COMMUNIQUE

An expanded meeting of the National Assembly-CSO Cooperation Platform

RECCOMENDATIONS

on the RA Labour Code Draft Law

On June 8, 2021, a regular meeting of the National Assembly-Civil Society Cooperation Platform was held. The meeting was devoted to *the RA Draft Law on Introducing Amendments to the RA Labour Code*.

The objective of the meeting was to discuss the amendments introduced in the Draft Law and to present new recommendations aimed at improving the Draft Law.

The meeting participants were RA MPs, representatives of the RA Government and state structures, representatives of Civil Society, human rights groups, trade unions, private sector, international organizations, and experts.

The meeting was held within the framework of the "Modern Parliament for a Modern Armenia" Project. The UNDP "Modern Parliament for a Modern Armenia" project is co-implemented with the OxYGen Foundation, the International Center for Human Development, and the Westminster Foundation for Democracy, in cooperation with the National Assembly of the Republic of Armenia. The project is funded by the United Kingdom's Good Governance Fund and the Government of Sweden.

The meeting participants noted that the Draft Law requires further discussion and ascribed importance to the opportunity created by the Platform in terms of making the views and recommendations of all stakeholders heard. Specifically, the stakeholders noted that the Draft Law does not fully correspond to technical legislative rules and there are numerous articles, which require specification and clarification. The Labour Code contains provisions, which will be incomprehensible to both employees and employers.

The participants made suggestions related to:

- Gender mainstreaming of the law, which will ensure equal opportunities for women and men;

- Provision of decent working conditions for employees;
- Issues related to addressing the needs of persons with disability and ensuring equal conditions for them;
- Regulation of the employer-employee relationships;
- Prohibition of forced and compulsory labour.

The complete package of the recommendations made during the meeting together with their justifications is presented below.

RECCOMEDATIONS

To the Labour Code of the Republic of Armenia and the RA Draft Law on Introducing Changes and Additions to the RA Labour Code (https://www.e-draft.am/projects/3213/about)

1. Article 82 of the RA Constitution stipulates that every worker shall, in accordance with law, have the right to healthy, safe, and decent working conditions, to limitation of maximum working hours, to daily and weekly rest, as well as to annual paid leave. Article 26 of the revised European Social Charter also specifies that all workers have the right to dignity at work. However, the RA Labour Code does not reference ensuring decent working conditions among the main principles of the Labour legislation, which provide for safe conditions meeting hygienic requirements and the right to rest. Hence, there is a need to legislatively secure the principle of dignity at work.

   It is proposed that Part 1 of Article 3 of the RA Labour Code include as a main principle of the labour legislation the following wording under added Point 4.1: *Provision of decent, dignified working conditions for every worker.*

2. Part 2 of Article 6 of the RA Labour Code defines that "if the labour legislation and other normative legal acts containing labour rights norms do not directly prohibit the parties to labour relations to independently define t mutual rights and responsibilities through a contract, then, when defining such rights and responsibilities by a contract, the parties shall be guided by the principles of fairness, common sense, and integrity."

   It is proposed that the principles of "fairness, common sense and integrity" stipulated in Part 2 of Article 6 of the RA Labour Code be replenished by the words "non-discriminatory and non-stereotypic."

3. Article 3 of the Draft Law proposes to add new Article 3.2 to the Labour Code: "Article 3.2. Compulsory or forced labour 1. In accordance with Article 57 of the Republic of Armenia Constitution, compulsory or forced labour shall be prohibited. 2. For the purposes of this Code, compulsory or forced labour is any work or service required from a person and performed by a person under the threat of punishment, if 1) this work is not envisioned by the employment contract signed by the parties or individual legal act on hiring the person, 2) no employment contract signed by the parties or individual legal act on

hiring the person is available, 3) in accordance with this Code and (or) other laws of the Republic of Armenia, the person has the right to refuse the performance of the required work, including in case of such danger directly threatening his/her life and health, which has resulted from the failure of the employer to organize the work in line with the requirements of normative and (or) internal legal acts on ensuring the safety of employees and maintaining their health or as a consequence of the employer's failure to provide workers with individual and collective protective equipment."

Although the addition proposed in the Draft stems from the International Labour Organization's (ILO) Convention Concerning Forced or Compulsory Labour, however, the Draft does not fully include the relevant provisions of the ILO Convention on the Abolition of Forced Labour. Specifically, "Each Member of the International Labour Organization which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour—(a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; (b) as a method of mobilizing and using labour for purposes of economic development; (c) as a means of labour discipline; (d) as a punishment for having participated in strikes; (e) as a means of racial, social, national or religious discrimination."

