

LABOUR AND SOCIAL JUSTICE

UNCERTAIN CHANCES OF SUCCESS

A Review of the Georgian Law on Employment
Promotion

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On July 14th, 2020, the Georgian Parliament passed the Law of Georgia on Employment Promotion. The substantive provisions of the Law shall enter into force in September 2021.



Does the Law meet the challenges? Is it adequate for implementation? Does it meet the key requirements of transparency and comprehensibility? Is it timely? Are its results measurable and evaluable? Is it a “good law” in all these senses? These are the main questions explored in this study.



The paper is divided into five chapters. The first chapter presents an overview of facts and figures pertinent to the Law. The second deals with the legislative aspects in a narrow sense. The third and fourth chapters address the requirements of textual clarity and absence of redundancy. Supplementary topics, such as data collection about employment, are dealt with in a series of short excursions. Finally, the fifth chapter summarizes conclusions and presents some suggestions for the way forward.

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მოკლე მიმოხილვა

წინამდებარე კვლევა ითვალისწინებს საქართველოს 2020 წლის 21 ივლისს მიღებული დასაქმების ხელშეწყობის შესახებ კანონის კრიტიკულ შეფასებას. შეფასება ძირითადად ეფუძნება საკანონმდებლო პრინციპებს, როგორცაა ყოველისმომცველობა, სიცხადე და წინააღმდეგობრიობებისა და დუბლირების თავიდან აცილება. ტექნიკური თვალსაზრისით ამ სტანდარტების დაცვა ნიშნავს, რომ კანონი კარგია. აღნიშნული სტანდარტები თუ არ შესრულდა, კანონი საერთოდ ვერ განხორციელდება, ან განხორციელდება არასათანადოდ.

შეფასების შედეგად ნათელია, რომ საქართველოს კანონი დასაქმების ხელშეწყობის შესახებ არ პასუხობს ყველა აუცილებელ მოთხოვნას. კანონის მიღება მისასაღმებელი მცდელობა იყო საქართველოს დასაქმების პოლიტიკისათვის ორგანიზებული საფუძვლის შესაქმნელად. ამის მიუხედავად, კანონის ტექნიკური ხარვეზებიდან გამომდინარე, ამჟამინდელი ფორმით არსებული კანონის პირობებში დასაქმების ხელშეწყობისა და უმუშევრობის დონის შემცირების ზოგადი მიზნების მიღწევა სათუთა.

ძალიან მნიშვნელოვანია კანონში ცვლილების შეტანა, მისი გადამუშავება, თანმიმდევრულობისა და სემანტიკური სიცხადის მოთხოვნების შესრულებისათვის; სათანადო შემთხვევებში შემოთავაზებულია აგრეთვე ტექსტის დახვეწასთან დაკავშირებული რჩევები. ეს ამოცანა უნდა შესრულდეს 2021 წლის სექტემბრამდე, კანონის არსებითი დებულებების ძალაში შესვლის დროისათვის.

თუ კანონის საფუძვლიანი გადამუშავება მიუღებლად ჩაითვლება, შესაძლოა ტექნიკურად გამართული ალტერნატიული, შედარებით ვიწრო თემაზე მიმართული კანონის მიღება. მაგალითად, აღნიშნული კანონის მიზნად შესაძლოა განისაზღვროს ახალგაზრდების უმუშევრობის დაძლევა და უნდა შემუშავდეს იმგვარად, რომ შესაძლებელი იყოს მისი გავრცელება სხვა სამიზნე ჯგუფებზე, ასეთი აუცილებლობის შემთხვევაში.

Foreword and Acknowledgements

Many observers have found Georgian employment policies to be in need of a more solid and more orderly basis. In our own writings we have proposed consolidating the current maze of secondary legislation of the Georgian government in the field of employment policy into one single law.¹ Quoting Aristotle, we argued that law is order and good law is good order.²

A good law on employment promotion should be designed with a long-term outlook and be aware of its socio-economic repercussions for Georgia in the more distant future. It should also look beyond immediate employment concerns and labour market problems to consider how employment policies would affect other areas of Georgian society. A vision with depth and breadth is needed, one that would help ensure the new legal framework is open to assessment and, if needed, amenable to improvements.

We have written this paper with a diverse audience in mind, ranging from Georgian government officers, politicians, legislators and policymakers, to international aid administrators, social scientists, or simply the curious observer. The diversity of audience is matched by the paper's unity of purpose, which is to encourage as many people as possible to become active in matters of employment policy in Georgia.

Writing the paper has benefitted from the support of friends and colleagues both in Georgia and abroad. We are particularly indebted to Irina Seperteladze of the Georgia Office of Friedrich-Ebert-Stiftung, and to Ana Diokanidze of the Georgian Institute of Public Affairs, for their painstaking reviews of earlier drafts. Their comments are reflected in the paper, yet all remaining errors and omissions are the sole responsibility of the authors.

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1 Diakonidze/Boergen/Burisch: Some Thoughts on Employment Policies in Georgia. Berlin and Tbilisi 2020.

2 Aristotle: Politics, Book 4, Chapter 4.

1

INTRODUCTION

On July 14, 2020 the Georgian Parliament passed the Law of Georgia on Employment Promotion (“the Law”). After being signed by the President, it was published in the Georgian language on July 21, 2020 under the registration number 270170000.05.001.019966. While the Law has been translated into English, this is still awaiting authorisation.

The final phase of the parliamentary deliberations and the enactment of the Law coincided with the first wave of the COVID-19 pandemic, which has caused serious problems for the Georgian population and the Georgian economy. Never before has protecting and creating jobs been more important.

Does the Law meet these challenges? Is it adequate for implementation? Does it meet the key requirements of transparency and comprehensibility? Is it timely? Are its results measurable and evaluable? Is it a “good law” in all of these senses? These are the main questions explored in this study. Our principal sources in doing so are the English-language versions of the Law and its accompanying Explanatory Note. Despite some semantic and typographic peculiarities, we consider the two texts to be a solid basis for the work at hand. Whenever necessary we have checked our observations and conclusions with the Georgian-language originals of the Law and the Note.

The paper is divided into five chapters, as follows. The first chapter presents an overview of facts and figures pertinent to the Law. The second deals with the legislative aspects in a narrow sense, examining in particular the first 12 Articles of the Law. The third and fourth chapters address the requirements of textual clarity and absence of redundancy, which a proper law must comply with in order to be effective.³ Supplementary topics, such as data collection about employment, are dealt with in a series of short excursions. Finally, the fifth chapter summarises our conclusions and presents some suggestions for the way forward.

³ Hey/Schwarz/Reimer/Karpen/Kirchhof. ifst-Schrift 527. Berlin 2019. P. 10.

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THE LAW AT A GLANCE

In nine chapters, comprising 59 articles, the Law seeks to regulate the functioning and organization of public employment services and employment promotion in Georgia. At the same time, it opens up the possibility of transferring promotional activities to private institutions, provided these are not for-profit. In addition, the Law defines binding rights and obligations for employers and employees, and also creates a framework for promoting people with disabilities.

