



**ALTERNATIVE REPORT TO UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS ON THE REALIZATION OF THE RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK IN ARMENIA**

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## **A) The authors of the Submission**

1. This written submission is prepared by the Human Rights Research Center (HRRC) and the Law Development and Protection Foundation (LDPF), both based in Armenia.

Human Rights Research Center, established in 2018, is a non-governmental organization that carries out comprehensive, cross-sectoral and evidence-based researches in the field of human rights in Armenia, raising the level of awareness about human rights issues among a range of stakeholders and advocating for the adoption of rights-based approaches in all areas of state policy.

The Law Development and Protection Foundation, established in the beginning of June 2018, strives for human rights, democratization and establishment of the rule of law in Armenia, as well as comprehensive reforms of the judiciary. Main directions of the Foundation include: Human Rights, Judiciary and Elections. It assigns particular importance to the research-based approach, comparative analysis of the facts, international standards and the Armenian context.

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## **B) Introduction**

2. We present the following Alternative Report in advance of the 74th Session of the Committee on the Economic, Social and Cultural Rights ('the Committee'), taking place between 25 September and 13 October 2023, for consideration of Armenia's fourth periodic report for review. By means of this submission we present to the Committee our concerns related to the protection of the right to just and favourable conditions of work.
3. In particular, this report addresses the issue of discrimination in employment, trade union membership restrictions, restrictions on the right to strike, assessment of occupational risks to pregnant, breastfeeding women and women, who has recently given birth and the lack of factor-based occupational risk assessment system for pregnant and breastfeeding women.
4. Information presented in this Alternative Report indicates the failure of the State to comply with its obligations under Article 2.1 and Article 7 of the UN Covenant on "Economic, Social and Cultural Rights" (hereinafter the "Covenant").

## **C) Failure to comply with the requirements of Article 2.1 in the context of prohibition of discrimination in employment**

5. Safeguards against discrimination in employment can indeed be found in Armenia's Labor Code, as well as in the "Law on Equal Rights and Equal Opportunities for Women and Men". Domestic regulatory framework, however, does not provide for effective protection mechanisms which can be applied to in case of discrimination in employment.

6. “Law on Equal Rights and Equal Opportunities for Women and Men” lacks enforcement tools and does not provide effective rights protection mechanisms<sup>1</sup>.
7. The draft law "On Ensuring Equality" also cannot be viewed as an effective mechanism for ensuring redress for the victims of discrimination. The draft law, however, does not put any sanctions, the mandate of the equality body is very limited and cannot be viewed as an effective protection mechanism.
8. Although the regulation of the prohibition of discrimination in the Labor Code is quite detailed, it also does not create or endow with additional powers any protection mechanism (equality body, labor inspectorate or another extrajudicial body), which can be applied to in case of discrimination in employment. Besides, it does not provide for the definition of indirect discrimination as well as does not fully cover the phase preceding the employment.
9. **Based on the above, it is necessary to Adopt the draft “Law on Ensuring Equality”, create or endow with additional powers a protection mechanism, such as equality body, labor inspectorate or another extrajudicial body, which can be applied to in case of discrimination in employment, improve the regulatory framework pertaining to the prohibition of discrimination in the Labor Code.**

**D) Failure to comply with the requirements of Article 7 in the context trade union membership restrictions and restrictions on the right to strike**

10. Committee’s General Comment No. 3 establishes “that *trade union rights, freedom of association and the right to strike are crucial means to introduce, maintain and defend just and favourable conditions of work*”.
11. According to Article 6 of the RA Law "On Trade Unions", the employees of the armed forces, police, national security, prosecutor's office of the Republic of Armenia, as well as judges and judges of the Constitutional Court cannot be members of a trade union.
12. In its conclusions, the ILO Committee of Experts regularly refers to the limitations of freedom of association established by the RA legislation. Thus, in the findings published in 2021 regarding Armenia, the ILO Committee of Experts again referred to these restrictions, reminding that the Government should take the necessary measures to amend the Constitution and the RA Law "On Trade Unions" to guarantee that the following categories of workers (i) employees of the prosecutor's office, judges and members of the Constitutional Court; (ii) civilians working in the police and security services; (iii) self-employed workers; (iv) workmen engaged in free occupations, and (v) workmen engaged in the informal economy, may establish and join organizations of their own choice. The Committee on Social Rights has also regularly addressed the issue of inconsistency with the Revised European Social Charter based on the restrictions of trade union membership.
13. **Based on the above, it is necessary to amend the RA Law "On Trade Unions", as well as other related legal acts, and establish the right of police officers, prosecutor's office employees, judges (including the Constitutional Court), self-employed persons,**

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<sup>1</sup>See, <https://coalitionagainstviolence.org/en/publication-en/research-on-law-on-provision-of-equal-rights-and-equal-opportunities-for-women-and-men/>

**workmen engaged in free occupations and workmen engaged in the informal economy to establish trade unions and to join them.**

14. According to Article 74 of the RA Labor Code, the trade union has the right to make a decision to announce a strike. A strike is declared when the decision to do so has been approved by secret ballot, in the case of a strike at the employer (in case of a collective strike of the employees), by the majority of the votes of the employees participating in the vote, which cannot be less than half of the total number of the employees. The trade union is obliged to notify the employer in writing about the planned strike at least seven days in advance before the day of the strike.
15. It is obvious that the number of votes required to hold a strike and the deadlines set by the Labor Code practically make the implementation of a strike unrealistic in practice. Although before the changes adopted in May 2023, the number of the necessary votes was higher, however, the envisaged changes did not provide any tangible results, the adoption of the decision actually depends on the votes of more than half of the total number of the employees of the organization. This complex and unrealistic procedure does not allow employees to exercise their constitutional right, while for employees and their representatives, a strike is often the "last resort" to protect their social and economic interests.
16. **Based on the above, it is necessary to establish that the decision to announce a strike is approved by the majority of employees who participated in a secret ballot, if at least half of the organization's employees participated in the vote, as well as to reduce the notification periods specified by the Labor Code.**

