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The Impact of Coronavirus Pandemic on Labour Relations

The subject of this article is the impact of the pandemic caused by the Coronavirus on labour relations. In the 21st century, it has become a challenge for each country to take effective and efficient steps that would reduce Covid's impact on the population, the health care system and the economy. The issue of proper legal regulation of labour disputes became especially relevant because, by its specificity, labour relations are closely related to the social life of the people.

We will discuss what labour law in general is, what impact a pandemic could have on it, and whether the latter is a force majeure. What is the constitutional legal standard established by the Constitution of Georgia and what are the rules and conditions provided by the Organic Law of Georgia "Labour Code of Georgia" when regulating labour relations, The practical problems that have arisen in labour relations during the pandemic will be discussed, which includes both dismissals and layoffs, as well as the issue of forced leave and fair reimbursement. The rights and responsibilities of the employee-employer in the legal regulation of labour relations will also be discussed, which includes the provision of a safe working environment, the issue of proper equipment etc. Aforesaid is based on the analysis of the legislation and case law in force in the country, as well as the reconciliation of the recommendations of the International Labour Organization.

Keywords: *Compulsory leave, Constitutional-legal standard, Dismissal, Force majeure, Labour law, Pandemic, Reduction of remuneration, Refusal to pay remuneration, Safe working environment, Temporary disability to work.*

1. Introduction

Labour law is part of private law.¹ Its establishment as an independent branch of private law is linked to the early stages of the Industrial Revolution.² It should be noted that in the past, labour law was considered a part of civil law and labour relations were regulated by the contractor's agreement.³ Nowadays, Georgia has the Labour Code assigned in 2010, which regulates *"labour and related relations, unless otherwise regulated by other special laws or international agreements of Georgia."*⁴

According to the established view, the employee is a weak side in labour relations, so, as a rule, the employer has the opportunity to influence her/him and make him/her agree on terms acceptable to her/him⁵. Consequently, there is some risk of restricting the autonomy of the employee's will, which is a fundamental principle of private law. Therefore, we can conclude that one of the purposes of

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¹ *Chanturia L.*, General Part of Civil Law, Tbilisi, 2011, 15 (in Georgian).

² *Shvelidze Z.*, Georgian Labour Law and International Labour Standards, International Labour Organization, 2017, 14 (in Georgian).

³ *Chanturia L.*, General Part of Civil Law, Tbilisi, 2011, 16 (in Georgian).

⁴ Organic Law of Georgia, Labour Code of Georgia, Article 1, 27/12/2010.

⁵ *Gabisonia Z.*, Georgian International Private Law, Tbilisi, 2016, 306 (in Georgian).

labour law is to protect the employee from the employer, from unjustified and disproportionate encroachment on his interests.⁶

That's the reason why labour law is considered as a field of law with a protective function.⁷ This is confirmed by the decision of the Constitutional Court of Georgia in one of the cases, which states that “*labour relations are contractual relations, and its regulation by imperative norms reduces the scope of contractual freedom.*”⁸ The purpose of reducing the scope of contractual freedom is to protect the employee.⁹

Labour relations, unlike other private law relations, are highly dependent on the society and social or economic factors in the country. Moreover, the latter is the determining factor of its existence. The coronavirus pandemic¹⁰, it can be said, has made challenges to the labour market. The state of emergency in the country¹¹ has been reflected in the labour relationships, which have manifested itself in conflicts of interest between employers and employees, an increase in discriminatory facts, facts of addressing trade unions, and rising unemployment.

Within the frame of this article, we will be discussing the impact of the coronavirus pandemic on labour relations, we will evaluate the constitutional legal standard of restriction of labour rights and discuss the rights and obligations that the employee-employer had in this period, which include the regulation of organizational issues such as leave, pay, working hours, as well as the implementation of internal activities, focused on the safety and health of the employee.

2. Constitutional-legal Standard of Restriction of Labour Rights

Based on the first paragraph of Article 7 of the Constitution of Georgia, the regulation of labour legislation belongs to the special board of the highest state bodies of Georgia. Freedom of labour is guaranteed by Article 26 of the Constitution,

⁶ *Shvelidze Z.*, Georgian Labour Law and International Labour Standards, International Labour Organization, 2017, 15 (in Georgian).

⁷ *Ibid.* Further reference: *Gimpu S., Ticlea A.*, Romania, International Encyclopedia of Labour Law and Industrial Relations, *Blanpain R. (ed.)*, Vol. 12, The Hague, London, Boston, 1988, 22.

⁸ *Ibid.* Further reference: Judgment of the Constitutional Court of Georgia №2/2/565 of 19 April 2016 in the Case “Citizens of Georgia - Iliia Lezhava and Levan Rostomashvili v. Parliament of Georgia”.