All of these substantive regulations will come into force on September 1, 2021. The lawmakers selected the date to meet a need for **conducting certain preparatory** work for implementing the Law.⁴

After two introductory chapters on constitutional principles and legal definitions, Chapter III distinguishes four types of employment, for which it foresees various support measures. These are detailed in Chapter IV and supplemented in Chapter V with certain privileges for the disabled. Chapter VI catalogues the rights and obligations of employers and employees in the context of employment promotion. In Chapter VII there are rules for the design of **an active labour market policy**, while Chapter VIII outlines the responsibilities and forms of co-operation needed in the institutions of the **employment promotion system**. The ninth and final chapter specifies the dates on which the Law's substantive regulations will come into force.

Under Article 17 of the Georgian **Law on Normative Acts**, any bill submitted to the legislature must be accompanied by an **Explanatory Note**, since the legislature regulates, but does not justify, its regulations. Explanatory Notes normally will contain the justification, according to which a regulation is deemed necessary. Furthermore, it will show that these regulations are appropriate to resolving an issue arising from actual circumstances (real life issues, legal issues). If the actual circumstances are not disclosed, the Explanatory Note lacks its very basis. It only asserts what it should justify. In summary, the causes, aims and essential content of a proposed legal regulation must be presented in the Explanatory Note. The problems or conflicts that are supposed to trigger an initiative of the legislature must be analysed and

presented as legal facts.

The Explanatory Note attached to the Law on Employment Promotion does not meet these requirements. In particular, it fails to indicate what specific legal facts relevant to employment were determined, nor what conclusions were drawn, in order to justify the legislative text politically. Consequently, it is neither possible to appreciate which legal facts have induced the legislature to act nor why the new norms will change these existing legal facts. If an investigation of relevant legal facts has taken place, such facts are not stated. Instead, non-verifiable value judgments are presented. Truisms such as **'the main challenges for the country by 2020 remain the high number of job seekers, unused work resources and the imbalance between the demand and supply of professions'**⁵ are neither sufficiently precise nor instructive.

From the Explanatory Note it is clear that the law is essentially an in-house undertaking of the Georgian legislature. A sociological survey supported by the Friedrich Ebert Foundation,⁶ and consultations with an eminent Georgian constitutional lawyer, are mentioned⁷ but the experiences of other European states that have recently passed employment promotion laws have not been **reviewed**.⁸ This is unfortunate as employment laws such as those passed in Lithuania, or more recently in Albania, contain information that Georgian lawmakers might have found helpful.

Nor does the Explanatory Note refer to the participation of Georgian employers' and employees' associations, or other interest groups, in drafting the law. Reportedly, one large consultation with employers' and employees' associations took place in February 2019; it was followed by a series of smaller consultations. But the Note is silent on all of these events.

5 Explanatory Note AAA

6 Explanatory Note AAA) and AAB)

7 Explanatory Note D.d.a

8 Explanatory Note D.d.c

4 Explanatory Note A. A. B.a.e)

Finally, the authors of the Law disregarded the results of the numerous projects funded or co-funded by the international donor community in Georgia, which aimed to combat unemployment and establish an efficient employment support system.⁹ The unwillingness or inability to harvest, that is, to make use of the results of donor-funded projects, is a shortfall that occurs throughout the public institutions responsible for employment promotion in Georgia. We have offered suggestions for remedying this problem elsewhere.¹⁰

9 A 2018 EU tender invitation stated that in addition to the EU, the main donors supporting skills development and labour market initiatives in Georgia included the MCC, SDC/UNDP, GIZ, USAID, Danish government/ILO and World Bank/UK Good Governance Fund (TA to Skills Development for Matching Labour Market Needs in Georgia. Annex II: Terms of Reference. Pages 7-8). The previous EU-financed TA project, EUVEGE, contained an ambitious law-making effort to improve employment promotion in Georgia.

10 Diakonidze/Boergen/Burisch: Some Thoughts on Employment Policies in Georgia. Berlin and Tbilisi, 2020.

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LEGISLATIVE ASPECTS OF THE EMPLOYMENT PROMOTION LAW: CHAPTERS I AND II

3.1 UNAMBIGUOUS TERMS AND DEFINITIONS

Prefacing draft laws with extensive catalogues of legal definitions of the terminology they use has increased considerably in recent years. A preface serves the principle of clarity by fixing the meaning of important terms which might otherwise have been interpreted in diverging ways. If a definition laid out in the preface allows for ambiguity, it is unfit for these purposes.

A legal definition must set out the essential attributes of the thing defined. It is characterized by at least one feature of the defined term that is missing from other terms of the same genus. Conversely, in the case of *idem per idem*, if a definition contains the term to be defined it is useless.

Legal relationships are social phenomena whose professional handling has led to a specific technical vocabulary. However, this does not prevent the use of everyday language, especially in a case like a law about employment, given that all concerned are familiar with most of its attributes. The important thing is not to assign different (or even worse, contradictory) meanings to a term, or to use different terms to describe the same facts. Against this backdrop, a good law usually begins with a catalogue of central terms and definitions, which are then used consistently in what follows.

In the Law on Employment Promotion, Article 2 sets about cataloguing its definitions; however, it is not exhaustive and other definitions are scattered throughout the Law. Many more definitions appear in the Explanatory Note.

The terms ‘unemployed persons’, ‘job seekers’ and ‘measures’ are of particular importance for any law on employment promotion. How does this Law handle them?

According to Article 2. R), a ‘job seeker’ is an **unemployed or employed person, who is actively looking for a job, is able to start working and is registered in the State Employment Promotion Agency¹¹ at the job seekers database.** The ‘unem-

ployed,’ according to Article 2.T), is an **able-bodied person from 16 to retirement age who does not have paid work at the time of registration, who is looking for a job and is able to start working in the next two weeks.** The Law uses the term ‘job seeker’ both in the narrow sense (an employee looking for a better job) and in the broader sense (including both employees looking for a better job and unemployed persons), without establishing in individual cases which term is meant. Similarly, job seeker represents the generic term for job seeker in the broader and the narrower sense. The definitions are a prime example of ambiguity in the Law.¹²

What about the employment-promoting measures defined by the Law, which are aimed at job seekers and unemployed persons? Using the term in the singular, Article 2.E defines the **measure of Employment Promotion** as follows: **All actions/services provided to job seekers and other persons provided for under this law to promote job search and professional development; As well as services provided to employers in order to assist in finding a suitable workforce.** The title of Chapter IV and Article 18. 1. speak – in the plural – of **Employment Promotion Measures** and define them as, **All employment promotion measures serve the employment of a job seeker based on the experience of the job seeker, level of education, professional profile, skills, needs and expectations; As well as motivating off-bodied unemployed persons and promoting them to become employed.**

This partly reflects a peculiarity of Georgian semantics that has been lost in translation, whereby the singular of a term is explained with a plurality of activities. However, the definitions are formulated quite differently, and their content is only partially congruent. For a start, the target groups of the measure (in the singular) of Article 2 E) comprise **job seekers and other persons** as well as **employers**, while Article 18. 1. directs the measures (in the plural) of the Law at **job seekers and unemployed persons.**

¹² At the end of the Explanatory Note, the corresponding definitions are different again. Under AAA) ac.) ... a **job seeker is a person who is actively looking for a job, is able to start working within the next two weeks and is registered with the State Employment Promotion Agency at the job seekers database.** The reference to unemployed persons is missing here. The ‘unemployed’ are, on the other hand, persons who **unlike the job seeker, are neither working nor looking for a job.**

¹¹ The State Employment Promotion Agency is nowadays referred to as the State Employment Support Agency or SESA.

