subjected to the court transferring the case for enforcement, without any re-examinations under common rules of administration.

2. Mechanisms for Enforcement of Mediation Agreements in Georgian legislation

Georgia law does not provide special guarantees for the enforcement of agreements reached through labor mediation. In particular, the law does not specify any type of simplified procedure or deadlines for enforcement of the agreements reached through labor mediation. According to the current legal framework, disputes arising around the agreements reached through mediation process, like any other legal agreements, are reviewed by judges with broad specialization in the court under general rule.

National law, in relation to family, inheritance, neighbor law and other similar disputes, recognizes the model of integrated mediation in the system of common courts[99], although these norms do not apply to labor disputes. This model of mediation has been established in Georgia law since 2011, which creates the possibility of transferring certain cases to the mediator by the court. In case of successful completion of the mediation process and the reaching of an agreement, the court shall, without reviewing the case under general proceedings, expressly approve the agreement reached by the parties; in the case of breach of an agreement the court makes a direct enforcement order.[100]

99 The Civil Procedure Code of Georgia, chapter XXI1, December 20, 2011

100 The Civil Procedure Code of Georgia, article 187^7.

For the purpose of unified codification of current norms, a new "Law on Mediation" is underway. According to the draft law prepared by the Ministry of Justice of Georgia, one of the main principles of mediation is to strengthen the possibility of enforcement of agreements, if the enforcement of the reached agreement is possible and the contents of the agreement are in compliance with the legislation of Georgia.[101] Thus, the legislation, according to the current norms as well as the draft law, is oriented towards a rapid and flexible enforcement of mediation agreements in specific sectors, and does not require additional court hearings in compliance with the general proceedings. The draft law, like the current model, does not consider labor disputes under the integrated mediation court system and[102] thus establishing effective mechanisms for implementing agreements achieved through labor mediation.

Conclusion

The study shows that the acute problem of the labor mediation system is frequent violation of the agreements achieved through mediation and the absence of an effective mechanism for enforcement of agreements. The current system, considering the inefficacy of enforcement mechanisms, cannot turn into a real instrument of collective bargaining, which makes its existence a mere formality and contributes to the mistrust of the parties towards the newly established system of labor mediation.

Considering the European experience, covering labor disputes under mediation mechanisms in the general court system could be defined as an initial stage of creating an effective enforcement mechanism, so far as the country's legal framework and the judicial system already recognize rapid and efficient enforcement mechanisms for other types of disputes. Furthermore, the current process of developing a new legal act, a "draft law on mediation", is a new opportunity for establishing effective mechanisms for enforcement of labor mediation. Integration of the rapid enforcement of agreements achieved through labor mediation in

101 Georgian "Draft law on mediation", article 13.

102 Georgian "Draft law on mediation", explanation note: "Law regulated sphere" page 18.

the system of common courts, would establish a principle of judicial supervision by the competent authority and ensure timely and flexible enforcement of agreements reached through labor mediation. Using existing mechanisms for labor mediation agreements will enable the enforcement of agreements in a short period of time and at a lower cost, will increase confidence in the mediation mechanism, and provide real preconditions for enforcement of mediation agreements and the interests of the parties towards the use of the mechanism.

Representatives of the interviewed employers agree with the need to establish specialized approaches in the judiciary. In their view, enforcement of the labor mediation agreements under the supervision of the court, would rule out direct execution of the agreements without court review. In its turn, that would minimize the risks of enforcement of the agreements without fair assessment of the content of the agreement and ensure the establishment of an effective mechanism for timely enforcement.[103] In the view of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia[104] as well as the employees, [105] integration of labor mediation agreements timely enforcement mechanisms in the court system would increase the effectiveness of the mechanism and the quality of negotiations in mediation process.

However, in the long run, it is also important to start discussions about creating specialized labor courts, since the existence of the labor court cannot only be reduced to rapid and flexible enforcement mechanism for labor mediation agreements, but also respond to the demand for special labor dispute procedures, approaches and panel of specialized judges. In addition, the research shows that the existence of a specialized labor court is an interesting prospect for employers and unions, as well as the representatives of the Ministry of Labor, Health and Social Affairs. The interview with the ILO representatives also suggests the necessity of establishing labor courts, as it would facilitate and accelerate resolving labor

103 Interview with Mikheil Kordzakhia, Vice President of Georgian Association of Employers. Interview date: 23/04/2018. Interview with Georgian Business Association Legal Analyst Nikoloz Nanuashvili. Interview date: 20/04/2018.

104 An interview with Elza Jgerenaia, head of the Labor and Employment Policy Department of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia. Interview date: 4/05/2018

105 Interview with Ilia Lezhava, Deputy Chairman of the New Trade Union of Railways, 31.10.2018,

disputes and enforcement of labor mediation results, and diversify mechanisms of realization of labor rights at the national level.[106]

Initiating labor courts is an important perspective that ensures the establishment of a timely, effective and flexible enforcement system of mediation agreements, creating an opportunity to respond to the concerns of employees and increasing the confidence in the mediation mechanism. However, considering the complexity of the reform, which calls for long term and systematic work, its integration in the judicial system reform and participation of social partners and other actors, it is essential the existing mediation model in the court system is applied here in order to ensure timely and effective implementation of labor mediation agreements.

106 Interview with the Chief Technical Advisor of the International Labor Organization, Zsolt Dudas. Interview Date: 17/04/2018.

Legislative research findings

The role of the government in the performance and effective administration of the mediation mechanism:

- The mediation mechanism in Georgia operates under the supervision of the government which is in compliance with the international standard; however, considering the fundamental challenges in the system, the mechanism has failed to become an effective tool for building trust among parties and settling collective disputes, which in its turn, highlights the need to significantly reform the system;
- Based on the connection between the right to a strike action and mediation, and the need to maintain balance between them, the government must ensure the validity and effectiveness of the mediation mechanism on the one hand, and respect for the right to strike on the other, in order to make sure that the mandatory requirement of mediation does not obstruct enforcement of the right to strike action;
- The role of the government in the performance of mediation and obligations that arise as a result should not be understood as contradictory to the two main elements of the process of collective dispute settlement: autonomy and voluntarism of disputing parties. Involvement of the government in mediation is a way to make sure that realistic decisions are made as a result of mediation and expression of their will by the parties;
- In Georgia, many problems concerning effectiveness of mediation are linked to the administration of the system. The current model of management does not ensure adequate functioning of the mechanism and diminishes the trust of parties towards mediation which increases the responsibility of the government to be more proactive in effective administration of the mechanism;
- Study of mediations, examination and analysis of challenges, elimination of gaps and consistency of practice and legislation, are important elements to improve performance of the mediation system. Such

systematic research and evaluation does not take place in Georgia which limits opportunities for substantial improvement of the system;

- Another obstacle to the effective performance of mediation is the shortage of mediators, which is caused by the lack of various contractual schemes with mediators on the one hand, and inadequate salary policies on the other. These issues significantly affect the process of assigning mediators to disputes in a timely manner;
- The minister assigns the mediator (selected from the mediators' registry) to a specific dispute unilaterally, without considering opinions of disputing parties which contradicts the ILO standard regarding close participation of social partners in the process;
- Continued education and training of mediators is the internationally accepted practice. Mediators in Georgia are periodically trained by international organizations, but there is no systematic and institutional support for continued training of mediators from the government;
- According to the ILO standard, where necessary, the national legislation must provide employees with access to economic and other types of information of the employer, which is important for effective completion of negotiations; however, the Georgian law does not allow access to financial and other information during collective disputes in any circumstances.

Regulations for preventing collective disputes at workplace and adequately addressing labor relations:

- Contrary to the international standard and practice, the Georgian legislation does not provide concrete requirements for forming collective agreements and ensuring fair terms and conditions. The law does not require collective agreements to be mandatory nor guarantees better conditions in such agreements. It leaves the process

of forming collective agreements and defining terms and conditions completely to the disputing parties;

- Unlike international practice, Georgia's legislation does not require development of effective mechanisms for rights protection of workers in the process of corporate management. Introduction of such mechanisms are completely dependent on the willingness of employers which excludes employees from fair organization of labor and contributes to accumulation of frustration among them.
- Enforcement of agreements reached through mediation:
- The main challenge of existing mediation system in Georgia is the failure to implement agreements reached through mediation which is manifested in either partial or full violation of mediation agreements by employers;
- Failure to implement mediation agreements leads to strike actions or secondary mediations, which diminishes the trust towards mediation and turns it into an ineffective and a mere formal mechanism;
- There is no practice of litigation by workers or trade unions against failure to fulfill mediation agreements which can be explained by delayed trials and related disproportionate expenses;
- Georgia law does not provide special measures for ensuring enforcement of mediation agreements while it recognizes the court mediation model in relation to specific types of disputes;
- International standards and practice demonstrate that the court system plays a significant role in effective performance of mediation. This role is manifested through specialized labor courts or models of rapid enforcement of mediation integrated within common courts;
- Social partners interviewed in the research also stress the issues related to failure to implement mediation agreements and highlight the need for special enforcement mechanisms.

Part II
Studying Labor Mediation from Employees' Perspective
Sociological research

Research Methodology

The presented research was carried out with qualitative methods and is based on the analysis of data collected through fieldwork and desk research. The research instrument was a semi-structured interview guide, which consisted of four sections. The first section addressed the demographic data and personal experiences of respondents while the remaining three sections directly dealt with the research subject. In order to collect baseline data, 19 face-to-face in-depth interviews were conducted during April-June 2018. The respondents were selected through purposeful sampling.