⁹ *Davies P., Freedland M.*, Kahn-Freund's Labour and the Law, 3rd ed., London, 1983, 93-95.

¹⁰ Covid-19 was officially declared as a pandemic on 11 March 2020 by World Health Organization, <<https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19--11-march-2020>>.

¹¹ Resolution of the Government of Georgia №181 “On Approval of Measures to Be Prevented against the Spread of the New Coronavirus in Georgia”, LHG, 23/03/2020.

according to the same article, everyone has the right to freely choose a job.¹² „*Declaring the labour rights in constitution emphasizes the essence of Georgia as a welfare state, whose main task is to ensure a dignified human life.*“¹³ It is a concept that reinforces the importance of freedom of labour as a fundamental principle, on which labour law should be based.

Accordingly, Paragraph 2 of Article 2 of the Labour Code of Georgia is a logical continuation of the above mentioned, accordingly to which, “Labour relationship is based on an agreement reached on the basis of equality of the parties as a result of a free expression of will”. Freedom of labour firstly implies the prohibition of forced labour, so the conventions of the International Labour Organization are noteworthy, in particular №29:¹⁴ Forced Labour Convention¹⁵ and №105:¹⁶ Abolition of Forced Labour Convention.¹⁷

According to the Constitutional Court of Georgia „*By ensuring the principle of freedom of labour, the state undertakes not to force a person to work against his will (Negative obligation) and ensures that private entities do not forcibly employ a person against his will (Positive obligation)*“.¹⁸ However, the Court also notes that “*freedom of labour does not only mean freedom from forced labour*”¹⁹ and its “*purely formal definition undermines the social character of the right to labour, erodes it and at the same time, it violates the principle of the rule of law, which puts the actions of state authorities, including the legislature, within a strict constitutional-legal framework.*“.²⁰

According to Professor Besarion Zoidze, “*The Constitution protects not only the right to choose a job but also the right to carry out, keep and give up this job, be protected from unemployment and such regulation, which provides for the possibility of unjustified, arbitrary or unfair dismissal.*”²¹

¹² Constitution of Georgia, Departments of the Parliament of Georgia, 1st Paragraph of Article 26, 31-33, 24/08/1995.

¹³ Judgment №2/2-389 of the Constitutional Court of Georgia of 26 October 2007 in the case of “Citizen of Georgia Maia Natadze and Others v. Parliament of Georgia and President of Georgia”, II-18.

¹⁴ C029 - Forced Labour Convention, 1930 (No. 29).

¹⁵ Georgia ratified this convention on 22 June 1993.

¹⁶ C105 - Abolition of Forced Labour Convention, 1957 (No. 105).

¹⁷ Georgia ratified this convention on 23 September 1996.

¹⁸ Judgment №2/2-389 of the Constitutional Court of Georgia of 26 October 2007 in the case of “Citizen of Georgia Maia Natadze and Others v. Parliament of Georgia and President of Georgia”, I-6.

¹⁹ Ibid, I-5.

²⁰ Ibid, II-18.

²¹ *Zoidze B.*, The Essence of Labour Freedom in the Practice of the Constitutional Court of Georgia, Labour Law (Collection of Articles), *Zaalishvili V. (ed.)*, Vol. I, Tbilisi, 2011, 9 (in Georgian).

It should also be noted that in addition to freedom of labour, Article 26 of the Constitution of Georgia also strengthens the right to form and join trade unions, as well as the right to strike (within the limits defined by organic law) and freedom of entrepreneurship.

Following the outbreak of the Covid-Pandemic, the Parliament of Georgia amended the Law of Georgia on “Public Health”, which gave the government “*the authority to make labour-related decisions on the basis of “ordinary” law*”.²² The Constitutional Court of Georgia, by its decision of February 11, 2021, declared the disputed norm - normative content of the first and second sentences of the first paragraph of Article 45³ -unconstitutional, according to which the government was entitled to restrict labour rights declared by Article 26 of the Constitution of Georgia.²³

According to the established view, “*The first paragraph of Article 26 of the Constitution of Georgia establishes the obligation to regulate labour rights on the basis of organic law and, therefore, the restriction of this right should be delegated to another body by the Parliament of Georgia in the same way*”.²⁴

Nowadays, the existing provisions of the Constitution of Georgia acquire special practical significance, in the conditions of a pandemic, in the relevant legal regulation of the existing challenges, which will ensure the effective implementation of this provision of the Constitution for the employee, therefore, any resolution or by-law must comply with this general provision of the Constitution.