Furthermore, the **measure** of Article 2 E) focusses on the objectives of the Law. On the part of the workforce, these are the promotion of job searching and professional development and, on the employers' side, the recruitment of suitable employees. In Article 18, the term **measures** refers primarily to the personal characteristics of the job-seekers who, in addition, must be **motivated** to look for work.

Finally, who might be the **other persons provided under this law**? Both the Law and the Explanatory Note are silent on this question. One possibility is that persons with disabilities are addressed here; another is that all beneficiaries of the Law are included, as enumerated in Article 13.

If Article 18. 2. is used for the interpretation of Article 2. E), one cannot fail to notice the extension of Article 18. 2. to **self-employment seekers**. Firstly, the term 'self-employment seekers' is misleading as self-employment belongs to the category of entrepreneurial activity.¹³ Secondly, the inclusion of self-employment seekers would require a new title for the Law, such as the Law on Employment and Self-Employment. This matter could easily be mended by deleting the reference to self-employment.¹⁴

What about the use of the key terms to describe the target groups of the law? Here too, the lack of a consistent terminology makes it difficult to interpret and implement the Law, but the frequency with which the terms are used can act as a guide. While unemployed is used only nine times,¹⁵ job seeker can be found in more than eighty places, albeit with quite different meanings, such as:

- In Article 3 3.C, job seekers are simply unemployed persons in search of a job
- In Article 19. 1., job seekers include both persons interested in changing their current employment and the unemployed
- In Article 33. 1, job seekers are again exclusively unemployed persons belonging to the groups covered by Chapter V.

As the Law uses the terms unemployed and job seeker in a ratio of 1:10, one wonders whether the lawmakers did not intend to direct the promotional efforts at job seekers with potential for qualification, while tacitly accepting that a number of unemployed persons – at some points in the Law discredited as unwilling to work and hence in need of **work**

motivation¹⁶ – would not be materially affected by the Law.

Further ambiguity arises from the use of repeated, but in their wording differing definitions and from the equally frequent use of, other, which in law-making inevitably has the effect of opening a clause. Here are two examples of multiple definitions:

- **Single window principle** in Article 2 H) and Article 12
- **Intern** and **Internship** in Article 2.S) and Article 16.

Both Article 12 and Article 16.1 repeat terms laid down in the definitions of Article 2 H) and 2 S), respectively, yet each time with a different phrasing.¹⁷ The single window of Article 12 is defined as containing a **unified electronic system**. Article 16.1 highlights a different purpose and a deadline. However, in law-making, a term once defined is to be used as defined, and a new definition should refer to something different.

The term other¹⁸ appears almost twenty times in the Law. While it is not a legal or logical argument in and of itself, it is nonetheless true that each time other is used it gives the related legal norm the character of an opening clause, a blank space to be closed by interpretation. Stated differently, an opening clause is a permission to modify the provisions of the Article in which the clause resides. In law-making, further framework provisions need to be added to a law specifying which institutions may interpret and modify the respective provisions and what legal standards will guide them in doing so. If these requirements are not met, the affected norms lack both clarity and certainty.

3.2 CERTAINTY

Clarity and certainty may well be overlapping. While clarity concerns the meaning of a rule, certainty asks which statement the rule actually contains. For instance, it must be clear what legal consequences are to result from a target group's actions. The state's reaction to such actions must be predictable and certain, otherwise citizens would be exposed to arbitrariness on the part of the state.

A first example of the lack of certainty in the Law is Article 3, according to which **effective management of the active labor market policy by the state is based on current labor market requirements and constantly updated information, in active cooperation with the private sector**. How is the effectiveness of management to be measured, and what does effective mean in the context of the Law? The policy of the

13 The recent Lithuanian Law on Employment as amended 21.06.2016 (chapter II, Article 3.2) points out that self-employment shall be established in special laws and other legal acts.

14 Doing so would require changes made to Articles 3. 3.c.; Article 23. I); Article 28.

15 Some might object to the fact that in the Explanatory Note the term unemployed is reduced to meaning those refusing work. Chapter AABac states: **However, the unemployed, unlike the job seeker, are neither working nor looking for a job. The state policy is directed exactly in order to activate this category of people.**

16 Article 18.1 and 31.1

17 Article 16 contains other terminological imprecisions, e.g., internship denotes a relationship, not a person.

18 „other persons“ Article 2. E); „... others“ Article 2.M); „... other actions.““ Article 2. Q); „... other measures.“ Article 3. 2. D), 32. Article 34. 3.; „... other activities.“ Article 18. „...information...“ Article 21. F); „... other skills.““ Article 24. 2. K), 24. 3., 25. 5.B); „... other consulting services.“ Article 28. „... other legal entities.“ Article 28. „... Other related requirements.““ Article 37. 1.B); „... other rights.“ Article 39. 1. E); „... other circumstances.“ Article 43.2

state is based on current requirements of the labour market and constantly updated information, but who determines the requirements and who collects the information? In active cooperation with the private sector, how shall the cooperation be organised? The legal consequences of failing to cooperate with the private sector are unknown.

Furthermore, and contrary to *Principles of the law* as announced in the title of Chapter II, the article on the *Single Window Principle* does not contain a substantive legal principle, but some general instructions on procedures: for obtaining state employment support job seekers and employers are to apply the single window principle. The principle refers both to a physical space and the unified electronic system,¹⁹ thereby casually amending the definition of the window given in Article 2.H. In view of the dual competences of the state and the municipalities, it is not clear to which buildings or to which clients the single window will open. However, as a possibility for de-bureaucratisation, and if provided with more detailed procedural rules, single window arrangements could usefully complement other rules and regulations.

Finally, a *systemic Reform of Active Employment Policy* mentioned in the Explanatory Note as providing the *reason for adopting the draft law*²⁰ is missing in both the Note and in the Law, both as a term and as a fact.²¹ Similarly, the legal facts describing the phenomenon of unemployment are not set out in the Explanatory Note, nor are they analysed. Reference is made to Georgia's social background and economic development, meaning that the solutions under discussion extend well beyond the matter of employment and are intended to achieve an unspecified balance between supply and demand. Possible solutions to Georgia's employment problem are based on a shaky foundation of expectations and assumptions that appear throughout the Explanatory Note.

3.3 CONSISTENCY

Is the Law consistent with regard to promoting foreign nationals into gainful employment? According to Article 3. 1, the Law aims *to promote the employment of citizens, the production of active policies in the labor market, the development of free enterprise and competition, as well as equal availability to state employment programs for people living throughout Georgia*. The reference to *people living throughout Georgia* would make all persons with residence permits and work permits inhabiting Georgia eligible for support measures. However, Article 19.3 excludes persons

without Georgian nationality from registration as a job seeker: *A person cannot be registered as a job seeker if: ... D) He/ She is not a Citizen of Georgia*, and to benefit from employment promotion measures, a person must be registered as a job seeker. No registration, no support. Article 11.2 is even clearer: *Employment promotion is universal and accessible to all citizens of Georgia*.