Before sampling, a desk research was conducted and statistical, analytical and other types of information was requested from the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs regarding labor mediations that took place in Georgia during 2013-2017. Based on the analysis of various factors that were characteristic to the labor mediation cases, the desk research focused on cases which could offer most indicative data on the one hand and would also provide a wide spectrum and variety of information with regard to the research subject on the other. More specifically, the medication cases were selected through stratified purposeful sampling[107], which allowed for collection of most fundamental information regarding the research subject; identification of internal intricacies and accumulation of critical knowledge of the issue. Consequently, 9 cases were selected out of which 7 cases could be studied by the research[108]. They cover a wide array of employment sectors including: transportation, recycling industry, energy, television and service provision. Outcomes of the labor medication were also taken into consideration during selection. Mediation resulted in settlement in 3 out of the 7 cases and it failed in 2 cases. Mediation was terminated in one case and a partial settlement was reached in another case. Respondents were selected with regard to the selected labor mediation cases and a total of 17 individuals were interviewed. In order to balance

107 Michael Quinn Patton, *Qualitative Research & Evaluation Methods* (SAGE, 2002).

108 Two mediation cases: with JSC Glass in 2016 and Rustavi Nitrogen in 2017 could not be examined due to problems in communication with participating respondents

the small number of service workers and the data collected from them, interviews were also conducted with the director and lawyer of an independent trade union "Solidarity Network – Workers' Center", which specializes in the service sector. In total, the research is based on 19 face-to-face in-depth interviews (please see the annex), which lasted for 60-70 minutes each.

For analysis purposes, audio recordings of the interviews were transcribed and thematically coded. The quantitative data were processed using the statistics software SPSS which measured the frequency and percentage of the data[109] and the qualitative information was analyzed in QDA Miner software which was used to assign thematic codes to the data and conduct content analysis. Notably, the comparative analysis of quantitative and qualitative data demonstrated consistency, which once again confirmed the appropriateness of the methods and instruments used in the research.

Due to the high number of requests for labor mediation coming from employees, which is a common experience in Georgia, looking into their experiences was prioritized by the research; therefore it examines the labor medication cases from the perspective of employees. It can be described as a limitation of the research as it does not include sufficiently the views and attitudes of employers about certain labor mediation cases; however, opinions of employer associations regarding the mediation mechanism and its practices in Georgia are addressed in the first part of the research. For an in-depth analysis of Georgia's labor mediation mechanism it is important to examine the attitudes and viewpoints of employers in more detail, which can be the subject of future research.

Other limitations of the research include the scarcity of information or research/analytical data about the labor mediation in Georgia. Availability of such data would provide a baseline for the research. Shortage of information also limits the research in its capacity to generalize and widely interpret the findings. Another limitation has to do with the lack and disparity of official statistical and analytical data regarding the labor mediation mechanism in Georgia. Notably, the information provided by the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs in April 2018 did not include complete and comprehensive data about the subject, settlement terms

109 Acceptable coefficient for data reliability and internal consistency – Cronbach's Alpha: 0.796

and enforcement periods of labor mediations conducted during 2013-2017. The reports submitted to the Ministry by the mediators also lacked elaborate and consistent description of mediation cases. Furthermore, the refusal of the Georgian Trade Union Confederation (GTUC) to participate in the research and provide the research team with information delayed collection of data and limited the research only to the communication with the representatives of trade unions and analysis of their experiences.

Despite the limitations described above, conversations with a diversity of respondents and systemic analysis of literature and information of various types and contents have enabled us to compile fundamentally new and critical knowledge specific to the local context, which will contribute significantly to the debates about the labor mediation mechanism in Georgia, expansion of perspectives and new applications of its potential in the future.

Chapter 1. Labor Mediation Literature Review

There is a plethora of literature, research and assessments concerning dispute settlement and application of the mediation mechanism, its historic development, and the role and efficacy of mediation in labor and industrial policies. Nevertheless, there is paucity of literature that would examine the role of a third party in labor mediation, namely the state. Moreover, the lack of publications that would research the workings of such mediation from the perspective of the employees is even more stark.

The existing literature about labor mediation includes a broad spectrum of comparative studies, which analyze different models of labor dispute resolution mechanisms including mediation, arbitration and conciliation, and their regulatory frameworks and internal characteristics of relevant institutional arrangements in various countries.[110] [111] [112] There is also an abundance of mediation research literature where the comparative analysis of legislative frameworks and industrial policies are the leading research topics.[113] [114] [115] In addition to the comparative studies of procedural and legislative aspects of mediation and dispute resolution mechanisms in various countries, the literature also includes research about the types and variations of mediation mechanisms in different sectors of

110 Anand Chand, "Comparative Analysis of Dispute Resolution Mechanisms: Fiji and the Cook Islands," Fijian Studies: A Journal of Contemporary Fiji 13 (2015): 58–72.

111 Varda Bondy et al., "Mediation and Judicial Review: An Empirical Research Study," Monograph, June 2009.

112 Annie de Roo, "The Settlement of (Collective) Labour Disputes in the Grand Duchy of Luxembourg," National Report, EU Project for the Study of Conciliation, Mediation, and Arbitration (Erasmus University Rotterdam, n.d.).

113 Chand, "Comparative Analysis of Dispute Resolution Mechanisms."

114 András Tóth and László Neumann, "Labour Dispute Settlement in Four Central and Eastern European Countries," 2003.

115 Ian McAndrew, "Models of Employment Dispute Resolution in New Zealand: Are There Lessons for Europe?," Proceedings of the 10th International Labour and Employment Relations Association (ILERA) European Conference: Imagining New Employment Relations and New Solidarities., n.d.

employment: private, public or federal.[116] [117] There is also ample literature about the effectiveness of mediation and practices of its application analyzed through the examples of family disputes, disagreements between collective groups or disputes between community organizations.[118] [119] [120] [121]

Aside from comparative analysis of mediation, the literature is also dominated by labor mediation research, which looks at the effectiveness of mediation in terms of conflict management, risk management and settling of organization or industrial relations.[122] These documents view conflict as an intrinsic part of organizational or industrial relations, therefore, in cases where the dispute is on different hierarchy levels between top and low managerial positions, organizations of employees and administrative units, the importance and effectiveness of the mediation mechanism is analyzed from the perspective of conflict management and preservation of organizational stability where the mechanism is described as an effective instrument to resolve conflicts and manage risks.[123] [124] In the available international research papers, mediation and the dispute resolution mechanism are deemed as an effective tool to neutralize or reduce the negative consequences of labor relation conflicts or divergences. They often point to the positive and

116 Lisa B. Bingham, "Employment Dispute Resolution: The Case for Mediation," Conflict Resolution Quarterly 22, no. 1–2 (2004): 145–74.

117 Raymond L. Hogler and Curt Kriksciun, "Impasse Resolution in Public Sector Collective Negotiations: A Proposed Procedure," Berkeley Journal of Employment & Labor Law 6, no. 4 (1984).

118 Joan Kelly, "Family Mediation Research: Is There Empirical Support for the Field?," Wiley Online Library, Conflict Resolution Quarterly, 2004.

119 Megan Morris et al., "Predictors of Engagement in Family Mediation and Outcomes for Families That Fail to Engage," Family Process 57, no. 1 (March 1, 2018): 131–47.

120 Mukesh Khanal and Preeti Thapa, "Community Mediation and Social Harmony in Nepal," Companion Paper (The Asian Foundation, 2014).

121 Lee Li-On, "The Politics of Community Mediation: A Study of Community Mediation in Israel," Conflict Resolution Quarterly 26, no. 4 (June 1, 2009).

122 William K. Roche, Paul Teague, and Alexander J. S. Colvin, eds., The Oxford Handbook of Conflict Management in Organizations, Oxford Handbooks (Oxford, New York: Oxford University Press, 2014).

123 Cathy A. Costantino, 'Using Interest-Based Techniques to Design Conflict Management Systems', Negotiation Journal, 12.3 (1996), 207–15

124 Cathy A. Costantino, "Second Generational Organizational Conflict Management Systems Design: A Practitioner's Perspective on Emerging Issues," Harvard Negotiation Law Review 14, no. 1 (2009): 81–100.

balancing effect of bargaining and mediation for industries and companies as well as for regulating labor relations, where particular emphasis is placed on optimization of financial expenses, insurance of financial losses and seamless workflow.[125] [126] In addition to financial and economic justifications, the literature about importance of labor mediation mechanism also often highlights the issues of organizational justice[127] and enforcement of labor rights of employees.[128] Notably, the labor mediation studies and their theoretical and practical approaches, which view mediation and dispute resolution as a tool to maintain stability, manage risks and neutralize conflicts at workplace environments, highlight the role of organizational culture and internal organizational approaches which are designed to harmonize the work process and establish the kind of corporate culture to reduce the probability of conflicts and divergences between different hierarchical levels to a minimum.[129] [130]

Labor mediation literature and academic sources which study mediation as part of a larger institutional process and places it within the frames of labor policy regulation systems and social dialogue, are more relevant to local Georgian context. However, unlike its description in the Georgian reality, the role of social dialogue has a different implication in these academic sources and is depicted as a combination of discussions, consultations, negotiations and joint actions involving social partners from organizations and companies (representatives of employers and employees) in order to settle collective disputes or disagreements on

125 E. Giebels and O. Janssen, "Conflict Stress and Reduced Well-Being at Work: The Buffering Effect of Third-Party Help," European Journal of Work and Organizational Psychology 14, no. 2 (June 2005): 137–55.

126 Paola Manzini and Marco Mariotti, "Arbitration and Mediation: An Economic Perspective," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, July 1, 2002).

127 David H. Good, Lisa Blomgren Bingham, and Tina Nabatchi, 'Organizational Justice and Workplace Mediation: A Six-factor Model', International Journal of Conflict Management, 18.2 (2007), 148–74.

128 Donna Margaret McKenzie, 'The Role of Mediation in Resolving Workplace Relationship Conflict', International Journal of Law and Psychiatry, 39 (2015), 52–59

129 Michele J. Gelfand et al., "Conflict Cultures in Organizations: How Leaders Shape Conflict Cultures and Their Organizational-Level Consequences," Journal of Applied Psychology 97, no. 6 (2012).