It is proposed to bring the formulation of the notion of compulsory or forced labour in line with the wording defined by international norms.

4. Part 2 of Article 19 of the RA Labour Code defines that "A meeting of workers has a quorum if more than half of the workers of an employer participate in it, and in case of a convention, more than two thirds of the workers' elected delegates."

   It is proposed to replenish this provision by adding the representation requirement for both male and female members of the workers' collective.

   It is also proposed to envision in Part 3 of the same Article the representation requirement for the two sexes in decision-making processes.

5. In Article 22 on Representation fundamentals, Article 23 on Representatives of workers, and Article 24 on Regulation of the activities of bodies representing workers' rights and interests of the RA Labour Code, it is proposed to add provisions on workers' collective electing, having and representing its interests through both male and female representatives, and Article 25, which addresses the issue of the rights of workers' representatives should pay special attention to engaging both male and female representatives in decision-making and to the right to represent the interests of both male and female workers. Moreover, this Article can also regulate gender mainstreaming of the Charter and other normative legal acts of the body of representatives or of the Charter of the legal entity.

6. In Article 27 of the RA Labour Code, which provides for legal regulations of the representatives of employers, it is proposed to define the proportion of female and male representatives in the composition of the Union of Employers, leadership body of the organization and at the decision-making

level as it is required and envisioned by the RA Constitution and legislation and defined by international documents.

7. Article 39 of the RA Labour Code defines the principles and notion of social partnership. Since social partnership is a system of mutual relations between employees (their representatives), employers (their representatives) and, in cases defined by this Code, the Government of the Republic of Armenia, which is intended to ensure accord between interests of employees and employers in collective work relations, it is proposed to add to the main principles of social partnership a provision on prohibiting sex-based discrimination, which will help not only upholding equal rights, but also creating equal opportunities in this area.

8. Article 68 of the RA Labour Code provides for legal regulations of reconciliation commissions. Based on the principle of equality, reconciliation commissions are formed by involving an equal number of representatives of the parties to collective work disputes. It is proposed to add the words "through engagement of female and male representatives" to the first sentence under Part 1of Article 68 of the Code.

9. Article 30 of the Draft proposes to rewrite Part 4 of Article 73 of the Code in the following way, "4. The duration of a strike, its effects on public interests or life and health of separate persons shall be proportionate (equivalent) to the significance of those interests, for the purpose of whose protection the strike is held (the proportionality principle). The proposed provision leaves the term "proportionality" unclear. What authorized body is to determine that proportionality and based on what principle? It is proposed to clarify the regulations related to the proportionality of strikes.

10. Article 74 of the RA Labour Code deals with regulations related to calling a strike. In addition to the provision on securing the opinion of the two thirds of the total number of the organization employees regarding making a decision to announce a strike and their participation, it is proposed to envision the requirement for participation of both male and female representatives of the working collective, thus making a provision for not only the opinion of the quantitative majority, but also for participation of representatives of different sexes in decision-making about this most important action, which is part of the exercise of Labour rights.

11. Part 1 of Article 75 of the RA Labour Code defines cases of prohibition of holding strikes. Specifically, it is prohibited to hold strikes in the police, the Armed Forces (other similar services), security services, as well as in centralized electricity supply, heat supply and gas supply organizations and emergency medical services. Article 32 of the Draft proposes to add Part 1.2 to Article 75 defining that "With the aim of protecting public interests or main rights and freedoms of others, the laws of the Republic of Armenia may fully or partially restrict the right to strike at other organizations, services, and bodies, which have key significance for the vital activity of the population, not mentioned in Part 1 of this Article." We believe that the proposed provision can lead to broader restrictions to strikes. It is proposed to revise this provision of Part 2 under Article 32 of the Draft.

12. Article 84 of the RA Labour Code provides the content of the individual employment act and employment contract. It is proposed to also note in the part on the content of the individual employment act and employment contract about the possibility for special purpose leave envisioned by the Labour Code, i.e. a leave provided to women for pregnancy and childbirth and for care of a child up to three years of age, as well as a fatherhood leave for men (Articles 171, 172, and 173 of the Code).