Article 15.1.F adds to the confusion by allowing exceptions from the abovementioned legislation. It refers to *Other persons designated by a relevant resolution of the Government of Georgia*, which can include foreign nationals if the Government so chooses.

On a side note, the Constitution of Georgia does not provide for a *resolution of the Government of Georgia* as an instrument of secondary legislation. The reference to a resolution in Article 15.1.F²² may be just another case of something lost in translation. Yet it also could be an example of the somewhat indifferent naming of laws and legislation in Georgia.²³

Politically less delicate, but more important for the application of the Law in real life, are the rules concerning wage subsidies under Article 15. Employers and employees must deal here with the State Employment Support Agency which, reportedly, began operating on 01.01.2020.²⁴ Employers can apply to the Agency for wage subsidies if they enter into an employment contract with a beneficiary whose wage is to be subsidised. This implies that the Agency is to pay the wage subsidies to the employer, which also means that the repayment provisions in Article 15.6 of the Law would be applicable. However, Article 15.3 requires an additional contract between the Agency and job seeker *in order to pay the subsidy*.

3.4 ENFORCEABILITY

Is the Law enforceable? Does it, for example, constitute a sufficient basis for issuing an administrative act on job seekers or employers, which could be a precondition for enforcement measures?

For a start, the discussion shall be limited to administrative acts that put a burden on employers. One such act is the important statutory obligation of employers to participate in periodic *labour market needs surveys*.²⁵ Article 40.2 reiterates the obligation: *The employer is obliged to participate in the labor market needs research* – a superfluous duplication. It was possibly meant to emphasise that without labour market needs research, actions like the ones prescribed in Article 53 cannot be carried out. However, the Law does not

19 Article 12

20 Explanatory Note Aa) and AAB)

21 Section A.A.A. of the Explanatory Note describes objectives, not legal facts nor policy: It is necessary for the state to conduct such an active employment promotion policy, which on the one hand will connect job seekers and businesses, on the other hand will bring to compliance the qualification of job seekers and business requirements in the country, which will significantly increase the number of employed people and help business in raising the quality, as well creating as in new jobs.

22 Another reference to a *resolution of the Government of Georgia* is contained in Article 27.3 of the Law.

23 We have commented on this in Diakonidze/Boergen/Burisch: *Some Thoughts on Employment Policies in Georgia*. Berlin and Tbilisi 2020. Pages 17/18.

24 For example, GT Georgia Today from 20.01.2020

25 The requirement is set out in Articles 29.1 and 29.3.

contain any indications with regard to type, content, scope, etc. of the participation expected from employers. It also does not foresee penalties in cases of non-participation.

Obligations for job *seekers* are catalogued in Article 38. With the exception of deregistration in the case of Article 20.C (refusal to take up work), breaches of those obligations remain without penalty. There are no rules on the setting of fines or defining a required substitute performance.

Beyond onerous administrative acts, *enforceability* in a broader terminological sense can be considered largely similar to *feasibility*. Seen from this perspective, lacking organisational capacity and other framework conditions should not stand in the way of *enforcing* the Law. This touches upon areas of law-making where technical aspects directly affect matters of policy.

It is not the intention of the present paper to cross the line separating the two. However, what can be said is that employment promotion in Georgia has better chances of being implemented and succeeding if the Law in its current form is largely ignored. Otherwise, one would have to accept that measures are carried out without legal authorization and that competences are distributed in disregard of the formats defined by the Law. Both are possible, so long as the substantive rules of the Law have not yet entered into force.²⁶

3.5 REDUNDANCIES

Redundancy may refer to information that is understood without definition or that is defined more than once. For instance, **Monthly labor remuneration of full time shall be at least 2 times higher than the subsistence minimum. Remuneration of monthly full-time work must be at least twice the minimum subsistence level.**²⁷ Redundancies irritate readers who might at first doubt their understanding rather than assume the legislator is repeating themselves for no good reason. Even laws that otherwise may appear clear and specific do not tolerate redundancies!

A whole array of redundancies can be found in the legal definitions of Article 2. Redundancies and related deficiencies include the following:

- Definitions like the one for being **employed**, which according to the Law refers to **A natural person who performs certain work for an employer on the basis of an employment contract.**²⁸ Cross-checking with the definition in the Georgian-language text of the Law proves that this is not an error in the translation. Generally speaking, defining unmistakable terms corresponding to

normal colloquial language, the use of which does not lead to misunderstandings, is superfluous.

- Defining legal terms that have already been defined elsewhere. Using legal terms in the same sense in every law helps maintain unity of legal order. In the case of employment promotion in Georgia, legal definitions which comply with the definitions of Article 3 of the Labour Code²⁹ need not be repeated for use in the Law. A simple reference to the Labour Code is sufficient.
- Using too many defining features for a term. In the case of a **suitable job** in Article 2.U, at least six characteristics are required to define ‘suitable.’ The relationships of the six to one another, including whether they are to be seen as complementary or alternatives, remain unclear.
- *Idem per idem* definitions, as in Article 2. Q), where **active job searching** is defined as **active and targeted actions of a person**.
- Superfluous definitions relating to terms that appear only once or twice. For such terms, it is generally advisable to include their definition as and when they appear in the text.
- Finally, arbitrarily interchangeable definitions. One example, in Article 45, is the use of the key terms active labor market policy and employment policy.

Following the catalogue of definitions, Article 3. exclusively contains programme clauses, and Article 4. describes the well-known legal basis of law-making in Georgia. Article 5 deals with the **Individualization of employment promotion measures**, a subject that is addressed for a second time in Article 18 and Chapter V. Whether these are attempts to define terms, or to interpret the text, is beside the point: there should not be multiple instances of either within the same Law.

And so it continues. Articles 6 to 9 include many statements which do not fall under the competence of the ordinary legislature: Articles 6 to 8³⁰ deal with constitutionally guaranteed fundamental freedoms in the areas of work; the statements about job seekers’ motivations in Article 9 lack the proper reference and are not even suitable for the Explanatory Note (as with Article 3.2.C); Article 11.1 deals with the exemption from the fees for employment by the State, and Article 39 D does the same.

²⁶ This in turn raises the question of the current legal basis of the fight against unemployment and the promotion of employment in Georgia. We have dealt with this in Diakonidze/Boergen/Burisch: Some Thoughts on Employment Policies in Georgia. Berlin and Tbilisi 2020.

²⁷ Article 14.1.d

²⁸ Article 2.F) Other examples are the definitions in Article 2 A) -D).

²⁹ <https://matsne.gov.ge/en/document/view/1155567?publication=18>

³⁰ In addition, Articles 6 (b) and (c) are redundant as job seeker rights are dealt with in great detail in Article 37.