130 Dean Tjosvold, "The Conflict-Positive Organization: It Depends upon Us," Journal of Organizational Behavior 29, no. 1 (2008): 19–28.

labor and employment matters by means of exchanging information and applying mediation. These academic sources study the process of labor mediation and collective dispute resolution mainly with regard to national industrial and labor policies as well as the managerial policies and practices of companies where more emphasis is placed on the structural, collective or interpersonal characteristics of the mediation mechanism.[131] There is a broad spectrum of research and analysis of the labor mediation mechanism as an instrument enhancing social dialogue and regulating labor policies, which assess the efficacy of the mechanism from the perspective of its harmonized incorporation in the government's legislative framework and its systems (institutions) tasked with handling labor relations. More specifically, these publications accentuate the procedural, technical or qualitative specifications of labor mediation system, which ensure its coherent incorporation within individual aspects of national level labor or industrial policies[132].

As for the literature works focusing on various factors or aspects that instigate collective disputes, they are also widely available and can be grouped under the cases of mediations of collective and individual disputes.[133] [134] Given the objective of the presented research is to carry out a thorough analysis, it has been found that in collective dispute mediation cases much consideration is given to the following issues: bargaining power; sense of justice among employees; influences of hierarchical position constraints on the mediation; access to information related to the production processes before the occurrence of the dispute; strength of collective unions, etc.

There is a significant shortage of literature, research and academic sources studying the specific characteristics of the labor mediation mechanism in Geor-

131 Martin Euwema et al., Promoting Social Dialogue in European Organizations: Human Resources Management and Constructive Conflict Management (industrial Relations & Conflict Management, 2015).

132 Katalien Bollen, Martin Euwema, and Lourdes Munduate, eds., Advancing Workplace Mediation Through Integration of Theory and Practice, Industrial Relations & Conflict Management (Springer International Publishing, 2016).

133 Nick Clark, Sylvie Contrepois, and Steve Jefferys, "Collective and Individual Alternative Dispute Resolution in France and Britain," The International Journal of Human Resource Management 23, no. 3 (February 1, 2012): 550–66.

134 Joel Cutcher-Gershenfeld et al., "Collective Bargaining in the Twenty-First Century: A Negotiations Institution at Risk," Negotiation Journal 23, no. 3 (2007).

gia, its development and the procedural and regulatory aspects of the mechanism. There are very few studies and assessments within the available literature which examine and assess the effectiveness of the mediation mechanism in Georgia. Similarly, few publications look at the role of mediation in labor policies, its impact on labor relations, experiences and attitudes of disputing parties regarding the mechanism, etc. Reasons for the lack of academic research may be related to the following two circumstances. The first is that labor mediation is a relatively new mechanism in Georgia's labor and industrial policies, and consequently, it has not yet been subjected to scrutiny by various research institutions, non-governmental organizations, workers' unions or academics when analyzing labor policies of the country. The second reason, which may be closely interconnected with the first, is the failure of the mediation mechanism that was introduced in 2013 to acquire importance and power to influence the labor policies of Georgia; therefore, it has failed to become a subject of broad public discussion.

Nevertheless, the few studies and assessments of the specifications and performance of the mediation and dispute resolution mechanism in the Georgian context should be duly acknowledged. One of the most important sources in this regard is the assessment report of the mediation mechanism produced by an expert invited by the ILO in 2016. The assessment report was developed in order to be submitted to the Tripartite Commission on Social Partnership.[135] The report consists of four sections. The first section summarizes the procedural specifications of the mechanism, and the second section analyses various practical aspects of the mediation cases in Georgia between 2013 and 2016. The third section provides descriptions of necessary changes and modifications for improving the legislative procedures for dispute resolution, while the final section offers expert recommendations of on how to improve the legislative mechanisms of labor mediation. A more general but vast research is offered in the document published in 2013 by the National Center for Alternative Dispute Resolution at Ivane Javakhishvili Tbilisi State University, which examines the prospects of legal regulations of the mediation mechanism in Georgia. The document clarifies the meaning and importance of labor mediation that took place and summarizes the few practical

135 The report is an internal document and has not been publicized. Lekuri Roger: Evaluating and Improving the Mediation Mechanism in Georgia (Tbilisi: International Labor Organization, 2016)

cases of mediation before 2013.[136] Another research study looks at the historical development of the concept and mechanism of mediation where the historical foundations of this model of dispute resolution are analyzed with regard to the customary law of certain parts of Georgia[137].

Considering the above, one can argue that there is a significant lack of literature in Georgia that examines, assesses and analyzes labor mediation in the country; therefore, the presented publication will, on one hand, contribute to the local research and analysis, and on another hand, it will also enrich the relevant international literature by offering dense descriptions of Georgia's unique context and circumstances and adding new perspectives to the theoretical understanding or practical application of the mechanism.

136 "Legal Perspectives of Mediation in Georgia" - Report (Tbilisi, National Center for Alternative Dispute Resolution, 2013).

137 Tkemaladze Sopho, "Mediation in Georgia: From Tradition to Modernity" (Tbilisi, UNDP, 2016)

Chapter 2. Origins and Development of Labor Mediation Internationally and Locally

1. The history and the development of Labor Mediation

Mediation is an interactive process where disputing parties discuss the subject of dispute and a neutral third party facilitates the communication and helps the parties reach mutually acceptable agreement. The mediator leads the negotiations and can also help the parties to clearly understand the subject of dispute, find the most suitable solutions, and reach an agreement.[138]

Mediation is very important in labor relations. As early as the 19th century, when national workers' unions and employers' associations were being formed and the number of collective agreements in companies were increasing, debates about how to maintain seamless workflow in the industry or production level started to grow. These debates reflected not only the interests of employers or employees but were also closely interconnected with the visions and plans of the government on how to develop national labor policies in the future.

According to the available literature, the first country to introduce the modern form of labor mediation mechanism was Sweden. In 1906 it adopted the first act about mediation, which addressed the administrative procedures of collective disputes at the workplace. According to the sources, at that time Sweden was divided into eight different regions and each one of them had one mediator, but in cases when the collective dispute transcended the regional borders, the government would appoint one specific mediator on an ad-hoc basis to resolve the dispute. Mediation was not mandatory; however, the 1920 and 1930 amendments required from the disputing parties to notify their regional mediator in advance about their plans to terminate the production process or organize a strike. After Sweden, labor mediation was introduced in many other European countries and became an important part in regulations of labor relations.[139]

138 Bollen, Euwema, and Munduate, Advancing Workplace Mediation Through Integration of Theory and Practice.

139 Torgeir Aarvaag Stokke, "Mediation in Collective Interest Disputes," Stockholm Institute for Scandianvian Law, Stability and Change in Nordic Labour Law, 2002, 135–58.

Presently the main role of labor mediation is to prevent confrontation in collective disputes at the workplace and encourage dialogue between disputing parties. In this regard, the mediation mechanism is often intertwined with government strategies addressing labor relations or those designed to ensure institutional management of collective disputes.[140] Considering the historical perspectives, one can argue that the need to introduce the mediation mechanism arose when national labor policies or corresponding legislative frameworks proved to be insufficient for adequate handling of labor relations or effective prevention of collective disputes. These circumstances generated the necessity to find alternative solutions and introduce labor mediation mechanisms: mandatory or voluntary, administered by the government or acting independently.

In most of the countries, occurrence of a collective dispute and failure of negotiations do not directly result in radical actions or strikes. Rather, the majority of government employ certain mechanisms, which require employers and employees to apply different methods of bargaining and use every possible opportunity for a constructive dialogue. From the perspective of labor relations, different nations may have varying methods of conflict management and dispute resolution; however, in Georgia, one of the most common methods is mediation, which was introduced and enacted in 2013.

Scholars who write extensively about labor mediation and the importance of its incorporation in national labor relation policies, point to the additional factors and stress that without ensuring unimpeded operation of these factors, existence or effectiveness of the mediation mechanism will be compromised. Scholars engaged in studying labor mediation also emphasize that historically, the process of mediation has always depended on a number of fundamental conditions, such as the strength of trade unions; collective demands of employees; balanced bargaining power of employees and employers, etc.[141] Notably, the settlements or agreements reached as a result of mediation reinforced by the factors listed above are characterized with high legitimacy and formal power. More specifically, in countries where the mediation mechanism is an extension of national regulations of labor relations, agreements formed as a result of mediation are regulated by similar labor policy legislation provisions and are therefore institutionally solid.

140 Tony Bennett, "The Role of Mediation: A Critical Analysis of the Changing Nature of Dispute Resolution in the Workplace," Industrial Law Journal 41, no. 4 (December 1, 2012): 479–80.

141 Berndt Keller, "Mediation as a Conflict-Solving Device in Collective Industrial Disputes," Relations Industrielles / Industrial Relations 43, no. 2 (1988): 431–46.

2. Labor mediation mechanism in Georgia

At the international conference organized by Friedrich Ebert Foundation and International Labor Organization in 2011, which was dedicated to the improvement of labor standards and social dialogue in Georgia, the guests spoke about *"creating effective, accessible and independent mediation units which will provide new opportunities for collective dispute resolution.*[142]*"* It has to be noted that at the time, the Labor Code of Georgia did not include any regulations on collective dispute review and resolution procedures. The only document providing legal foundations for labor dispute resolution, enacted in 1998 during the presidency of Eduard Shevardnadze, was the Law of Georgia on Collective Dispute Resolution,[143]which was invalidated in November of 2006. Consequently, the version of the labor code at the time addressed strike actions by allowing the disputing party to organize a warning strike first, and only afterwards, required them to participate in bargaining, *"meaning that the parties would go on strike first, and only then they would sit down at the negotiations table*[144]*"*.

In addition to the lack of legislation addressing collective disputes, until 2012, Georgia's labor policies were characterized by a highly liberal approach, which ignored fundamental labor and social protection rights of employees. The labor code itself was often referred to as *"some of the most hostile legislations in the world.*[145]*"*

The new government of Georgia elected in 2012 implemented a number of reforms in labor policies and re-introduced regulations. Based on amendments enacted in 2013, several articles and provisions of the labor code were modified[146] to include: definitions and regulations of the reasons for collective disputes;[147] procedures for re-

142 Lekuri, "Evaluating and Improving the Mediation Mechanism in Georgia"

143 LEPL Legislative Herald of Georgia, "Rules of Addressing Collective Labor Disputes"

144 Sanikidze Zurab et al., "Legal Aspects of the New Changes in the Labor Law", ed. Chachava Sopho (Tbilisi, GIZ, 2014) pp. 23)

145 Matthias Jobelius, "Economic Liberalism in Georgia: A Challenge for EU Convergence and Trade Unions," Friedrich Ebert Stiftung, April 2011.