3. Coronavirus Pandemic as a Force Majeure in Labour Legal Relations

The Civil Code of Georgia does not provide a definition of force majeure.²⁵ However, based on the definition in the legal literature, an event can be considered an insurmountable force, if, under the given conditions, it becomes objectively

²² Judgment of the Constitutional Court of Georgia №1/1/1505,1515,1516,1529 of 11 February 2021 in the case “Paata Diasamidze, Giorgi Chitidze, Eduard Marikashvili and Lika Sajaia v. Parliament and Government of Georgia”, II-62.

²³ *Shvelidze Z.*, Covid-19 Pandemic and Labour Law Restrictions and Social Impacts in Georgia, *Las Consecuencias Sociales del COVID-19: una Mirada Jurídica Comparada Después de un año*, №3, 2021, <<https://mailchi.mp/cielolaboral/noticias-cielo-no-532172?e=933b929ef2>> [10.04.2022].

²⁴ Judgment of the Constitutional Court of Georgia №1 / 1 / 1505,1515,1516,1529 of 11 February 2021 in the case “Paata Diasamidze, Giorgi Chitidze, Eduard Marikashvili and Lika Sajaia v. Parliament and Government of Georgia”, II-62.

²⁵ force majeure - A situation that is unavoidable, an insurmountable obstacle, a dictionary of civic education, a dictionary of foreign words.

impossible to avoid it by technical and other means.²⁶ “*An extraordinary and unusual event is also considered an unbearable circumstance*”.²⁷

Coronavirus pandemic should be assessed on the basis of facts, in each case individually and then decide should it be considered a force major or not. This implies the cumulative existence of certain preconditions: the circumstance must have arisen independently of the will of the parties, also the parties should not have been able to take it into account when concluding the contract, and the circumstance must be beyond the control of the party, and the latter must make it impossible to fulfil the contractual obligation.²⁸ “*Accordingly, in each case, it must be assessed whether there was a direct causal link between the circumstance caused by Covid-19 and the inability to fulfil the obligation.*”²⁹

According to the opinion established in the legal literature, when regulating labour relations, in addition to the provisions of the Organic Law (The Labour Code), the norms of the Civil Code (contract law) apply.³⁰ So, termination of employment may be due to force majeure under Article 47 paragraph 1 subparagraph “O” of the Labour Code³¹ (implying that force majeure may automatically be considered as “other objective circumstances”). However, a different opinion is expressed on this issue, that “it is inadmissible to apply the principle of force majeure existing in other types of contractual relations strengthened by the Civil Code or the principle of adaptation to the changed circumstances of the contract to labour relations automatically”.³² This position is based on the fact that the Labour Code, as an organic law, according to Article 7, Paragraph 3 of the Law of Georgia on Normative Acts, is hierarchically superior to the Civil Code of Georgia (which is a law).

We believe that the above position should be shared, since the employee (who is in a subordinate position with the employer) has more guarantees that his rights under the regulation of the Labour Code will be secured. So, a covid-pandemic, as a force majeure, taken alone, could not be a ground for termination of an employment contract unless there were other objective circumstances.

²⁶ Chanturia L. (ed.), Commentary on the Civil Code, Book I, Tbilisi, 2017, 740 (in Georgian).

²⁷ Chanturia L., Akhvlediani Z., Zoidze B., Jorbenadze S., Commentary on the Civil Code of Georgia, Book I, General Provisions of the Civil Code, Tbilisi, 2002, 324 (in Georgian).

²⁸ The Impact of Covid-19 on Legal Relations, Georgian Young Lawyers Association, Kurdovanidze N. (ed.), Tbilisi, 2020, 9, 16 (in Georgian).

²⁹ Ibid.

³⁰ Chanturia L., General Part of Civil Law, Tbilisi, 2011, 16 (in Georgian).

³¹ The grounds for termination of an employment contract are: n) other objective circumstances that justify the termination of the employment contract.

³² Chanturidze G., Surmava T., The Impact of the Pandemic on the Labour Market and the Condition of Employees, Report, Tbilisi, 2021, 9 (in Georgian).

It does not negate the opinion that employees may be subject to various additional obligations during the Covid Pandemic. According to the guidelines of the International Labour Organization, it is possible to increase the working hours of employees during force majeure, although the above must be strictly regulated/checked by the Labour Inspectorate.³³ According to ILO standards, (Forced Labour Convention №29), labour during an emergency (for example-pandemic) when the life or health of the population or part of it is in danger is not considered forced labour.³⁴

4. Dismissal of an employee due to the situation created by the spread of Covid-19

The economic background developed due to the pandemic had an impact on labour relations, which was reflected in the reduction of jobs.³⁵ It must be noted that, based on the existing practise, we often encounter procedural violations in the termination of employment, which is contrary to the rules provided by the Labour Code, which has a significant impact on the legal status of employees in the labour market.³⁶

Article 47 of the Labour Code of Georgia provides the grounds for termination of employment. There may have been such structural changes in the enterprise due to the Covid-pandemic, which would satisfy subparagraph, “A” of this article (“*economic circumstances, technological or organizational changes that necessitate a reduction in the workforce*”), subparagraph “o” is also relevant in this context (“*another objective circumstance that justifies the termination of the employment contract*”).