Excursion I: Purpose of a law and consideration of its position in the legislative process

Redundancy in the legislative text is not synonymous with redundancy in the draft law. The redundancy established in the legislative text with regard to the purpose of Article 3 does not mean that the content of the article is irrelevant to the legislative procedure. On the contrary, according to Article 17 of the *Law of Georgia on Normative Acts*, it is imperative to attach a purpose provision to a bill. Laws are not free-floating products but are earmarked for purposes. The legislator recognizes social problems or conflicts to which he responds with a set of rules in order to achieve a balance of interests and thus to ensure legal peace. The target is usually determined in the form of an Explanatory Note.

Consequently, drafting a law begins with the identification of the legal facts that determine the problem, or conflict, which requires a law for its resolution. In the case of the Employment Act, the problem statements say, *Poverty is one of the biggest challenges*³¹ and that *the main challenge ... remains the high numbers of job seekers, unused work resources and the imbalance between the demand and supply of professions*.³² Both statements are correct.

The problem has thus been given a name, but there are no guidelines for its quantification nor for judging attempts at a solution. The Explanatory Note does not contain a single statistic on the share of the unemployed in Georgia's labour force, on vacancies left unfilled due to a lack of skilled labour, or on highly qualified persons whose qualifications do not meet the employers' needs. Instead, there are only truisms³³ and speculation about the efficiency of the state in promoting employment, which stimulates the labour market and thus is thought to support the welfare of Georgia's citizens. Not even the overall direction of future legal fact research is given.

There is no doubt that it was necessary to legislate to solve the problem of unemployment.³⁴ However, the legislators do not seem to have recognized the problem of the statistically obvious mass unemployment. Instead, the Law addresses a lack of a well-trained labour force meeting the requirements of the *labour market*. With its predominance of profiling measures, career development planning and short-term vocational training, the Law clearly favours job seekers, i.e., persons who are not unemployed but are looking for a job with higher pay and/or a better reputation.

31 see Explanatory Note A) Aa) AAA) 1 st.

32 see note 27

33 Article 2. D) (Tautology) and E)

34 Hence the headline to AAB)

There is a lack of reliable facts and figures for this target group, as well. For example, it remains unknown in which sectors and regions of Georgia there are unfilled jobs. Is it not also the case that many qualified job seekers cannot find their dream jobs and have to accept less-skilled jobs, forcing them to compete with less-qualified job seekers?

4

SUPPORT MEASURES

Both the Law and the Explanatory Note remain silent on the question of whether the serious unemployment in Georgia, or the dissatisfaction of the population with their profession, or even the lack of qualifications among workers for existing vacancies, are the problem that has led to the drafting of the Law. However, it seems reasonable to suggest that the high unemployment, which is likely to have increased as a result of the COVID-19 pandemic,³⁵ triggered the legislative process and brought it to its provisional conclusion on 21 July 2020. This is despite the fact that Articles of Chapters III and IV focus mainly on job seekers and not on the unemployed.

What are the chances that the support measures will really reach the target groups? To what extent is the separation of legislation and administrative ordinances, and their implementation, appropriate?

4.1 CHAPTER III

From Chapter III onwards, and despite its somewhat misleading headline of **Forms of Employment**, the Law addresses promotional measures. Yet the imprecisions continue to appear. Is the intention of **connecting employers and job seekers** (the heading of Article 13) a kind of social commitment or a legal relationship? Why is apprenticeship not included amongst the main ways **to connect an employer and a job seeker**, but internship is? More generally, should an internship (similar to an apprenticeship) not be considered a form of training rather than a mode of employment?

Some more questions that need clarifying include:

- Article 14, on the subject of **employment**, refers to the time spent on getting to work and the definition of a minimum wage. Are these not aspects relating to contractual arrangements which have next to no connection to a Law on Employment Promotion? And even if the state has the full right to establish a minimum wage, Article 14 neither establishes an obligation to do so nor

what sanctions would apply in case of its violation. Article 14 just says that when placing a job seeker into a job some aspects need to be taken into account. All these should be considered by the State Employment Support Agency, but the text does not say this explicitly anywhere, either.

- Should the provisions of Articles 14.2 and 14.3 for registration or deregistration as job seekers not be dealt with in Article 19 (**Registration of a person as a job seeker**) and Article 20 (**Termination of registration as a job seeker**)?
- Should wage subsidy (Article 15) – a standard means of employment promotion – not appear in Chapter IV on employment promotion measures? In addition, systematically wage-subsidized employment does not belong to *forms of employment*; it is instead a means of financing workplaces.
- Finally, labour migration is not a typical topic of employment promotion. Outward migration can relieve Georgian unemployment statistics in the short term.³⁶ But apart from transfer payments, *working abroad* makes hardly any direct contributions to employment in Georgia. Moreover, the Georgian legislature lacks the power and jurisdiction in the host countries to control the movement of migrant workers alluded to in Article 17.3.

According to Article 19.1, a prerequisite for all employment promotion measures is an individual's registration as being unemployed or as a job seeker. According to Article 19.2, registration is to take place in a **Unified Database of the labor market management information system/agency**.

Should such a database³⁷ or agency come into being, care

³⁶ The Law defined (in Article 2A) labour migration as **the promotion of temporary legal employment of Georgian citizens abroad on the basis of an agreement between the countries, on the condition of return and the possibility of leaving again**. The obligation of workers to return to Georgia suggests that the legislator here has seen a long-term perspective for the Georgian labour market.

³⁷ The present Worknet database contains data on some 230,000 registered persons. Worknet does not differentiate between unemployed job seekers and job seekers who are employed but who want to change their place

³⁵ Reliable data on this are published by the World Bank (see <https://data.worldbank.org/country/georgia>).

should be taken to avoid mixing target groups: the unemployed and job seekers should be registered separately. It could also be made clear whether the Unified Database is an information system or an independent agency.³⁸

Excursion II: Data collection and data processing for employment promotion

In the past, information about employment in Georgia and, in particular, about career guidance and professional orientation services has been collected and processed by at least five different organizations, including four Legal Entities of Public Law of the ministries concerned and the National Statistics Service of Georgia. The five data collection systems operated largely in isolation from one another. Information on crucial policy issues like combating youth unemployment is difficult to retrieve or is lacking altogether. Performance data for vital services such as regional employment guidance and job mediation are task-driven; they do not include information on the guidance, nor on the results accomplished, and they have not been validated.

For defining and implementing labour market policies a consistent national data collection and data processing system are needed. Dependable data are required in order to compare, monitor and evaluate the services provided. An overhaul of the data collection systems is an obvious necessity. Without this overhaul – or at the very least, without much better co-ordination between the various existing data-collecting institutions – and without a substantial methodological upgrading, it will be next to impossible to set performance standards and apply them to employment promotion policy.

Since registering as unemployed or job-seeking is required by the Law, it is then necessary to regulate which institution is obliged to register and deregister individuals and at what point in time these should occur. In the event of dismissal, the employee or the employer could be made responsible for deregistration. The Employment Support Agency may be best suited for age-related deregistration actions following a request by the person concerned.