146 Sanikidze et al., "Legal Aspects of the New Changes in the Labor Law", ed. Chachava Sopho (Tbilisi, GIZ, 2014)

147 The Labor Code of Georgia, Art. 47

view and resolution of disputes; the role of the labor mediation mechanism and the mandatory requirement for disputing parties to participate in labor mediation.[148] In addition, a new resolution was enacted which established the rules and deadlines for considering and resolving collective disputes and approved frameworks for the entitlement and enforcement of the right to strike.

The new amendments in the labor code regarding collective disputes and mediation constituted a significant change in regulating labor relations - mediation was recognized as mandatory and the government became responsible for the administration and financial support of the process. The head of the Labor and Employment Policy Department of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs had the following to say regarding the role of the government:

> *The role of the government in the [mediation] process is critically important as it ensures unbiased mediation for the [disputing] parties where the government is involved only in the financial and organizational aspects of the process.* [149]

According to the statistical data, a total of 32 mediations took place between 2013 and 2017 and in all of these cases mediation was initiated by employee collectives (of 20 persons or more) or by professional unions (local or sectoral industrial trade unions). During these years, the instances of collective disputes which turned into mediation took place at 20 different enterprises or organizations (please see Table #1), out of which 16 companies were from the private sector and four companies were co-founded by the state. During the given period, there were also cases of repeated mediation caused by the breach of agreements reached as a result of initial mediation and the recurrence of collective disputes (please see Table #2).

As for the statistical distribution of mediation cases across years, the data shows that frequency of mediations grew annually and reached its highest number in

148 The Labor Code of Georgia, Art. 481

149 Elza Jgerenaia; face-to-face interview with the Head of the Labor and Employment Policy Department, 2018

2016 (53% of the total number of mediation cases); however, the number of mediation cases dramatically fell in 2017 (please see Figure #1). As for the final outcome of labor mediations, 15 out of the 32 mediation cases during 2013-2017 ended with positive results and agreement could not be reached in nine cases. Other instances of labor mediation were either terminated or postponed or they ended with partial agreements (please see Figure #2).

Table #1

#	Company/Organization	Institutional sector
1	RMG Gold and RMG Copper	Private
2	JSC Georgian Railway	State
3	LLC Georgian Post	State
4	LLC Tbilisi Transport Company	State
5	JSC Corporation Poti Sea Port	Private
6	JSC Mina (Ksani glass container factory)	Private
7	JSC Energo-Pro Georgia	Private
8	LLC Georgian Manganese	Private
9	LLC Georgian Coal (GIG)	Private
10	LLC 23rd Office of China Railway	Private
11	LLC "Rustavi Azot"	Private
12	LEPL Public Broadcaster	State
13	JSC Telasi	Private
14	LLC Employment Agency HR	Private
15	LLC Tbilservice Group	Private
16	LLC Batumi Autotransport	Private
17	LLC Batumi Oil Terminal	Private
18	Road Construction Altcom	Private
19	LLC Albatros	Private
20	Salini Impregilo	Private

Table #2

#	Company/Organization	Cases of mediation (2014-2017)
1	RMG Gold and RMG Copper	3
2	JSC Georgian Railway	3
3	LLC Georgian Manganese	3
4	LLC Georgian Post	2
5	LLC Tbilisi Transport Company	2
6	JSC Mina (Ksani glass container factory)	2
7	LEPL Public Broadcaster	2
8	LLC Batumi Autotransport	2

Figure #1. Distribution of labor mediation outcomes across years

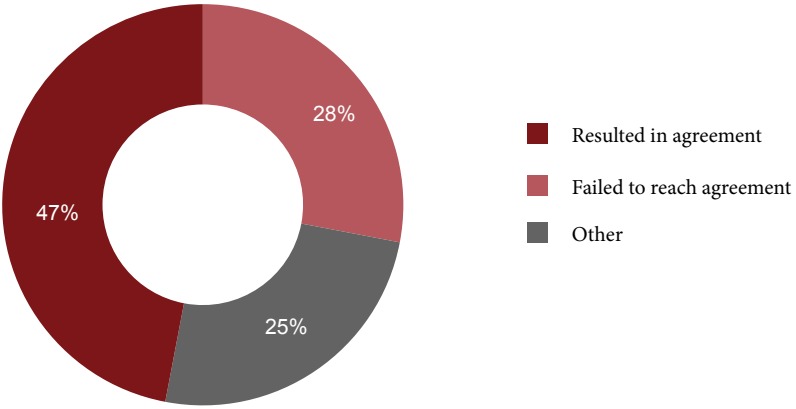
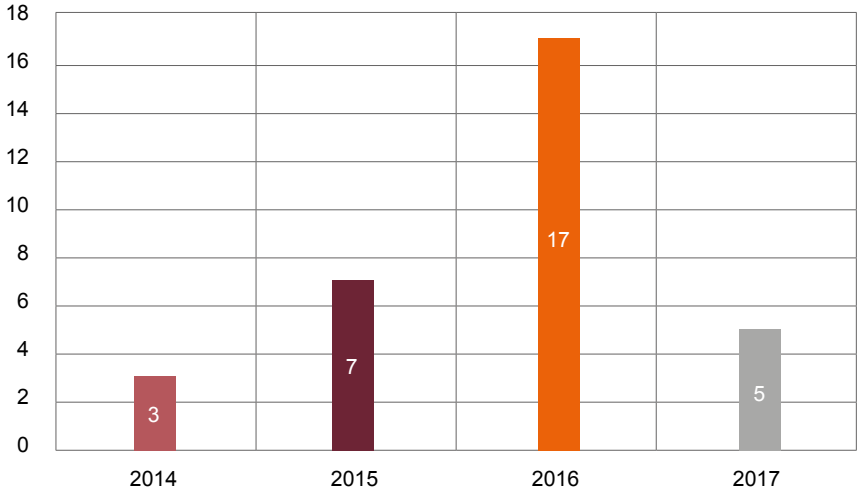


Figure #2. Distribution of the number of mediation cases across years



The statistical data demonstrates that despite the novelty of the mechanism in Georgia and the flaws in its procedural or administrative regulations, the use of labor mediation at different industries or companies was increasing annually, with the exception of 2017.

Review of the types and contents of employees' demands during mediation demonstrates the fundamental importance of issues that became the reason for dispute. For example, according to the mediation minutes and narrative reports provided by the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs[150], the most frequent demand of employees engaged in mediations during 2013-2017 had to do with their requirement to form or amend a collective labor agreement. Other recurring demands included: increase and/or indexation of salaries; enforcement of obligations undertaken by companies' administration; overtime pay, etc. Notably, requirements of employees also included fulfillment of such fundamental demands as harmonization of individual labor agreements with existing labor legislation; enforcement of the right to vacation and sick leave, etc. (please see Annex #1 for more information

150 Data collected from 24 meeting reports provided by the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs.

about employee demands). Importantly, up to 48% of the mediation cases during 2014-2017 resulted in settlements.

It is difficult to comment on or assess the actual positive contribution of the mechanism to the improvement of labor policies in Georgia despite the available statistics. The research has found that regardless of the use of mediation, the trade unions in Georgia do not consider it to be a workable and effective instrument. Most frequently, it is viewed by employees as a formal procedure and is not expected to yield any actual results; the low expectations of employees may be caused by their lower bargaining power on the one hand and recurring practice of breaching or failing to enforce the agreements reached as a result of mediation on the other.

3. Structural challenges in labor relations

The history of the formation and development of the labor mediation mechanism shows that it was created in one of the most developed parts of the world – Northern Europe – as national labor policies and institutions evolved and advanced. Certain structural circumstances also supported greater institutionalization of the mechanism: for example, the high potential for bargaining between social partners, which, in the light of equal conditions and somewhat equal bargaining power, enabled them to use all available tools for negotiations. These historical conditions ensured institutionalization of mediation as one of the most important mechanisms of labor relations and stimulated its integration in the agenda of International Labor Organization.

As described earlier, the labor mediation mechanism was introduced in Georgia in 2013. Its establishment was partly associated with the impetus to transform the social sector coupled with shifts in the political reality of Georgia and was also required by the action plans of EU-Georgia Association Agreement. In addition to introducing the labor mediation mechanism, a number of other changes were implemented in labor policies after the 2012 regime change; for example, amendments in the labor code; formation of the labor inspection department; introduction of a tripartite social dialogue format; drafting legislation on labor safety

(which is the most recent reform), etc. However, despite the seemingly long list of changes carried through the system, they have failed to significantly improve labor policies in Georgia since they lacked leverage and enforcement mechanisms[151] on the one hand, while on the other hand, they were not properly contextualized and linked to the socio-structural environment in Georgia, the specific nature of local labor relations and structural challenges of the labor market[152].

The process of formulating and introducing the labor mediation mechanism in Georgia can also be described with similar critique. In spite of the increased need for the mediation mechanism, its establishment was not followed by adequate actions to improve labor policies or empower social actors. International research and approaches on labor mediation demonstrate that in addition to unhindered procedural and technical performance of the mechanism, other factors including the strength of trade unions; balanced bargaining powers; the extent of resonance with the collective demands of employees; consequences of socio-economic conditions on the labor market, etc. are similarly important for the effectiveness of the mechanism. However, the above listed structural challenges and worker safety have always been some of the acute issues of labor policies due to the ineptitude of trade unions, unstable labor market, high socio-economic vulnerability and other reasons.