³³ ILO Standards and COVID-19 (coronavirus), International Labour Standards Department, 13/04/2021, 43.

³⁴ Ibid.

³⁵ Employment fell by 54,000, with the majority of the unemployed (77.7%) being women. Chanturidze G., Surmava T., The Impact of the Pandemic on the Labour Market and the Condition of Employees, Report, Tbilisi, 2021,4. <<http://ewmi-prolog.org/images/files/8832GTUCReportGEO.pdf>> [10.04.2022] (in Georgian).

³⁶ See. Raj-Reichert G., Plank L., Labour Law Compliance and the Role of Labour, International Labour Organization, 2019, 7-8; The Employment Situation – March, News Release, 2022, <<https://www.bls.gov/news.release/pdf/empsit.pdf>> [10.04.2022]; U.S. Department of Labor Occupational Safety and Health Administration, Guidance on Preparing Workplaces for COVID-19, 2020, 6-7.

However, it should be noted that “*the right of the employer to terminate the employment relationship with the employee is not unlimited.*”³⁷ Even if a person is dismissed on the basis of the preconditions provided by the Labour Code, it is necessary to follow the rule of termination of employment. According to the first and second parts of Article 48, when a person is dismissed on the grounds provided for in the first paragraph of Article 47, he must be compensated in the amount of 1 month's salary (if the dismissal was notified 30 days in advance by prior written notice) or compensation in the amount of 2-month salary (if the notice of dismissal was sent to the employee at least 3 days in advance).

It is necessary that in case of dismissal of a person for the reason provided in Article 47 subparagraph “A” , the following circumstances are encountered: an economic necessity that precludes the ability to maintain a certain amount of staff members; there should be a real (and not a hypocritical) reduction of number of staff members in accordance with the law; the dismissed staff members should be selected according to pre-established criteria, which should be based on an objective basis and should not leave the possibility of discriminatory treatment.³⁸

In relation to the above, the decision of Tbilisi City Court is interesting, where the dismissal of a person in a pandemic was considered illegal, on the grounds that the circumstance that highlighted the economic situation in the company, which would have made the dismissal of employees legal, could not be confirmed.³⁹ Consequently, dismissal of an employee should be an extreme means (*ultima ratio*) and the employer should try as much as possible to use less restrictive means in a particular situation.

5. Coronavirus as a Temporary Disability

In practice, the question is whether the case of being infected with coronavirus is a temporary incapacity for work, which according to the Labour Code is one of the grounds for the layoff of employment, however, the latter does not mean the termination of employment. Temporary incapacity for work occurs according to the

³⁷ *Loladze Sh., Dumbadze M., Jgerenaia V., Antadze G., Jananashvili Ts., Lomtadze D., Minasiani A., Bekishvili L., The Impact of Kovid-19 on Legal Relations, Georgian Young Lawyers Association, Kurdovanidze N. (ed.), Tbilisi, 2020, 9 (in Georgian). Further reference: The decision of the Supreme Court of Georgia of August 9, 2018 in the case №as-1444-1364-2017.*

³⁸ *Ibid*, 10.

³⁹ *Chanturidze G., Surmava T., The Impact of the Pandemic on the Labour Market and the Condition of Employees, Report, Tbilisi, 2021, 9, <<http://ewmi-prolog.org/images/files/8832GTUCReportGEO.pdf>> [10.04.2022] (in Georgian).*

Labour Code if its term does not exceed 40 consecutive calendar days or the total term for 6 months does not exceed 60 calendar days.⁴⁰ In case exceeding the mentioned period, the employer has the right to terminate the employment contract with the employee on the grounds of long-term incapacity for work. The employer is obliged to suspend the employment relationship for a reasonable period of time in case of a request. The employment relationship is considered suspended from the submission of the said request until the relevant grounds for its suspension are eliminated.⁴¹

In this regard, it is important to note whether the period during which the employment relationship is considered to be temporarily suspended on the above-mentioned grounds is remunerative. According to the Labour Code, an employee will not be remunerated unless otherwise provided by Georgian law or an employment contract. Therefore, it is noteworthy that the order of the Minister of Labour, Health and Social Affairs of Georgia №87 / n, according to which, due to temporary incapacity for work, assistance is provided by the employer/institution for the entire period of temporary incapacity for work.⁴² In a broad sense, a ministerial order is a law.⁴³ Accordingly, a special norm is preferred.⁴⁴ So, a person whose employment contract has been temporarily suspended due to being infected with coronavirus, should be paid by the employer on a regular basis⁴⁵ throughout this period, if the employee submits to the employer a hospital certificate⁴⁶ or an equivalent certificate confirming the above.