13. Article 109 of the RA Labour Code envisions among other grounds for dissolution of the employment contract the possibility for dissolving the contract "at the employer's initiative," which is by itself a correct and important provision. However, it is necessary to take into consideration approaches based on discriminatory attitudes, which, for example, can be related to women's reproductive function, and prohibit the possibility for dissolution of the employment contract at the employer's initiative in such cases. Since these provisions are already envisioned by Article 114 of the Code, it is proposed to add "with the exception of the cases envisioned by Article 114 of this Code" after the words "at the employer's initiative. The same provision should be incorporated in Article 116, which relates to mass dismissals from work.
14. Article 52 of the Draft proposes to replenish Article 113 of the RA Labour Code with a new Part 1.1., i.e. in the event of dissolution of an employment contract at the initiative of the employer on the grounds stipulated by Point 2, Part 1 of the RA Labour Code, it provides for the preferential right to stay at work to a former serviceman entitled to a military disability pension, recipient of the military pension for the disability of the first category or a family member of the killed (died) serviceman. It is proposed to add, after the words "other equal conditions," clear-cut conditions or criteria, which should guide the employer, for example, professional work record, number of disciplinary breaches, professional education, etc. It is necessary to define such criteria by law to rule out the application of discretion and arbitrariness by the employer.

15. It is proposed to define additional social guarantees for constitutionally defined maternity and childhood protection. Specifically, it is proposed to provide the preferential right to stay at work to pregnant workers taking care of a child under three years of age and having two or more minor children in the family in the event of dissolution of an employment contract at the employer's initiative.

16. It is proposed to revise the loss of trust in the worker as a basis for dissolution of an employment contract at the initiative of the employer, as well as the cases defined by Article 122 of the RA Labour Code and Article 60 of the Draft since the unclear and ambiguous definitions of these provisions may be arbitrarily applied by employers. For example, Point 2 of Part 1 of Article 122 of the Code defines as a ground for loss of trust in the employee the following: "2) employee performing educational functions has carried out an act incompatible with the continuation of the given work." A question arises: Which are those incompatible actions, how are they evaluated as incompatible actions, which act defines them, etc.? There are similar problems and uncertainties also in the loss of trust cases proposed in the Draft Law, for example, related to the extent of the caused property damage, intentionality and non-intentionality and other issues.

17. It is proposed that the words "at workplace or educational institutions" under Point 6 of Part 1 of Article 138 of the RA Labour Code be followed by the words "or organized outside them." This recommendation is conditioned by the fact that the qualifications advancement, training or retraining process can also be carried out outside workplace or educational institutions. There are cases when trainings are conducted outside the workplace not only at educational institutions, but also at other organizations (for example, for the medical community and not only). Hence, we believe that this period should also be included in the work time.

18. Article 132 of the RA Labour Code envisions the general requirements for the processing of personal data of the employee and guarantees for the protection of these data. It is proposed to add "and data regarding the pregnancy only at her written consent" after the following text in Part 4: "4) the employer has no right to acquire and process data regarding the employee's political, religious and other beliefs or personal life. In cases directly related to work relationships, the employer has the right to acquire and process data about the personal life of the employee."

19. Article 71 of the Draft proposes to introduce a change in Point 3, Part 1, Article 141 of the RA Labour Code, which will provide for a not full workday or a not full working week at the request of the employee taking care of a child under the age of one year and a half instead of the employee taking care of a child under one year of age. It is proposed to replace "under the age of one year and a half" by "under the age of two years," thus providing more favorable conditions to employees taking care of young children.

20. Part 2 of Article 145 of the RA Labour Code states, "In case of the necessity to engage in overtime work, the employer notifies the employee about that within a reasonable time, with the exception of the cases envisioned by Point 1 of Part 1 of this Article." According to this provision, if the employee refuses to perform overtime work at the request of the employer for some reason, he/she can be subjected to disciplinary sanctions, up to dismissal from work. In essence, Part 2 of the noted Article secures the lawful use of compulsory, forced Labour. It contradicts the ILO Convention Concerning Forced or Compulsory Labour (No. 29), as well as the requirements of the new Article 3.2 proposed by the Draft. In essence, except in cases of force majeure, all other cases require the employees' consent for engagement of the employee in overtime work by the employer. If the employee works overtime against his/her will, it is considered a forced labour. Based on the above, it is proposed to rewrite Part 2 of Article 145 in the following way: "In case of necessity, the employer can engage the employee in overtime work if the employee's written consent is available, with the exception of the cases envisioned by Point 1 of Part 1 of this Article."

21. Article 81 of the Draft proposes to rewrite Part 1 of Article 161 of the RA Labour Code, i.e. additional annual leave is provided to workers engaged in jobs of special nature. The RA Labour Code's Article 161 currently in effect enumerates the cases when additional leave is provided. The notion "jobs of special nature" is not defined in the RA Labour Code. It is not clear whether it includes work in harmful and dangerous conditions and jobs with irregular working hours to entitle workers to additional leave stipulated in Part 1 of Article 161 of the Labour Code. It is proposed that the RA Labour Code define the notion "jobs of special nature".