Collapse of state institutions and the struggle to shift to a new political system after the disintegration with the Soviet Union brought extreme social hardships, economic instability and a total stagnation in Georgia. In response to these challenges, starting from the years 2005-2006, the right-wing liberal government started to carry out liberal labor policies in order to encourage economic activity and production, attract foreign investments and simplify doing business in Georgia at the expense of compromising the workers' rights. As a result, employees soon found themselves in a highly vulnerable situation, which grew permanent and systematic in nature, rather than temporary[153]. Current labor policies and labor market structures are faced with the same challeng-

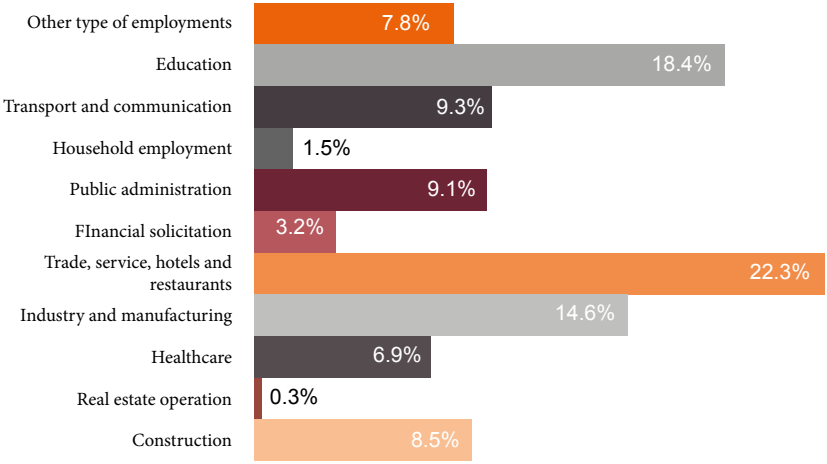
151 Chubabria Tatuli, Gvishiani Lela and Jokhadze Salome; Evaluation of the Labor Inspection Mechanism and Worker Rights in Georgia (Human Rights Education and Monitoring Center- EMC, Tbilisi, 2017)

152 Ana Diakonidze, "Superficial Institutions and Challenges of Re-Regulation in the Republic of Georgia," Caucasus Survey 4, no. 2 (May 3, 2016): 149–64.

153 For more information about the systemic challenges of the labor market, please see the ILO review: *World Employment and Social Outlook – Trends 2016, n.d., 92.*

es as the new government elected in 2012 failed to eliminate the imbalance of the labor system and ensure fair labor policies, even though they introduced a number of amendments to re-regulate labor and employment policies. Unemployment is still soaring in Georgia; the number of people working in informal sector is high; employees are provided with minimum legal and social protection entitlements and the number of the so-called "contracted" employees is very low. According to the National Statistics Office of Georgia, in 2015 the unemployment rate was 12.4%[154] by ILO criteria but the aggregated rate of unemployment (unemployment by ILO criteria, partial employment and hidden unemployment combined) reached 26%.[155] In addition, as indicated above, the share of so-called "contracted" employees in this number was very low; almost half, specifically 43% (in 2017) were working in agriculture[156].

Figure #3. Employees distribution across the sectors uxcluding self-employed individuals in the agriculture



154 "ILOSTAT CP," accessed November 5, 2018, https://www.ilo.org/ilostatcp/CPDesktop/?list=true&lang=en&country=GEO.

155 Kapanadze Nodar, "The Structure of Unemployment and Structural Unemployment in Georgia" (Tbilisi, Friedrich Ebert Foundation, Rondeli Foundation, 2016)

156 *Distribution of Workers According to Economic Activity (Nace rev. 2) 2017* - National Statistics Office of Georgia

Removing the share of agriculture workers from the labor market analysis,[157] it turns out that the majority of workers (22.3%) are employed in small trade and service sector where instances of collective unions are very few due to the specific nature of work (please see Figure #3). In sectors such as education, transport and communications where employees are more protected due to the nature of the job, the competition is high.

Finally, it has to be noted that the number of Georgian Trade Union Confederation (GTUC) members remains to be low in Georgia and constitutes only 8.8% of the working population.[158] In terms of economic activity, some of the most active members of the GTUC include unions of employees of mining, chemical and metal industries and the new railway workers' union, however, according to the local unions of these industries, the number of members within their unions is decreasing. Similarly, the public's trust in trade unions also diminishes each year,[159] which affects the unions' capacity to attract more members. As for collective agreements and their scope on enterprise or industry field level, the situation is grave as well: there are only 57 valid collective agreements and one industry field-level collective agreement in the country.[160] Furthermore, due to the lack of data, it is impossible to count the number of employees who are covered by these collective agreements and how these documents ensure protection of their rights. The structural analysis of the labor market and existing socio-economic conditions however expose the high vulnerability and poor protection of employees in Georgia.

All of the challenges described above, namely fragmented policies of re-regulation in labor legislation, systemic flaws in labor policies and labor market, feeble trade unions, high rates (levels) of structural unemployment, low intensity of diversifying the employment sector and generating new jobs,[161] poor employee

157 The method to calculate the structure of employment was taken from the research "The Structure of Unemployment and Structural Unemployment in Georgia" by Kapanadze Nodar.

158 The Georgian Trade Union Confederation counts 21 industry-specific unions who enrol up to 150 000 members. Taken from: www.gtuc.ge/ჩვენს-შესახებ/ისტორია/

159 Comparison between the data of IRI opinion polls for February-March 2017 with the data of April 2018

160 The information has been submitted and confirmed by the Georgian Trade Union Confederation

161 World Bank, "Georgia : From Reformer to Performer," Systematic Country Diagnostic (Washington, DC, 2018).

protection mechanisms and low degree of responsiveness to their collective complaints, weakens the bargaining power of employees which has consequences on the effective performance of labor mediation in its turn. Therefore, discussions about the efficacy of the mediation mechanism in Georgia should take into account the structural aspects which substantially influence the system.

Chapter 3. Research Result

This part of the research discusses and analyses the qualitative and quantitative data collected through face-to-face interviews in order to identify the key issues and challenges concerning the application or functioning of the mechanism and to examine the attitudes and dispositions of participating employees towards mediation. The data describes experiences and attitudes of groups of employees or trade unions, who have been engaged in mediation or have assisted other employees in the process at least once and are therefore able to comment on the functionality and efficacy of the mechanism.

1. Conceptual framework

The study of the attitudes and experiences of employees and primary trade unions was conducted based on the comprehensive model of mediation. The conceptual research framework known as the Herrman Model was developed by Margaret Herrman and her colleagues in 2006[162]. It allows for in-depth, comprehensive and step-by-step analysis of the mediation mechanism from the perspective of individuals involved in and benefitting from it. One of the most important features of the Herrman Model is its assumption that collective workplace disputes are connected to and triggered by wider socio-political contexts but they also have unique internal dynamics, which may be characteristic to certain employment sectors, employee collectives or a specific workplace. This research model examines the employees' attitudes, experiences, disposition and expectations regarding mediation across three different time periods:

- Pre-mediation period: T_0;
- During the mediation: In situ mediation T_m;
- Short or long post-mediation period $T_{1\_2.}$

162 Margaret S. Herrman, Nancy Hollett, and Jerry Gale, "Mediation from Beginning to End: A Testable Model," in *The Blackwell Handbook of Mediation* (Wiley-Blackwell, 2006), 19–78.

The model is sometimes criticized by researchers and practitioners alike because of its linear and static approaches. Nevertheless, the Herrman Model is widely recognized as capable of creating flexible and dynamic frameworks for the assessment and comprehensive study of the mediation mechanism. As a counterargument to the critique of the model's static and linear nature, one can point to more than half of the respondents sampled for the research (52.3%) who have been engaged in mediation for more than once (1>) (please see Table #3), which enabled them to assess practices and circumstances of a certain period in time through the lens of their broad context and experiences, rather than comment on them in an isolated way.

Table #3

	Responses	Frequency	Percentage
Frequency	None (=0)	3	15.7%
	Only once (=1)	6	31.6%
	More than once (>1)	10	52.3%

Finally, it should also be stressed that labor mediation is not a process that takes place in a vacuum, detached from other developments and influences in the field of labor and employment. Existing context and the environment have consequences on the pre-mediation period (T_0), as well as they influence the actual process of mediation (T_m) and the potential short-term or long-term outcomes of the mediation (T_{1_2}). Analysis and interpretation of the data collected in this method can lead to findings that may help to identify the characteristics of labor relations or labor policies, which are unique to the Georgian context.

2. Attitudes and experiences of employees during the pre-mediation period (T_0)

Analysis of the mediation cases between 2013-2017 has shown that mediation was mostly requested by collectives of employees and trade unions. Therefore, it is important to understand what preliminary information and attitudes employees had regarding the mediation process; if and how easy they thought mediation could be initiated, including appointment of the mediator by the state and also what important factors preceded and influenced the process of mediation. Answers to these questions will enable us to assess the attitudes and expectations of employees before the start of labor mediation on the one hand and on the other hand, to analyze the main challenges and needs that existed in the pre-mediation period (T0) and influenced the effectiveness of the mediation.

Summary of the results

Table #4

	Responses	Frequency	Percentage
Level of knowledge and information of the respondent about the mediation mechanism	High	7	36.8
	Average	11	57.9
	Low	1	5.3
	Very low	0	0.0
Level of knowledge and information in a large collective of employees about the mediation mechanism	High	0	0.0
	Average	1	5.3
	Low	15	78.9
	Very low	3	15.8

The research has found that lack of knowledge among employees about the mediation mechanism and the unequal distribution of knowledge was an important challenge during the pre-mediation period (T0). Specifically, leaders and committee members of primary trade unions were more informed about the importance, nature and functions of mediation while ordinary employees had limited knowledge of the mechanism (please see Table #4).

Most of the employees view the process of requesting mediation and taking required procedural actions to start the mediation to be a difficult one. As for the duration of the process, which includes the time taken after requesting the mediation to find, appoint and meet the mediator, the respondents describe the process to be of an average duration (please see Table #5).