Interestingly, being infected with coronavirus may be considered a so-called “industrial injury”, if infection with covid was related to the performance of official duties of a person, as stated by the International Labour Organization.⁴⁷ If a person dies from coronavirus and he / she became infected with coronavirus while performing his / her official duties, his / her family members have the right to request compensation as well as to demand that the employer cover the funeral expenses.⁴⁸

⁴⁰ Organic Law of Georgia, Labour Code of Georgia, Article 46, LHG, 75, 17/12/2010.

⁴¹ Comp. *Powell A., Francis-Devine B., Clark H.*, Coronavirus: Impact on the Labour Market, Commons Library Research Briefing, 2022, 14-16.

⁴² Order of the Minister of Labour, Health and Social Affairs of Georgia №87 / n, Article 4, Paragraph 6, LHG, 20, 20/02/2009.

⁴³ *Khubua G.*, Theory of Law, Second Completed and Revised Edition, Tbilisi, 2015, 173.

⁴⁴ Civil Code of Georgia, Departments of Parliament, Article 2, 31, 26/06/1997.

⁴⁵ ILO Standards and COVID-19 (coronavirus), International Labour Standards Department, 13/04/2021, 21.

⁴⁶ Order of the Minister of Labour, Health and Social Affairs of Georgia №281 / n, LHG, 137, 25/09/2007.

⁴⁷ ILO Standards and COVID-19 (coronavirus), International Labour Standards Department, 13/04/2021, 28.

⁴⁸ *Ibid*, 29.

It should also be noted that if an employer tries to require an infected person to come to work, it may be considered a crime under Article 132 of the Criminal Code of Georgia (particularly dangerous infectious disease outbreak), as the infected person will pose a risk of contracting a particularly dangerous infectious disease to another.⁴⁹

6. Forcing a Person to Take a Leave when He or She gets Infected

According to the first and second paragraphs of Article 31 of the Labour Code, an employee is entitled to paid leave of at least 24 working days per year, as well as an unpaid leave of at least 15 calendar days per year. Under paragraph 4 of the same article, the parties may set different leave periods in the contract, although these terms and conditions should not have worsened the employee's condition. It should be noted that according to Article 46, paragraph 2, Subparagraphs "L" and "M" of the Labour Code, the employment relationship is terminated during paid and unpaid leave.

Existing legislation not only addresses the issue of leave but also gives the employee the right to take leave. In this regard, it is important to note the ruling of the Supreme Court of Georgia, on the basis of which the decision of the Tbilisi Court of Appeals was upheld, which clarified that, *“for the realization of the right, the will of the employee is necessary, ... Vacation is the employees’ rest time, i.e., the right that cannot be replaced by monetary compensation.”*⁵⁰

Also, one of the judgments of the European Court is noteworthy, which explained that the purpose of the leave is to give the employee the opportunity to relax and have fun during free time.⁵¹ That is why the European Court has ruled that if the employee is unable to work while on leave, these days should not be counted as vacation days and the person should be given the opportunity to use the days missed due to illness at other preferred time as leave.⁵² Consequently, an infected person who is absent from work cannot be considered to be on vacation by the employer.

⁴⁹ Center for Social Justice, whether the employer has the right to send you on unpaid leave or terminate your employment, 2020, <<https://socialjustice.org.ge/>> [10.04.2022].

⁵⁰ *Dzimistarashvili U.*, Vacation - an important right granted to an employee?! Labour Law (Collection of Articles), *Zaalishvili V. (ed.)*, Vol. III, Tbilisi, 2014, 88 (in Georgian). Further reference: Judgment of the Supreme Court of Georgia of 28 May 2012 in the case №as-698-655-2012.

⁵¹ *Ibid*, 98. Further reference: case C-78/11 Judgment of the Court, National Association of Large Distribution Companies (ANGED) and the Federation of Trade Unions (FASGA) and Others, 21/06/2012, 19.

⁵² *Ibid*.