22. Point 1 of Part 1 of Article 176 of the RA Labour Code defines that "At the request of the employee, an unpaid leave is provided 1) to the husband of the woman on pregnancy or childbirth leave, as well as of the woman on leave to take care of a child under the age of one. The general duration of this leave cannot exceed two months." It is proposed to make the noted ground for the provision of this leave a paid one with the aim of encouraging fathers to make use of it and ensuring young women's entry into the labour market.

23. Article 90 of the Draft proposes to replace the words "men and women" in Part 2 of Article 178 of the RA Labour Code by the word "the same." The effective Code defines that "men and women are paid the same amount of remuneration for the same or equivalent work." We propose to retain the effective wording of men and women.

24. Article 93 of the Draft proposes to repeal Article 182 of the Code on Indexation of Wages. Taking into consideration the inflation, dram devaluation, the minimum wage purchasing power in Armenia, as well as the data of the Republic of Armenia Statistical Committee, according to which, about 27% of the population is considered poor, including the working poor, we believe that the recommendation to repeal Article 182 of the RA Labour Code on Indexation of Wages envisioned by Article 93 of the Draft is not expedient.

Back in 1995, the RA Constitution declared the Republic of Armenia a sovereign, democratic, social, and rule-of-law state.

Provision of legislative guarantees for people's social protection and well-being should be separated and specified as a main component of a social state.

According to Part 3 of Article 23 of the Universal Declaration of Human Rights, "Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection," and according to Part 1 of Article 25, "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

A similar right is also defined by the International Covenant on Economic, Social and Cultural Rights adopted by the UN General Assembly.

By acceding to the noted international documents, the Republic of Armenia undertook to take measures to ensure a satisfactory standard of living for the population.

However, up to date, no legislative act in the Republic of Armenia has defined the concept of a sufficient standard of living and mechanisms for exercise of this right.

The Republic of Armenia does not apply the RA Law on Minimum Livelihood Basket and Minimum Livelihood Budget adopted by the RA National Assembly in 2004. According to that law, the minimum livelihood budget should have served as a basis for determining the amounts of minimum wages, pensions, stipends, as well as benefits and other social payments, and the proportions between these amounts should have been reflected in the RA Law on the RA State Budget each year.

By ratifying the International Labour Organization Convention No. 131 concerning Minimum Wage Fixing in 2004, the Republic of Armenia undertook to introduce a procedure for determining the minimum wage and review it from time to time.

According to Article 3 of the noted convention, the elements to take into consideration in determining the level of minimum wages shall include:

"(a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;
(b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment."

Meanwhile, the Republic of Armenia does not apply the mechanism for minimum wage determination in accordance with the requirements stipulated in the ILO Convention No. 131.

According to the ILO Recommendation No. 135 concerning Minimum Wage Fixing, minimum wage rates should be adjusted from time to time to take into account the cost of living. For this purpose, it is necessary to carry out a review of minimum wage rates "in the light of variations in a cost-of-living index."

Taking into consideration the above noted, it is proposed not to repeal Article 182 of the RA Labour Code and define a procedure for wage indexation.

25. Article 251 of the RA Labour Code envisions sanitary-hygienic rooms of the Organization: In line with the procedure defined by normative legal acts regarding ensuring the safety and health of the organization's employees, sanitary and personal hygiene rooms or appropriate separate spaces are furnished with sinks, showers, and toilets for rest, breadtfeeding of children, changing clothes, storage of clothes, shoes and personal protective equipment. However, this requirement is never implemented. We propose to envision punitive measures/administrative penalties for non-compliance of the employer with this requirement.

26. Article 253 of the RA Labour Code provides legal regulations for participation of workers in implementing measures aimed at their safety and health maintenance. It is proposed to secure in the noted Article a provision on participation of female and male representatives in decision-making on implementation of measures on safety and health maintenance of the staff.

27. Article 258 of the RA Labour Code stipulates that in the event of having no possibility for elimination of dangerous factors, the employer undertakes measures to improve working conditions so that pregnant women and women taking care of children under one year of age are not exposed to the effects of such factors. Ascribing importance to this provision, it is proposed to envision a requirement for elimination of dangerous conditions not only in places where pregnant women and/or women taking care of children under one year of age are engaged, but also where representatives of any sex, age, nationality, etc. are involved.

28. The RA Labour Code is based on a disability medical model, according to which, persons with disability are considered sick persons with health problems. Specifically, Article 259 of the Code identifies and

emphasizes guarantees for safety and health of working disabled. However, we believe that there is no need for a separate article, which targets persons with disability, and that maintenance of health should be ensured with respect to all workers. Persons with disability simply need equal conditions.

It is proposed to secure in the Law on Persons with Disability that the employer's failure to provide the necessary conveniences to persons with disability is considered discrimination.