Article 19.3 cites a number of reasons for exclusion (A person cannot be registered as a job seeker...), beginning with Article 19.3.B) and the somewhat hypothetical case of job seekers wishing to register on the last day of their working life. The statutory maximum age for registration should be set well before retirement age. Article 19.3.D) is relevant only if a residence permit issued to a foreigner ends with the loss of

their job.³⁹ Both Article 19.3.B) and D) make little sense; they could easily be deleted.

Article 19.3.E) concerns cases in which a previous deregistration occurred less than 18 months prior. As regards the reasons for such deregistration, Article 19.3.E) refers to Article 20 A)–D). But the reference requires further elaboration: currently, deregistration will take place if **a job seeker has not appeared**, failing to specify where and why that person should appear.

Finally, there is some unintended humour in Article 20.E). The State Employment Support Agency must decide whether a person should be deregistered as a job seeker **on the basis of the death of the job seeker**.

With deregistration, the actual status of a person as job seeker or unemployed does not change. However, the simultaneous deregistration of a large number of job seekers or the unemployed can reduce the number of persons without employment in Georgia's unemployment statistics. If a job seeker fails to comply with the obligations under this law, sanctions other than those of Articles 19 and 20 should be considered. They could include, for example, temporarily cutting off promotional benefits or, once introduced, reductions in unemployment payments.

Article 21 deals with the handling of job seeker data. Data collection and storage are assigned to the State Employment Support Agency. The **Ministry of Economy and Sustainable Development** is responsible for processing the data; its tasks include the publication of annual **labour market reports** and other forms of public accountability. For the **Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia**, which under Article 51 is responsible for employment support in Georgia, no role is foreseen in the whole complex edifice of data collection and processing activities as set out in Article 21.

As already suggested, it seems appropriate to restructure the data catalogue of Article 21.4 and the information contained in Article 22. This should occur via an ordinance, for which the Ministry of Economy and Sustainable Development could be authorised in the Law. Without such restructuring and legal redesign, Georgian lawmakers would have to amend the Law every time there occur changes in administrative arrangements and data collection procedures. In addition, the following issues need to be resolved:

- Who should have access to the data (unlimited access for job seekers, limited access for employers)?
- Which administrative steps require the explicit

of work. Worknet officers assume that half the persons registered are unemployed, and that the other half are looking for a new place of work. For further detail see Diakonidze/Boergen/Burisch: Some Thoughts on Employment Policies in Georgia. Berlin and Tbilisi, 2020. Page 28/29.

38 Article 19.2 leaves this open.

39 An additional problem arises from the fact that all Georgian laws must be compatible with the EU Acquis. Although in C.c.a the Explanatory Note confirms that the Law would not contradict EU law, a cursory look at Directive 2014/54/EU places this assurance in doubt (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32014L0054>).

approval of the job seekers?

- How should employer data be handled?
- How should retention, anonymisation, publication and deletion of data be managed?

These are important practical matters on which the Law remains silent.

The rules of jurisdiction defined in Articles 21.5 and 21.6 fit better into Chapter VIII, which – quoting from its headline – addresses the **Employment promotion system** as a whole. This also applies to the responsibilities for **profiling** in Article 23 and for the assessment of the **other skills** of job seekers in Article 24.3. Consequently, both rules should also be moved to Chapter VIII.

4.2 CHAPTER IV AND V

It is easy to see that significant improvements could be achieved by freeing the Law from regulations that could better be handled by ordinances or by simple administrative measures. Article 21.4 is a case in point. It contains a kind of catalogue of legally prescribed questionnaires for the processing of **the data of registered persons**. Here, as in the cases of Article 24.2 and Article 25.5, it would be more practical to regulate the question of the data to be collected in an ordinance, which could reflect the changing information needs quickly and easily. As a side effect, there would be a beneficial shortening of the Law's text.

Subdividing Chapter IV into a section covering the preconditions for substantive promotion measures (Articles 18. to 21.) and a section for the measures themselves (from Article 22.) would result in a similar streamlining of the Law and greater clarity.

Article 23. 3, on preparing an **individualized career development plan**, covers a subject dealt with in greater detail in Article 25; they should be consolidated.

Job seekers must agree to both the process and scope of profiling. For these reasons alone profiling will be a most demanding task for the Employment Support Agency and its staff. Profiling is the first action: when a job seeker approaches the Agency for employment support the Agency's councillor will make an initial assessment and prepare a profile of the applicant. Individualised services can then be offered depending on which group of job seekers the applicant is assigned to.

Article 24.1 begins with an idem per idem: **a jobseeker's employability** is to be assessed on the basis of the **probability of a jobseeker's employment**. Both **employability** and **probability of employment** shall be determined on the basis of **coefficients developed by the agency and assigned to its professional and individual criteria**. Article 24.2 contains hints as to which data are to be entered into calculating the

coefficients.

According to Article 24.3, the Ministry of Education and the Ministry of Economic Affairs both have to contribute important information to this process. However, Article 24 – and the Law as a whole – do not deal with the procedures of developing, summarizing and applying the coefficients. Furthermore, it is an open question whether job seekers have to accept their coefficients on a 'take it or leave it' basis, or whether they have a right to receive a formal decision with the possibility of appealing it. An amendment of the Law appears necessary for closing these voids.

Article 23 details the **profiling** of a job seeker, which means identifying the strengths and weaknesses of a person which are likely to determine that person's chances for employment. Profiling is the basis of a career plan for the job seeker, and Articles 23. 3 and 25 describe the content of such a plan. As in the case of Article 24, it would be more practical to regulate career planning and the implementation of those plans not in the Law, but by a ministerial ordinance, which could also cover the provisions of Articles 25.3 to 25.9.

Article 29 requires that a **labor market needs survey** be carried out at least every two years to plan and implement the **active labor market policy** mandated by the Law. Because of the mandatory nature of Article 29.3. its phrasing and terminology justify a closer look. For a start, Article 29.4. states that a **research instrument** has been defined in **paragraph 1 of this Article** for the goals and objectives, but Article 29.1 offers no such definition. Similarly absent are **the goals and objectives of the research** referred to in Article 29.4. Nor are the responsibilities of the Ministry of Economic Affairs for the labour market surveys explained (which by their very nature would seem to fall more under the remit of the Ministry of Labour).

Similarly flawed are Article 30, which announces a range of **promotion** services for employers, and Article 31, which is concerned with the **activation** of workers. Employers will generally know which selection criteria are to be applied when hiring job seekers, even without the involvement of the Employment Support Agency. They will also have a better understanding of their respective industry than the Agency. The services for employers referred to in Article 30 appear to be largely superfluous.

Based on the Law, Georgian lawmakers seem to believe that the able-bodied, yet unemployed, members of society are mainly lacking in a willingness to take up employment or to improve their professional skills. Article 31 aims at dealing with the **employment motivation of able-bodied unemployed people**. They are to be activated for the purpose of employment and short-term vocational education, and for this Article 31.2 announces the intention to provide **individual consultation and large-scale awareness-raising campaigns**.

Chapter IV ends with the all-encompassing authorization of Article 32: The Agency may also take measures that are **not directly provided for by this law, but serve the employment of the job seeker and the objectives of this law.**

Chapter V contains an authorisation clause in favour of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia (Article 35.4) The Ministry can issue instructions for implementing the principles of Chapter V, the content of which is commendable. It has until 1 September 2023 to complete this task, when the substantive provisions of Chapter V will enter into force.