During the Covid Pandemic, *“it became one of the most common forms to force employees to take unpaid leave, which is an illegal practice.”*⁵³ From the analysis of Article 32 of the Labor Code and the reasoning set out above, it is easy to understand that leave is taken on the basis of an agreement between the employee and the employer, hence the imperative requirement by the employer to leave the employee unpaid (or even remunerated) is a gross violation of the Labor Code. According to the Supreme Court, *“labour law does not give the employer the right to enter into such an agreement with the employee, which forces the latter, against his will, to take unpaid leave.”*⁵⁴

7. Reduction of Remuneration or Refusal to Pay it

According to the №95 Convention of the International Labour Organization (ILO) of 1949, wages must be paid regularly.⁵⁵ It is noteworthy that due to the problems caused by the coronavirus, there were facts of salary cuts and refusals to pay.⁵⁶

According to Article 14, Paragraph 1, Subparagraph F of the Labour Code of Georgia, remuneration is one of the essential conditions of an employment contract. And the substantive terms of an employment contract under Article 20 may be changed only by agreement of the parties. Accordingly, the above action is a violation of Georgian labour law. However, according to an International Labour Organization guideline, maintaining a minimum wage during an economic crisis is relevant because it can protect employees from poverty.⁵⁷ There may be a legal justification for reducing wages for some time, but we think this should be an extreme means of achieving the goal.

It should be noted that if an employer (enterprise) goes bankrupt or is liquidated due to covid, according to the №95 Convention of the International Labour

⁵³ Center for Social Justice, whether the employer has the right to send you on unpaid leave or terminate your employment, 2020, <<https://socialjustice.org.ge/>> [10.04.2022] (in Georgian).

⁵⁴ *Loladze Sh., Dumbadze M., Jgerenaia V., Antadze G., Jananashvili Ts., Lomtadze D., Minasiani A., Bekishvili L.*, The Impact of Kovid-19 on Legal Relations, Georgian Young Lawyers Association, *Kurdovanidze N. (ed.)*, Tbilisi, 2020, 9 (in Georgian). Further reference: The decision of the Civil Cases Chamber of the Supreme Court of Georgia of August 29, 2018 in the case HAS-140-140-2018.

⁵⁵ ILO Standards and COVID-19 (coronavirus), International Labour Standards Department, 13/04/2021, 21.

⁵⁶ Center for Social Justice, whether the employer has the right to send you on unpaid leave or terminate your employment, 2020, <<https://socialjustice.org.ge/>> [10.04.2022] (in Georgian).

⁵⁷ ILO Standards and COVID-19 (coronavirus), International Labour Standards Department, 13/04/2021, 22.

Organization, employees should be considered as privileged creditors and further actions should be taken in accordance with national law.⁵⁸

8. Safe Working Environment

The existence of a safe working environment is a necessary condition for the implementation of labour relations, this is confirmed by international acts⁵⁹, as well as Georgian legislation, a clear example of which is the Labour Code of Georgia, Chapter 9 of which provides rules for the protection of working conditions. According to the first paragraph of Article 45 of the Labour Code, *“the employer is obliged to provide the most safe and healthy working environment for the life and health of the employee.”* In the wake of the Covid Pandemic, creating a safe work environment for both employees and third parties has become a priority for employers.

According to paragraph 10 of Article 4 of the Law of Georgia on Occupational Safety, *“the employer is obliged to pay all expenses related to occupational safety and sanitary-hygienic measures in the workplace.”* Accordingly, the employer, in the current reality, is obliged to provide employees with face masks and other equipment that will be required, taking into account the specifics of the job. According to №155 recommendation of the International Labour Organization (ILO) on occupational, technical and hygienic safety, employees are not required to pay any expenses.⁶⁰ If the employer fails to create safe working conditions, employees have the right to leave the job voluntarily if their health is or may be in imminent and serious danger.⁶¹

It is also noteworthy that the importance of personal data processing in labour relations has increased in order to ensure a safe working environment. It is noteworthy that according to the recommendation of the State Inspector's Office, employers can collect information about employees' infections against the will of the employees if it serves to ensure a safe working environment and/or the management of the health care system.⁶²

It should be noted that according to the Law of Georgia on Personal Data Protection, information on a person's health status is a special category of data that

⁵⁸ Ibid, 22.

⁵⁹ Ibid, 28. According to the ILO guideline, the Labour Inspectorate should play an important role in the fight against Covid-19.

⁶⁰ C155 - Occupational Safety and Health Convention, 1981 (No. 155).

⁶¹ ILO Standards and COVID-19 (coronavirus), International Labour Standards Department, 13/04/2021, 26.

⁶² *Kacharava T.*, Decisions of the State Inspector's Service: Data Processing in Labour Relations, №3, 2021, 58, <<https://personaldata.ge/ka/recommendations>> [10.04.2022] (in Georgian).

allows the identification of a person.⁶³ Regarding the specific issue, the decision on the inspection conducted by the State Inspector's Service is interesting⁶⁴ -employees were interviewed (by the employers) in writing to record illnesses or other health problems that would allow the employer to determine the number of people at risk and take appropriate measures to ensure a safe working environment under the Labour Code.