Table #5

	Responses	Frequency	Percentage
Procedural simplicity of the process of mediation from the occurrence of the collective dispute to the mediation appointment	Simple	15	93.7
	Average	1	6.3
	Difficult	0	0.0
	Very difficult	0	0.0
The speed and promptness of the procedural actions taken from the point of requesting the mediation to its appointment.	Quick	6	37.5
	Average	10	62.5
	Slow	0	0.0
	Slow	0	0.0

Importantly, during interviews the employee representatives stressed the significance of an internal negotiation mechanism to be available at the workplace before requesting mediation; the mechanism entails negotiating with the disputing parties face-to-face, without the involvement of a third party. Some of these respondents argued that when unhindered, internal negotiations could be more productive as they would be based on initiatives of the parties rather than their obligations and thus it could simplify the process of bargaining and agreement. Notably, while most of the respondents confirm the instances of internal bargaining within companies or industries, they question their effectiveness:

> *We tried talking directly to the employer; we thought they would be more enthusiastic. It lasted about 5-6 months and we did our best but it got to a deadlock and when they refused to meet us, we requested mediation.*
>
> *(Committee member of the primary trade union of the ferroalloy plant)*

The issue of employee unions and mobilization during the pre-mediation period is an important matter. The research has found that employees struggled to maintain order and unity in the period between the occurrence of the collective dispute and request of the mediation or before the start of the mediation process. This challenge is particularly persistent in the companies or industries where primary professional organizations are weak, where there is no experience of employee organization or where worker mobility is high due to the nature of work, which impedes the efforts of employee organization and mobilization. The legislation on collective disputes and mediation defines a disputing collective party as a group of 20 or more employees, which creates a significant barrier for customer service sector employees, those with seasonal or temporary jobs or working at companies where primary trade unions are weak. According to the respondents, in cases when employees at such workplaces still managed to mobilize and form a group of 20 members, another biggest challenge that they faced was the long periods or delays in the process of mediation, as in such cases company administrations frequently carried out repressive policies or attempted to obtain loyalty of their employees – by means of intimidation or individual encouragement.

As described earlier, challenges of initiating the mediation and mobilizing the collective are particularly severe in the customer service sector due to weak employee alliances, high worker mobility and low indicator of forming collective unities. For these reasons, there have been no collective disputes in the service sector and majority of divergences with employers had an isolated, individual nature. Consequently, the mediation mechanism has not been applied in the customer service sector:

> *„It is absurd to use the mediation mechanism in the service sector when there is no employee mobilization. Almost no one in such jobs protests against their conditions and therefore, there is no voiced discontentment until, for example, someone is fired or leaves the job themselves".*
>
> *(Representative of Solidarity Network – Workers Center)*

In cases where employees achieved strong collective unity or primary professional associations were strong at the workplace, the research found that the attitudes and expectations of employees were mostly neutral during the pre-mediation period (T_0) (please see Table #6).

Table #6

	Responses	Frequency	Percentage
Initial attitudes and expectations among employee collectives during the pre-mediation period	Good	0	0.0
	Neutral	11	68.7
	Bad	5	31.3
	Very bad	0	0.0

According to the research respondents, regardless of its simplicity or promptness, the process of initiating mediation did not generate positive expectations. As described by the respondents, the reason why they requested labor mediation is the fact that it was the only legitimate and obligatory procedure to address collective disputes. Employees view labor mediation and bargaining as another procedural or bureaucratic activity in order to obtain the right to go on a strike. Furthermore, those respondents who had been engaged in mediation and bargaining multiple times, state that over the years their expectations have decreased as they have witnessed failures in the enforcement of the agreements reached as a result of mediation.

As a conclusion it can be argued that the lack of knowledge about the mediation mechanism, low expectations and negative past experiences have led to nihilistic attitudes of the employee representatives towards mediation even at its initial stage and have affected their ability to acknowledge its positive potential.

3. Attitudes and experiences of employees during mediation (T_m)

Upon the employees' request for mediation, the Minister is required to appoint a mediator who must administer the collective dispute resolution. The process of mediation usually consists of a cycle of individual and bilateral meetings with disputing parties. The research has found that the process and effectiveness of mediation is greatly influenced by such factors as: the role of the mediator; openness of disputing parties during mediation; transparency of and trust in the process; sense of justice and equality; access to information about the company during negotiations, etc. In-depth understanding and analysis of these factors will allow us to examine the attitudes and expectations of employees towards the process of mediation (In situ mediation T_m) as well as investigate the challenges which diminishes the effectiveness of mediation.

Summary of the results

The role of the mediator, their influence and the extent of their participation in mediation turned out to be some of the most important topics for most research participants. According to the respondents, in addition to professionalism and impartiality of the mediator, they view the mediator's ability to show empathy and sympathize with others as another important quality. Finally, the respondents also talk about the positive public image and prominence of the mediator as some of their significant characteristics.

> *„The mediator must be impartial and should be trusted by both parties. They should be publicly known… They must be able to see and share the factors and the pain of the workers. We've seen cases when the mediator was a good lawyer, a true professional but failed to break the deadlock in the negotiations".*
>
> *(Representative of Unity 2013 – Railway Machinists Union)*

In addition to the significance of personal qualities of the mediator, the respondents also described the practice of replacing mediators in the process of mediation and bargaining as another important challenge, as it caused postponement, delay or overuse of resources in a number of cases. Moreover, some of the respondents also stressed the need to develop a list of mediators specialized and knowledgeable in specific modes of operations or manufacturing, especially those related to plant operations and heavy industries. According to the respondents this approach would make it easier for the mediator to understand the subject of dispute and would save time and resources.

It has to be acknowledged that in a few number of cases, replacement of the mediator and the appointment of a different individual had a positive impact on bargaining. As respondents argued, it helped to break the deadlock and start negotiations from a new page.

As for the actual process of mediation and related challenges, the respondents with experience in mediation stressed the importance of access to financial information of the company in order to negotiate more effectively, including information regarding annual cash flow, expenses, profits, etc. Current legislation restricts access to company's financial information, predicating on an argument that it is a trade secret; however, the research has highlighted the importance of equal access to such information for parties involved in bargaining. The respondents describe how crucial it is for them to support their demands with 'economically rational" and "financially credible" arguments during negotiations:

> *„When negotiating it is important to have economically rational demands and financially credible arguments. When you demand increase of wages by 10%, [the employer] is going to ask you as to based on what you're demanding it... for example, if I know that the factory has had 5 million in profit, I can demand to give us the 10% increase."*
>
> *(Committee member of the primary trade union of the ferroalloy plant)*

Notably, the respondents have tried to address the shortage of information with their own methods and resources. For example, in some cases the employees

holding different positions compiled a variety of data available to them and tried to roughly calculate the 'rational' margin for their demand of increase in wages; however, this method could not be applied in the majority of companies due to the specific nature of their operations. The practice of individually trying to address the lack of access to information caused employees to feel as if being "rationally credible" during bargaining, preparing for the process and being capable of reasonable argument was their individual liability and not a systemic challenge.

> *„During negotiations it is important as to how well educated you are, how you present your arguments, which not everyone can do.. you need to think and collect information.. now if they [employers] are compiling some information, we are also doing that.. we don't go there empty-handed. If you try, you can get information from newspapers, Facebook, different places. Not accurate, though. If for example siliconmanganese cost USD 2001 before, now it costs USD 1999 and we didn't know that but I know that sales prices go up and down; there are also electricity payments and things like that".*
>
> *(Representative of the primary trade union of the ferroalloy plant)*

In addition, the respondents also stress the consequences of knowledge hierarchy on the actual negotiations. Namely, individuals who had extensive experience in public speaking and reasoning in a formal environment due to which they were more capable to articulate their opinions could advance in bargaining better than ordinary employees who struggle to demonstrate and maintain credibility and consistency in their reasoning:

> *„Everyone thinks that they can sit down and lead the conversations the way they want but they may end up staying silent there [at the negotiations table] because worker psychology is different, especially when you are not prepared, you haven't participated in any meetings, etc. you think it's going to be easy when you sit down, you can't shout there, you need to talk facts and talk differently"*

According to the employees' experiences, another important condition during bargaining is the sense of equality and justice, which are in turn connected to factors such as: hierarchy at the workplace; strength of the employee collective; bargaining power of employees; specific nature of work, etc. For instance, in companies where employee unions were strong and, based on the specific nature of operations, their bargaining power was high due to the difficulties related to their replacement or because they were highly qualified (Tbilisi Metro, Georgian Railway), the employees felt equal when the sense of equality among employees of other types of companies was low and the impact of position hierarchies were high. Nevertheless, the research has found that perceptions of employees of equality and hierarchy consequences were not actually linked with fair outcomes of labor mediation and bargaining. According to the respondents, despite their relatively high bargaining power, they had never experienced a successful resolution of a dispute. Most of them pointed out that regardless of the type of their employment or bargaining power, their expectations for a fair outcome of mediation were low or very low (please see Annex 2). This situation can be explained by a range of factors on the structural level: historical dominance of employers; advantages systematically guaranteed for employers by the state; low effectiveness of mediation itself and low extent of its incorporation into the general labor policies. Representatives of employee collectives argued that, given these circumstances, bargaining was mostly held within a pre-determined asymmetric power dynamic and therefore, they did not expect to achieve fair outcome or be allowed a smallest chance to actually meet their demands.

> *„Building hopes for mediation and submitting yourself to the process is a lost game. You must either be a fool or have a different agenda in reality, which is out of the question. So having any kind of feeling that you can reach justice through mediation is unbelievable".*
>
> *(Representative of Unity 2013 – Railway Machinists Union)*

Consequently, the employee representatives view mediation as a formal procedure where they can foresee the outcomes and the type of agreement that it can result in. According to these respondents, issues discussed during media-

tions rarely include the original demands of employees. Moreover, in the event of reaching a compromised agreement the respondents have low expectations of its enforcement.

Mediation is a complex and multidimensional process where the role of the mediator, familiarity of employees with the profitability of the enterprise, impact of different types of social or knowledge hierarchy and bargaining power of employees have significant consequences on the process of negotiations. In addition to these factors, mediation is also greatly influenced by structural circumstances, which cumulatively contribute to creating a somewhat objective reality where the mediation mechanism is discredited and perceived by employees as fictional.