Excursion III: Enterprise promotion for unemployed or job seekers?

Improving the lot of unemployed Georgians with rudimentary-to-average professional skills requires that they are paired with employment opportunities with matching demands. That the public health concerns of the COVID-19 pandemic have superseded all other societal problems makes reducing unemployment even more difficult. There may be an increase in the demand for nursing staff, but this is unlikely to compensate for the loss of jobs in other sectors. The wage subsidies and vocational education referred to in Article 41.2. are unlikely to be sufficient.

The text of the Law occasionally invokes the term unemployed and refers to a planned *active labor market policy*. But one cannot escape the impression that both statements are mainly alibis against the possible accusation of giving too much priority to employed job seekers searching for better jobs.

An indication of the focus on job seekers is Article 25. 6.F) that foresees the possibility of **Support for starting an independent business and access to relevant finance**. Few, if any, unemployed persons will be able to take up this offer.

In addition, enterprise promotion is neither covered by the title of the Law nor by the motives set out in the Law's first Article. Employment and self-employment are considered entirely different social categories. Promoting self-employment requires special skills and tailored programmes. If entrepreneurial talent were discovered in unemployed persons or job seekers, the Employment Support Agency would be well advised to alert them to possible business support programmes, which would ideally be provided by the Ministry of Economy and Sustainable Development or subsidiary agencies promoting start-ups and general enterprise development.

4.3 CHAPTER VI

In Chapter VI, the lawmakers have attempted to systematise their vision of the rights and obligations of the parties defined in the preceding chapters, where they are described in great detail. Should there have been any doubts about their comprehensibility, consistency or clarity they should have been redrafted, not revisited in a later chapter. Speculations aside, all redundant or legally problematic passages from the Articles making up Chapter VI should be eliminated. This would include the provision in Article 37.2 giving a person registered as a **jobseeker ... the right to request the application of the principles of this Law to him/her.**

The same applies to Article 39, which deals with the rights and obligations of employers. Under Article 39.1.A) and B), employers are granted **the right** to participate in the selection of their future employees. Who if not the employer is to hire employees? Furthermore, Articles 39.1.C) to F) give employers the right to participate **in state employment programs and measures in accordance with the Law and the legislation of Georgia**. This occurs four times with almost identical wording. The participation is to be **free of charge**.

Article 40.2 is likely to cause more problems. It obliges employers **to participate in the labor market needs research**. Here, too, their participation is to be free of charge. Yet the clause does not adhere to the principle of certainty.

4.4 CHAPTER VII

Chapter VII defines rules for the **production, analysis and planning of active labor market policy**. The policy is to be implemented by a so-called **inter-agency coordination mechanism** (Article 41.2) to be established by the Government. Is the mechanism a computer program, a procedure or an expert institution? Moreover, according to Article 2.O), the Law only knows one Agency, namely the **State Employment Promotion Agency established on the basis of this Legislation**. So, which are the other **agencies** of Article 43.1.? Do these other agencies exist, or have they yet to be created?⁴⁰

Article 43 makes the task of analysing **active labor market policy** the responsibility of the entire Georgian government, leaving open the question of which institution specifically should carry out the analysis. The analysis should be in **compliance with the requirements of the number and quality of existing jobs in the field of higher and vocational education with the requirements of the economy** (Article 43.2).

While this vagueness might be a product of the translation, the Georgian-language version of Article 43 is equally ambiguous.

⁴⁰ Setting up new agencies might require a proper legal basis.

The reference to **higher and vocational education** appears to be important. It is also taken up in Article 44.1, which seems to consider the prime task of **planning an active labor market policy** to be the balancing of supply and demand for jobs requiring higher or vocational education. However, the meaning of the statement is far from clear.

4.5 CHAPTER VIII

In addition to the **Interagency Coordination Mechanism** described in Article 41.2, Chapter VIII refers to an **Implementation System of Employment Promotion**, without explaining what this might be: an electronic program, a combination of people and machine for handling standardized data or work processes, or something else. In law, the use of the term system indicates a hierarchical, structured totality, the components of which would have to be described. They are not described here.

The mechanism is the responsibility of the State as a whole, supported by the private sector (Article 46.1), the State at **the central level** supported by the municipalities (Article 46.2) or the private sector (Art 46.1 and 3), or on the basis of special arrangements in line with Article 56. With regard to the participation of municipalities, Article 16.4. of the Georgian **Local Self-Government Code** defines a competing competence **to carry out activities to promote employment**; it is indicated in the Law, but not regulated.⁴¹

According to Article 46.3 involvement of the private sector institutions requires, first, that the private undertaking in question be a **non-entrepreneurial (non-commercial) legal entity**, which, secondly, meets the requirements determined by Article 56, namely performing more effectively, faster, and qualitatively better and more cheaply than public institutions.

In this context, as in the Law as a whole, the largely Internet-based commercial employment service is completely disregarded. This significant oversight is yet another reason for hoping that additional law-making will be undertaken for the **promotion of employment**.

According to Article 47.1, the legislature is to determine and supervise the **state policy for the promotion of employment**. This alludes to a more complete, more practical private sector involvement that is certainly needed.

Irrespective of this, the Law involves a large group of individuals and institutions in the **employment promotion system**; Article 49 requires the participation of internally displaced persons, as well as that of three representatives of the **Tripartite Social Partnership Commission**. Articles 50 to 53 appoint four ministries and a range of subordinate organisations. A diverse array of tasks awaits them, the most important of which are:

- Preparation of drafts of normative acts
- Promotion, Implementing and Analysing Research Activities
- Information and Consulting Services
- Short Term Vocational Education Courses
- Develop Evidence Based Policy
- Observation of Current Events and Trends
- Development of Strategies, Forecasts and State Programs and Annual Indicators

As per Articles 50 to 54, smaller bouquets are to be combined from this larger one in ever new variants. Article 54 describes in greater detail the establishment, management and purpose of the State Employment Support Agency.

Chapter VIII as a whole would benefit from a thorough revision to bring the Law closer to clearer, substantive solutions, which would have to include matters of jurisdiction and procedure.

For a start, the apparent conflict between Article 54.4.H) and Article 21.5 concerning the collection and processing of employment data should be resolved. Presumably, the lawmakers wanted to deal with the database containing information about the promotion activities of the State Employment Support Agency on the one hand, and on the other the results of promotion measures that are to be forwarded to the Ministry of Economic Affairs and used for annual reporting. However, the current phrasing of the Law allows for a variety of interpretations.

Excursion IV: Management matters

Distributing responsibilities between different actors can make good sense in an environment where balancing the power of ministers or political parties is a priority. Distributing functions over many political and operating entities can make a system as a whole resilient to failure in parts of the system. It can also create space for experimentation with different policy instruments or instruments operated by different players.