In fact, based on the factual circumstances, there was indeed a legal basis for the data processing, although the principle of proportionality of the data processing⁶⁵ was violated and the achievement of this result was possible by a less restrictive means.⁶⁶

This example, once again, proves that ensuring the safety of working conditions introduces additional requests in the settlement of labour relations, which obviously requires a more careful examination of each contentious issue and the proper determination of the adequacy and proportionality of the means to an end.⁶⁷

9. Conclusion

Within the scope of this article, we reviewed a number of interesting and topical issues. Based on the above, we can say, that freedom of labour guaranteed by Article 26 of the Constitution does not mean only freedom from forced labour, it is a concept on which the whole legislation should be based and first and foremost should ensure a dignified human life.⁶⁸

We conclude that Coronavirus Pandemic as a force majeure cannot be a basis for termination of employment unless there are grounds provided for in Article 47 of the Labour Code. In case of infection with covid 19, the person is considered to be temporarily incapable of work and the employment relationship is temporarily

⁶³ Law of Georgia on Personal Data Protection, Article 2, LHG, 28/12/2011.

⁶⁴ The order of the Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia 2401-120 / o of March 24, 2020 and 101-227 / o of May 29, 2020 was based on Article 6 of the Law of Georgia on Personal Data Protection Subparagraph a) of the second paragraph “... *the processing of health-related data is necessary to make an employment decision based on the nature of the employment obligations and the relationship, including employment.*”.

⁶⁵ Law of Georgia on Personal Data Protection, Article 4, LHG, 28/12/2011.

⁶⁶ Ibid.

⁶⁷ See. ILO Bureau for Employers' Activities, An Employers' Guide on Working from Home in Response to the Outbreak of COVID-19, Geneva, International Labour Office, 2020, 5-7; ILO Bureau for Employers' Activities, An Employers' Guide on Managing Your Workplace During COVID-19, Geneva, International Labour Office, 2020, 16-17.

⁶⁸ Judgment №2 / 2-389 of the Constitutional Court of Georgia of 26 October 2007 in the case of “Citizen of Georgia Maia Natadze and Others v. Parliament of Georgia and President of Georgia”.

suspended, however, the employer is obliged to pay him the contractual remuneration throughout this period.

It was also revealed that it is a gross violation of labour law if the employer forces a person to take unpaid / paid leave in case of being infected with covid 19 or will reduce or not pay compensation due to the situation caused by the pandemic. We touched on the issue of how important the safe working environment has become in the current situation and that its provision is the responsibility of the employer.

We think the impact of the Coronavirus Pandemic on labour relations may become even more apparent over time, court decisions will carry a special burden in this regard, and established practice on the basis of them will answer many controversial questions in the doctrine.

Bibliography:

1. C029 - Forced Labour Convention, 1930 (No. 29).
2. C105 - Abolition of Forced Labour Convention, 1957 (No. 105).
3. Constitution of Georgia, Departments of the Parliament of Georgia, 31-33, 24/08/1995.
4. Civil Code of Georgia, Departments of Parliament, 31, 26/06/1997.
5. Criminal Code of Georgia, LHG, 41 (48), 22/07/1999.
6. Law of Georgia on Public Health, LHG, 26, 27/06/2007.
7. Law of Georgia on Personal Data Protection, LHG, 28/12/2011.
8. ILO Standards and COVID-19 (coronavirus), International Labour Standards Department, 13/04/2021.
9. Order of the Minister of Labour, Health and Social Affairs of Georgia №281/n, LHG, 137, 25/09/2007.
10. Order of the Minister of Labour, Health and Social Affairs of Georgia №87/n, LHG, 20, 20/02/2009.
11. Organic Law of Georgia on Normative Acts, LHG, 33, 22/10/2009.
12. Organic Law of Georgia, Labour Code of Georgia, LHG, 75, 17/12/2010.
13. Order of the Minister of IDPs from the Occupied Territories, Labour, Health and Social Affairs of Georgia №01-120 / O, LHG, 24/03/2020.
14. Order of the Minister of IDPs from the Occupied Territories, Labour, Health and Social Affairs of Georgia №01-227 / O, LHG, 29/05/2020.
15. Resolution of the Government of Georgia №181 “On Approval of Measures to Be Prevented against the Spread of the New Coronavirus in Georgia”, LHG, 23/03/2020.
16. *Chanturia L., Akhvlediani Z., Zoidze B., Jorbenadze S.*, Commentary on the Civil Code of Georgia, Book I, General Provisions of the Civil Code, Tbilisi, 2002, 324 (in Georgian).
17. *Chanturia L.*, General Part of Civil Law, Tbilisi, 2011, 15-16 (in Georgian).
18. *Chanturia L. (ed.)*, Commentary on the Civil Code, Book I, Tbilisi, 2017, 740 (in Georgian).
19. *Chanturidze G., Surmava T.*, The Impact of the Pandemic on the Labour Market and the Condition of Employees, Report, Tbilisi, 2021, 4, 7, 9, <<http://ewmi-prolog.org/images/files/8832GTUCReportGEO.pdf>> [10.04.2022] (in Georgian).
20. *Davies P., Freedland M.*, Kahn-Freund's Labour and the Law, 3rd ed., London, 1983, 93-95.
21. *Dzimistarashvili U.*, leave - an important right granted to an employee?! Labour Law (Collection of Articles), *Zaalishvili V. (ed.)*, Vol. III, Tbilisi, 2014, 88 (in Georgian).
22. *Gabisonia Z.*, Georgian International Private Law, Tbilisi, 2016, 306 (in Georgian).