4. Attitudes and experiences of employees during the post-mediation period

Statistics on the mediation cases during 2014-2017 show that 47% of the cases have resulted in agreement while 28% have failed to yield any results (please see Figure #1). Considering the brief history of the mechanism in Georgia and other challenges, these figures may be viewed as positive indicators, however, a more detailed analysis of these indicators reveal that more than 30% of the 32 mediation cases during the indicated period were repeated mediations which points to the challenges in the enforcement of agreements reached through initial mediation. It is important to assess the effectiveness of the mediation using a more complex approach, which takes into account not only the frequency of formed agreements, but factors such as the capacity of mediation agreement to dissipate the collective dispute; assessment of the agreement by large groups of employees involved in the dispute; enforcement of the agreements both from short-term and long-term perspective, etc. Examining these factors will allow for an in-depth analysis of the attitudes and experiences of employees towards mediation that go beyond statistics.

Summary of the results

Many studies in the literature about mediation examine performance of labor mediation in direct connection with the outcomes it yields where high proportion of cases resulting in settlement is described as the indicator to prove the effectiveness of the mechanism. The research has found that, when analyzed in relation to the Georgian context, this assumption can be questioned as considering the proportion of mediations resulting in agreement as an indicator of efficacy limits and narrows down the possibilities for in-depth research and analysis of the mechanism. Therefore, in order to circumvent the reduced method of analysis of the long-term or short-term post mediation period (Post-mediation T1_2), rather than the statistics, the presented research placed emphasis on the attitudes and experiences of respondents who have been directly engaged in mediation and who have personal experiences concerning its short or long-term results.

The research has found that according to the experiences of most of the respondents, only a very small number of mediation cases could *sometimes* result in an agreement (18.7%); however, none of the respondents was confident that positive settlement of the collective dispute would mean its dissipation except for rare cases (please see Table #7) when the demands voiced by employees during bargaining concurred with priorities of employers and thus they did not require substantial changes.

Table #7

	Responses	Frequency	Percentage
How often does mediation usually result in an agreement?	Always	0	0.0
	Sometimes	3	18.7
	Rarely	13	81.3
	Almost never	0	0.0
To what extent does the completion of mediation with agreement mean the complete dissipation of the collective dispute?	Always	0	0.0
	Sometimes	0	0.0
	Rarely	15	93.7
	Almost never	1	6.3

According to the respondents, such re-prioritization of demands and their concurrence with the interests of the employer made it possible to reach agreement on paper, where the issues central to the collective dispute such as: increase in wages; forming a collective agreement or fulfilling the obligations undertaken during previous negotiations were either completely neglected during bargaining or included in the agreement as a long-term obligation. The respondents' state that bargaining regarding technical or administrative issues of workflow on the other hand proceeded in a more constructive manner (please see Annex 3).

As for the short-term and long-term enforcement of agreements reached as a result of mediation, the respondents' experiences vary per their employment sector. For example, respondents working in Tbilisi Metro and Georgian Railway have expectations and experiences of enforced agreements while other respondents have low expectations. Similar to findings described above (regarding the impact of equality and hierarchy on the actual mediation process), this discrepancy can also be explained by the high bargaining power, strong employee union and the prospect of strike actions (please see Table #8). Nevertheless, most of the respondents talked about multiple instances when employers failed to comply with one or several provisions of the agreement, which had caused the employees to go on a strike or initiate secondary mediation.

Table #8 Usually how often are the agreements reached through mediation enforced?

Place of work	Responses	Frequency	Percentage
JSC Georgian Railway	Always	0	0.0
	Sometimes	2	66.7
	Rarely	1	33.3
	Almost never	0	0.0
LLC Tbilisi Transport Company/Tbilisi Metro	Always	0	0.0
	Sometimes	3	100.0
	Rarely	0	0.0
	Almost never	0	0.0
LEPL Public Broadcaster	Always	0	0.0
	Sometimes	0	0.0
	Rarely	1	50.0
	Almost never	1	50.0
LLC Georgian Manganese	Always	0	0.0
	Sometimes	1	33.3
	Rarely	2	66.7
	Almost never	0	0.0
JSC Energo-Pro Georgia	Always	0	0.0
	Sometimes	0	0.0
	Rarely	2	100.0
	Almost never	0	0.0
LLC Batumi Autotransport	Always	0	0.0
	Sometimes	0	0.0
	Rarely	0	0.0
	Almost never	3	100.0

With reference to the short and long-term Post-mediation T1_2 results, the research has demonstrated as to how complex it is to analyze the process of settling on priorities during mediation, forming the agreement, enforcing the agreement and analyze the consequences of fulfilled demands for improving the conditions of employees. For these reasons it is impossible to assess the performance of the mediation mechanism only based on the number agreements formed as a result of mediation. It is important to emphasize other aspects, including: full dissipation of the collective dispute by means of settlement; assessment of the agreements by large groups of employees participating in the collective dispute; enforcement of the agreement both in short-term and long-term perspective and other adjoining factors. However, despite the above-mentioned, most of the respondents stressed the importance of the existing model of mediation for employees and the significance of the agreement reached by means of mediation, which could serve as official evidence in courts, if necessary:

> *"It is important for us that the state is represented this way at the negotiating table. They [employers] are stronger than us, they have all the resources – money, professional lawyers, power… while it [mediation] is a very weak mechanism, it does not have any influence whatsoever and is a fabrication, the reports of agreements and decisions during negotiations are important documents if we go to court.*
>
> *(Representative of the new Railway Workers Union)*

Regardless of the advantage that can be exercised in courts, none of the respondents mentioned any instance of lodging a complaint in courts against the failure to enforce the agreement. According to the respondents, this can be explained by the length of court trials, financial constraints and the delayed outcome.

> *„While the agreements signed during mediation are legally binding, the enforcement department does not monitor and act on it. Have they breached the terms or periods of the agreement? Go to court. You go to court, the trial is delayed for years and this is because there is no labor court and the court does not have fixed deadlines to admit and start the case."*
>
> *(Representative of Unity 2013 – Railway Machinists Union)*

> *„You need a lot of time in court, it is a lengthy process. The courts today are weak in addressing labor cases. There should be a separate court for labor-related disputes. We have criminal court, administrative court and just like that there should be a court for employment disputes."*
>
> *(Representative of primary trade union of Adjara Transport and Infrastructure Management Agency)*

As a conclusion, it should be emphasized that it is difficult and insufficient to assess the performance of the mediation mechanism in Georgia only based on the number of agreements reached as a result of mediation since these agreements do not reflect adequately the extent of effectiveness of the mediation mechanism. Instead it is important to look at the initial demands of employee collectives; the extent of re-prioritization of these demands; attitudes of larger groups of employees towards the agreements and finally, the short and long-term enforcement of these agreements. Employing such a complex approach in analyzing the performance of the mechanism has clearly demonstrated that the mechanism does not ensure resolution of employee complaints and does not provide equality in labor relations during bargaining. Nevertheless, the research participants have adequate understanding of the high importance of the mediation mechanism in labor relations. They acknowledge that in given circumstances the agreements formalized and confirmed on paper can still act as a crucial leverage at hand if they take the dispute to court. They also point to the significance and future potential of the mechanism in regulating the labor relations; however, as of today there have been no instances of filing lawsuits in courts against employers' failure to enforce the agreement reached as a result of mediation, which in its turn is related to lengthy court trials and lack of resources necessary to follow through.

Sociologic research findings

The research has explored attitudes and experiences of employees during pre-mediation, actual mediation and short and long term post-mediation periods. In addition, the desk research has examined local and international literature about the labor mediation and has also analyzed the history of the formation and development of the mechanism in Georgia and internationally. Thus the research has produced the following findings which are characteristic to the mediation mechanism in Georgia.

Literature review and analysis of variety of sources in order to examine the origins and development of the mediation mechanism and the important factors for effective functioning of the mechanism has revealed the following:

- Assessments of the performance of labor mediation mechanism from the employee perspective are lacking. Most of the international literature and academic sources examine various manifestations of mediation in terms of legal as well as a practical mechanism in comparison with practices of different countries. International literature is also rich with research, which views mediation as significant part of labor relations and labor policies; however, these publications mostly define mediation in a way which establishes it as a mechanism for resolving workplace conflicts and managing risks. The literature review found almost complete absence of detailed and in-depth research and analysis of the mediation mechanism in the Georgian context, both in terms of academic studies as well as policy evaluations.
- The research found that historically, mediation was created as a mechanism to address and administer disputes between parties. The contemporary type of the mediation mechanism is an integral part of labor relations and labor policies. In order to achieve effective performance and high institutional legitimacy of the mecha-

nism, it is important that a whole range of factors connected to labor policies are properly functional, including: adequate legislative framework for labor policies; addressing the issues related to the administration and handling of the mechanism; strength of collective unities of social partners; well-established practice of considering the employees' demands; balanced bargaining powers of employees and employers, etc.

- The mechanism to address and mediate collective disputes in Georgia was created in 2013 along with reforms in other policy areas, including re-regulation of labor policies which followed the 2012 change in the political status quo of the country. The research has counted 32 cases of mediation at different companies and industries across the country between 2013 and 2017. Mediation was mostly requested by employee collectives; however, despite the wide use of the mediation mechanism in labor relations, the research had found that the mechanism has failed to bring about significant improvements in labor relations which is due to the low institutional power of the mechanism, its incoherent incorporation in labor policies and a number of structural challenges.
- Based on the requested public information, up to 48% of the mediation cases between 2014-2017 have resulted in settlement. Approximately 30% of the cases were repeated mediations which means that mediation was frequently requested again due to the failure of employers to enforce the agreement reached through the first mediation, which gave way to new collective disputes.
- The research found that the factors which hinder effective performance of the mediation mechanism, its high institutional legitimacy and reliability are caused by system challenges related to the labor market structures and existing socio-political circumstances: high unemployment rate (level); high number of people working in informal sector; ineptitude of labor and trade unions and low

public trust in them; poor legal protection of employees, etc. All of these factors lead to low bargaining power and high vulnerability of employees, which puts them in an unfair and asymmetric conditions at the very beginning of negotiations.