However, there are inherent risks in such an arrangement. Distributed responsibility can lead to no institution being fully responsible for targeted action. A first recommendation would therefore be for Georgia to simplify and strengthen the organizational setup for employment and labour policies. A second recommendation would be making systematic use of the novel concept of Governance of Projects. With Governance of Projects, personalized project ownership and a personalised interest in

⁴¹ Article 46.2.; Article 55.

value harvesting are of prime concern. While the concept applies primarily to project management, its principles are of immediate relevance when introducing new employment policies in Georgia.

For generating ideas for employment promotion in Georgia, the Georgian decision makers should strive to gain access to the ongoing international discussions about labour and employment policies. For instance, concerning youth unemployment, the focus could be on the discussions of performance management and performance standards in the case of professional orientation and career guidance. Even if performance standards such as those defined for the EU Youth Guarantee Recommendation and the LTU Resolution do not immediately fit the Georgian environment, both come with requirements for performance monitoring that any Georgian system should be able to meet. Youth unemployment and long-term unemployment appear to be areas in particularly urgent need of policy-based action in both Georgia and in the EU Member States.

5

SUMMARY AND CONCLUSIONS

Since the beginning of 2020, the COVID-19 pandemic has revealed the fragility of societies built on a cavalier disregard for the unemployed. The need to become more resilient to a crisis of this kind is almost universally agreed upon. But will the new Law on Employment Promotion in its current form lead Georgia towards greater social development and economic growth?

We have shown that the Georgian legislators have not consistently succeeded in meeting all the requirements that a good law should fulfil. There is great potential for improvement with regard to a clearer structure and more comprehensible language. A good law must provide everyone concerned with an accurate idea of its content and of its relevance for their own actions, rights and obligations.

The ordering principle of norms is logical or deductive. For example, an effective employment support needs reliable information on the unemployed. It is therefore not very logical to deny job seekers registration in case of misconduct: the more unemployed people drop out of the registration in this way, including those unwilling to work, the more distorted and falsely positive the unemployment statistics will be.

Yet, these are considerations for the future. Currently, Georgia does not have reliable statistics about the *registered unemployed* on which employment support policies could be based.⁴²

Moreover, a law should limit itself to standardising only those facts that require standardisation. The fact that a deceased person is not to be regarded as a job seeker does not require standardisation.

A good law contains instructions, and standardises facts and objects in a more or less abstract manner, but it does not comment on or justify its own text. Reasoning, commentary, or professed motives are to be expressed in preambles or

one or more explanatory notes.⁴³ If a catalogue of legal definitions is unavoidable, it should precede other articles; defined terms could also be used in the first article of the law. Activities for which a law provides a chronological sequence are to be regulated in the order in which they occur. Terms give legal facts and objects their identity; legal terms have a defined meaning and it is unnecessary to use different terms for the same meaning. On the contrary, the use of different terms indicates that different meanings have been attached.

We advise amending the Law on Employment Promotion, and reworking it to meet the requirements of consistency and semantic clarity. Completing this task could easily be done before September 2021, when the substantive provisions of the Law shall enter into force.

In the amended law there should be a restriction on the essential objects of norm-setting (addressees, measures, organization, financing, legal process). There should be no rules for implementation (with the possible exception of dates for implementation), and no comments in the text, with the possible exception of a statement of purpose and the intended objectives of the law, possibly in a preamble. Wide-ranging and elaborate resolutions about professional profiling, career planning and self-employment should be avoided.

The implementation of the provisions of the amended law should be reserved for subordinate acts. Such acts are to be issued by one single Ministry, which would make use of its subordinate offices or other subordinate bodies for its practical work. The subordinate office (or offices) would be entrusted with all activities related to contact with the unemployed and not assigned to other authorities (for example, the exercise of legal supervision of employment offices and the gathering of unemployment statistics). If the amended law contains sanctions, care must be taken that those sanctions are enforceable.

42 See footnote 40. For policy making and international comparison the only official statistics are the ones reported by the National Statistics Office of Georgia, which calculates unemployment rates etc. based on its Labour Force Survey.

43 FES Analyse Verwaltungspolitik. Gute Gesetzgebung. Welche Möglichkeiten gibt es, bessere Gesetze zu machen? Ortlieb Fliedner Dezember 2001.

The law should be given a standardised character. Terms must always have the same meaning. Identical facts or legal consequences should always be denoted with the same term. Different terms should describe distinguishable facts or legal consequences. Citizens should be able to comprehend a law without legal advice. Semantic clarity and transparency promote a law's application. Finally, the content of the amended law must be oriented towards its purpose. It must strive for efficiency and be proportional in its intent, limiting itself to what is necessary to achieve its objectives.

Georgian lawmakers may find the Baltic employment laws a useful source of inspiration. Lithuania's 1990 Law on Support of the Unemployed is especially instructive. It applies to all unemployed persons and, in its 2005 version, includes rules on the registration of open employment, establishment of an Employment Fund and Public Works, as well as local initiatives and employment offices. In each section the Lithuanian Minister of Labour is authorised to regulate the details by means of statutory orders. The law also contains a helpful annex on the alignment of Lithuanian legislation with relevant EU Directives.

Should a complete overhaul and amendment of the Georgian Law on Employment Promotion be unfeasible, another option would be enacting experimental legislation on a specific manifestation of unemployment. In our paper on employment policies in Georgia⁴⁴ we have outlined how this could be carried out. Instead of responding to all sorts of possible aspects and causes of unemployment, legislation could confine itself to designing a clearly demarcated paradigm that, assuming its worth is proven, can be expanded to include other areas. The paradigm could address a relevant, largely homogenous group of unemployed people with only a few statistical parameters. This approach could yield positive effects with considerable time savings. One such group, for example, is unemployed youths, whose absolute numbers in Georgia reportedly are very high and who are relatively homogenous in terms of age, socialization and lack of professional experience. From an economic point of view, reducing youth unemployment could prove especially amenable to intervention at the legal and policy levels.

44 Diakonidze/Boergen/Burisch: Some Thoughts on Employment Policies in Georgia. Berlin and Tbilisi 2020.

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UNCERTAIN CHANCES OF SUCCESS

A Review of the Georgian Law on Employment Promotion



The study presented here subjects the Law on Employment Promotion of Georgia, of 21 July 2020, to a critical assessment. Legislative principles such as comprehensibility, clarity and the avoidance of contradictions and redundancies are in the foreground of the assessment. In technical terms these are the standards that define a good law. If they are not fulfilled, a law can usually only be implemented very poorly – if at all.



The assessment shows that the Law on Employment Promotion does not meet all of the necessary requirements. Passing the Law has been a commendable attempt at creating an orderly basis for Georgia's employment policies. Yet the Law's technical shortcomings make it doubtful that in its present form it can achieve its overall goals of promoting employment and alleviating unemployment.



Amending the Law, reworking it to meet the requirements of consistency and semantic clarity, is strongly recommended and suggestions for fine-tuning the language are provided where appropriate. Completing this task should be done before September 2021, when the substantive provisions of the Law shall enter into force.

If a critical reworking is deemed unacceptable, a technically sound alternative law on a more limited topic could be passed. It could, for example, aim at combating youth unemployment and should be designed in a way that allows for its extension to other target groups, if necessary.

Further information on the topic can be found here:
www.southcaucasus.fes.de