23. ILO Bureau for Employers' Activities, An Employers' Guide on Working from Home in Response to the Outbreak of COVID-19, Geneva, International Labour Office, 2020, 5-7.
24. ILO Bureau for Employers' Activities, An Employers' Guide on Managing Your Workplace During COVID-19, Geneva, International Labour Office, 2020, 16-17.
25. *Kacharava T.*, Decisions of the State Inspector's Service: Data Processing in Labour Relations, №3, 2021, 55, 58, <<https://personaldata.ge/ka/recommendations>> [10.04.2022] (in Georgian).
26. *Khubua G.*, Theory of Law, Second completed and Revised Edition, Tbilisi, 2015, 173.
27. *Loladze Sh., Dumbadze M., Jgerenaia V., Antadze G., Jananashvili Ts., Lomtadze D., Minasiani A., Bekishvili L.*, The Impact of Covid-19 on Legal Relations, Georgian Young Lawyers Association, *Kurdovanidze N. (ed.)*, Tbilisi, 2020, 9, 16 (in Georgian).
28. *Powell A., Francis-Devine B., Clark H.*, Coronavirus: Impact on the Labour Market, Commons Library Research Briefing, 2022, 14-16.
29. *Raj-Reichert G., Plank L.*, Labour Law Compliance and the Role of Labour, International Labour Organization, 2019, 7-8.
30. *Shvelidze Z.*, Georgian Labour Law and International Labour Standards, International Labour Organization, Tbilisi, 2017, 14-15 (in Georgian).
31. *Shvelidze Z.*, Covid-19 Pandemic and Labour Law Restrictions and Social Impacts in Georgia, *Las Consecuencias Sociales del COVID-19: una Mirada Jurídica Comparada Después de un año*, №3, 2021, <<https://mailchi.mp/cielolaboral/noticias-cielo-no-532172?e=933b929ef2>> [10.04.2022].
32. The Employment Situation – March, News Release, 2022, <<https://www.bls.gov/news.release/pdf/empsit.pdf>> [10.04.2022].
33. U.S. Department of Labor Occupational Safety and Health Administration, Guidance on Preparing Workplaces for COVID-19, 2020, 6-7.
34. *Zoidze B.*, The Essence of Labour Freedom in the Practice of the Constitutional Court of Georgia, Labour Law (Collection of Articles), *Zaalishvili V. (ed.)*, Vol. I, Tbilisi, 2011, 9 (in Georgian).
35. Judgment №2 / 2-389 of the Constitutional Court of Georgia of 26 October 2007 in the case of “Citizen of Georgia Maia Natadze and Others v. Parliament of Georgia and President of Georgia”.
36. Judgment of the Constitutional Court of Georgia №2/2/565 of 19 April 2016 in the case “Citizens of Georgia - Ilia Lezhava and Levan Rostomashvili v. Parliament of Georgia”.
37. Judgment of the Constitutional Court of Georgia №1/1/1505,1515,1516,1529 of 11 February 2021 in the case “Paata Diasamidze, Giorgi Chitidze, Eduard Marikashvili and Lika Sajaia v. Parliament and Government of Georgia”.
38. Decision of the Supreme Court of Georgia of 28 May, 2012 in the case №698-655-2012.
39. Decision of the Supreme Court of Georgia of 9 August, 2018 on the case №as-1444-1364-2017.
40. Decision of the Civil Cases Chamber of the Supreme Court of Georgia of August 29, 2018 in the case HAS-140-140-2018.
41. <<https://socialjustice.org.ge/>> [10.04.2022].