The empirical data collected in order to analyze the employees' attitudes and experiences has demonstrated the following:

- The lack or unequal distribution of knowledge among larger employee collectives about the operation, purpose and the role of the mediation mechanism in labor relations is a big challenge. While employee representatives describe their understanding of the mechanism as high or average (94.7% of the respondents), they assess the level of this knowledge among larger groups of employees as very low.
- Employee representatives have often stressed the need to introduce and/or develop internal culture and mechanisms of negotiations on the company and industry level.
- Concerning the pre-mediation period, the research has found challenges in forming or maintaining unity among employees. In workplaces where there is no practice of forming collective employee unities or such occasions are very few, the instances of resolving collective disputes through mediation are almost non-existent.
- According to the respondents, the role of the mediator, their experience, professionalism, and impartiality are crucial to the process of mediation. The respondents also believe that personal qualities of the mediator, their positive image and public visibility, which serve as prerequisites for them to trust the mediator, are also similarly important.
- Bargaining during the mediation are significantly influenced by factors such as: job hierarchy at the workplace; hierarchical access to and application of knowledge and level of education; advantages of the ability to express oneself clearly; access to financial and

commercial information of the company or opportunities to obtain such information; bargaining power of employees; actual prospects of strike actions, etc.

- The research has also found that employees initiated collective disputes around fundamental issues such as: collective agreements; overtime pay; compliance of individual labor agreements with the national law; provision of adequate work conditions for primary professional organizations, etc.
- According to the respondents, demands for salary increase and fulfillment of requirements undertaken as a result of initial mediation were the most difficult issues to negotiate and agree upon, while it was easier to obtain the employers' consent regarding other non-immediate actions such as improvement of work conditions, refurbishment of workplaces, etc.
- The research has found that in most cases, finalization of mediation with settlement did not mean complete dissolution of the collective dispute and agreements were mostly fictional. Given the re-prioritization of demands, compromises and the structural imbalance between the disputing parties, agreements reached as a result of mediation did not adequately respond to the full list of the actual demands of employee collectives. Furthermore, the agreements mostly remained unenforced which retained the collective dissatisfaction among employees and lowered the perception of the mediation mechanism as an effective instrument.
- Despite describing mediation as a formal and ineffective mechanism, the respondents stress the high importance of the mechanism and its potential to regulate labor relations and formalize collective disputes.

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Summary

The research has found that despite the frequent use of the mediation mechanism by employees and the number of produced agreements, mediation has failed to become an effective instrument for collective dispute settlement and to generate trust among employees and employers alike. Furthermore, social partners stress the ineffectiveness and the formality of the mechanism, which is linked to the structural challenges in labor policies along with legislative and practical gaps in the administration of the mechanism and prevention of collective disputes.

Despite operating within the government's institutional framework, handling of the mechanism by the government remains to be a problem, which can be linked to inadequate financial and human resources preventing the formation of the instrument as an effective mechanism within the existing system of labor policies. In addition, the research has demonstrated that the key challenge of the mediation system has to do with failure to enforce agreements reached through mediation, which often leads to repeated mediations or employee strikes and diminishes employees' trust in the instrument.

The study has shown that the labor policies respond to collective labor disputes with laws about mediation or strike actions only from the moment of their inception. Other than this, the existing law and practice completely neglects preventative policies in order to address relations between the parties before the onset of collective disputes on national, industry or manufacturing levels. Having such policies in place would prevent collective disputes and reduce the need for mediation in labor relations.

The sociological research has verified difficulties in handling the mechanism and enforcement of agreements reached by means of mediation. It has also exposed the structural challenges which limit the capacity of the mediation mechanism to contribute positively to labor relation policies. Namely, the research has found that it is important to scrutinize the mediation mechanism with reference to the entire framework of labor policies since its functionality is directly and innately influenced by a range of local factors such as: the fragmented policies of re-regulation carried through in labor law; systemic nature of challenges in labor

policies and labor market; weak ineptitude of trade unions; high rates (level) of structural unemployment, etc. The study has shown that these factors also significantly contributed to a lower bargaining power of employees and higher vulnerability, which undermined the opportunities to conduct balanced and equal bargaining between social partners. The research has also exposed issues concerning: lack of information among employees about the mediation mechanism; difficulties in sustaining collective unity; restricted access to information about the enterprise during bargaining and consequences of high hierarchical positions of employers during bargaining.

In addition to challenges regarding the mediation mechanism, the research also highlights the importance of the mechanism and its capacity to fundamentally influence enforcement of labor policies, which will contribute to generating experiences of social dialogue between the parties and creating an equal, fair and effective space for handling labor relations, including settlement of collective disputes.

Recommendations

The following actions should be implemented in order to ensure effective performance of the mediation mechanism:

- The government should strengthen administrative capacity of the mechanism and provide sufficient financial and human resources, including ensuring access to adequate number of mediators listed in the registry for timely appointment of the mediator; introduce adequate remuneration policies for mediators; cover mediation expenses throughout the entire mediation process and introduce continued education programs for mediators which will also focus on delineating specializations of mediators in different industries;
- The government should continuously monitor performance of the mediation mechanism, and based on the in-depth analysis of the gaps found in monitoring, design plans for improving the mechanism and labor policies. It is important that the government develops a complex and comprehensive methodology tailored to the national context, which will allow for realistic evaluation of the performance of the mediation mechanism. In addition, the ministry should prepare and proactively publish periodic reports regarding the performance of the mechanism;
- Create legislative guarantees in order to ensure direct participation of social partners in the appointment and assignment of the mediator to a specific dispute;
- Ensure appropriate legislative guarantees, which will allow employees to access commercial information available of their employers within legal rules and regulations, where it is required in frames of the mediation and for mediation purposes;
- In order to ensure effective enforcement of the agreements reached as a result of mediation, the draft legislation on mediation should also regulate agreements produced by mediation, which in the short term will tackle the main challenge of the existing system – failure

to enforce the agreements. In the long-term, it is important that the government set up labor courts within common courts whose authority and mandate will also apply to enforce agreements reached as a result of mediation, similar to disputes related to labor law;
- The government should carry out an extensive information campaign in order to inform larger groups of employees about labor policies and the mediation mechanism.

The following actions should be taken in order to enhance effectiveness of the mediation mechanism, prevent collective labor disputes and properly regulate collective labor relations:
- The government should develop a collective dispute prevention policy and the legislative framework which will establish the obligatory requirement to form collective agreements and provide fair terms and conditions in the agreements, in circumstances covered by law;
- The government should develop policies to encourage social dialogue on industry and manufacturing level and create mechanisms at workplace for equal and fair dialogue between employees and employers;
- It is important that the government links the performance of mediation to other aspects of labor policies which significantly influence the effectiveness of the mechanism. Among others, it is crucial that the government carries out permanent and intensive efforts in order to neutralize structural factors such as: fragmented policies of re-regulation in labor legislation; systemic nature of challenges in labor policies and labor market; high rates (level) structural unemployment, etc.

Annex 1

List of demands raised in labor mediations	Frequency of demands
Sign or amend collective agreements contracts	10
Increase or indexation of salaries	9
Fulfillment of taken obligations	6
Overtime pay	5
Arrangement/refurbishment of space for primary trade union	4
Reinstatement of dismissed employees	4
Review of individual labor agreements in order to harmonize them with the new Labor Code	4
Enforcement of the right to vacation and sick leave	4
Ending persecution and discrimination on the grounds of trade union membership	3
Improvement of work conditions	3
Provide and/or improve worker safety	2
Introduction and/or review of the system of premium/bonus payments	2
Compensation of hours worked during holidays with overtime pay rate	2
Freedom to join a trade union	1
Add more staff to the position	1
Hire local individuals	1
Issue the 13th salary	1
Introduce a salary scaling system based on employee's length of service, rank and status	1
Compensation of hours worked at night with overtime pay rate	1
Compensation of lost wages during forced leave from work	1
Introduce supplemental wages for employees working in heave, hazardous and dangerous conditions	1

Annex 2

		Feeling of equality among workers during mediation	
Place of Work	Responses	Frequency	Percentage
JSC Georgian Railway	High	0	0.0
	Average	2	66.7
	Low	1	33.3
	Very low	0	0.0
LLC Tbilisi Transport Company/Metro	High	3	100.0
	Average	0	0.0
	Low	0	0.0
	Very low	0	0.0
LEPL Public Broadcaster	High	0	0.0
	Average	0	0.0
	Low	1	50.0
	Very low	1	50.0
LLC Georgian Manganese	High	0	0.0
	Average	0	0.0
	Low	2	66.7
	Very low	1	33.3
JSC Energo-Pro Georgia	High	0	0.0
	Average	0	0.0
	Low	2	100.0
	Very low	0	0.0
LLC Batumi Autotransport	High	0	0.0
	Average	0	0.0
	Low	3	100.0
	Very low	0	0.0

Impact of workplace hierarchy on the proceedings of the mediation		Feeling of achieving justice through mediation	
Frequency	Percentage	Frequency	Percentage
0	0.0	0	0.0
3	100.0	0	0.0
0	0.0	3	100.0
0	0.0	0	0.0
0	0.0	0	0.0
0	0.0	0	0.0
3	100.0	3	100.0
0	0.0	0	0.0
2	100.0	0	0.0
0	0.0	0	0.0
0	0.0	1	50.0
0	0.0	1	50.0
2	66.7	0	0.0
1	33.3	0	0.0
0	0.0	1	33.3
0	0.0	2	66.7
0	0.0	0	0.0
2	100.0	0	0.0
0	0.0	2	100.0
0	0.0	0	0.0
3	100.0	0	0.0
0	0.0	0	0.0
0	0.0	2	66.7
0	0.0	1	33.3

Annex 3

Range of demands raised during mediations between 2014-2017	Very difficult to resolve	Difficult to resolve	Easy to resolve	Very easy to resolve
Financial demands (salary increase, overtime pay, etc.)				
Demands related to primary professional organizations (allocation of space, withholding of membership fees, etc.)				
Demands related to reinstatement of dismissed employee(s)				
Demands to fulfill obligations undertaken in previous agreements				
Demands related to improving work conditions and worker safety				
Demands related to basic rights protections of employees guaranteed by legislation				
Demands to form collective agreements				