**E) Failure to comply with the requirements of Article 7 in the context of assessment of occupational risks to pregnant, breastfeeding women and women, who has recently given birth and the lack of factor-based occupational risk assessment system for pregnant and breastfeeding women**

17. Article 82 of the RA Constitution enshrines the right of every employee to healthy, safe and decent working conditions. Chapter 23 of the RA Labour Code refers to the safety and health of employees. There are a number of regulations in that chapter that guarantee: creating proper, safe and healthy conditions for each employee (Article 243); ensuring normal working conditions, including safe and healthy working conditions (Article 244); providing and furnishing a safe, comfortable and healthy workplace and environment, including the organization of work in accordance with the requirements of the normative legal acts on ensuring the safety and health of employees (Articles 245, 246, 248); ensuring preliminary and regular medical examination of certain groups of employees (Article 249); ensuring healthy and safe working conditions for breastfeeding women and women caring for a child under 1 year of age (Article 258); documenting occupational diseases and accidents and conducting internal investigations to identify the causes (Article 261).
18. Despite the fact that Armenia's labour legislation stipulates the obligation of the employer to determine the nature and duration of the hazards for pregnant and breastfeeding women and to undertake temporary measures or measures to improve the workplace conditions, Armenia lacks an effective national system for the assessment of the occupational risks.

19. Inconsistent regulatory framework with diverse by-laws makes the enforcement of legislation by employers and the exercise of supervision by an inspection body difficult.
20. Domestic framework also does not provide specific lists of factor-based occupational risks to pregnant and breastfeeding women that can be used by the employers for effective assessment and further elimination of such risks. Factor-based risk assessment of the workplace is required under current international standards of occupational health and safety (ILO C183, EU Directive 89/391/EEC, EU Directive 92/85/EEC<sup>2</sup>). The outdated approach, which has been used in most of the post-Soviet countries, is based on the lists of harmful or hazardous occupations, prescribed in legal acts by the State, and the methodology of compensation for work in hazardous working conditions ('hazard pay'). This system is not effective, as in the modern world it is not possible to prescribe by law all of the job positions and professions that are harmful or hazardous. Armenian legislation is currently in a period of transition—from the outdated approach of occupation-based lists to a modern, factor-based risk assessment system. The importance of transition to factor-based risk assessment system was mentioned several times by ILO experts regarding the legislation of Post-soviet countries.<sup>3</sup>
21. The RA Labour Code uses both the terms 'heavy, harmful, especially harmful, especially heavy jobs' (Article 183, emphasis added) and 'harmful working conditions and hazardous factors' (Article 183 and Article 258, emphasis added). Employees who are involved in heavy, harmful, especially harmful or especially heavy jobs are entitled to 'hazard pay'. RA Government Decision No. 1698-N, which was adopted on the basis of Article 183 of the RA Labour Code, defines the list of productions, professions, works and positions that, by their nature, are considered heavy or harmful. The list includes such professions and jobs as the operator of a police call centre, the employees of psychiatric and forensic medical institutions, and other occupation-based categories. Article 258 of the Labour Code stipulates a blanket ban on the involvement of pregnant women and women caring for children under 1 year of age in heavy and harmful jobs. This means that pregnant women cannot, for example, work in a forensic medical institution regardless of the fact that the employer is taking steps to manage the risks; rather, the employee's work should stop from the moment the employer is aware that the employee is pregnant or breastfeeding.
22. At the same time, Article 258 also obliges the employer to protect the health and safety of pregnant and breastfeeding women by determining the extent and nature of the impact of the risk factors in order to take temporary measures to eliminate the risk of their impact or improve the working conditions and provide paid leave in the event that such workplace adjustments are not possible. Before undertaking the above-mentioned steps, the employer must carry out a workplace assessment, guided by the list of harmful working conditions and dangerous factors defined by Government Decision No. 2308-N<sup>4</sup>, which was adopted on the basis of Article 258 and is a decision that targets not only pregnant and breastfeeding women, but also children under 18 years of age. It lists the physical, biological, chemical and other factors that occur in certain areas of work, without specifying which factors are specific to pregnant women, which to breastfeeding women and which to children under

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<sup>2</sup> The mentioned EU legal standards are obligatory for Armenia under EU-Armenia Comprehensive and Enhanced Partnership Agreement (CEPA). The agreement entered into force on 1 March 2021. See [https://www.mfa.am/filemanager/eu/CEPA\\_ARM\\_1.pdf](https://www.mfa.am/filemanager/eu/CEPA_ARM_1.pdf)

<sup>3</sup> Occupational safety and health in Eastern Europe and Central Asia, ILO <https://www.ilo.org/moscow/areas-of-work/occupational-safety-and-health/lang--en/index.htm>

<sup>4</sup> RA Government Decision No. 2308-N, available at <https://www.arlis.am/DocumentView.aspx?DocID=21817>.

18 years of age. It also does not reflect the issue of workplace adjustments that the employer can make to eliminate or reduce the risks if such factors are identified.

23. Although Government Decision No. 2308-N names a list of harmful factors, these factors are in fact too general and not specific to pregnant and breastfeeding women and are not sufficient for the employer to conduct a risk assessment of the workplace.
24. Besides Government Decisions Nos. 1698-N and 2308-N, there is one more regulation in the RA legal system referring to the harmfulness and hazards of work, which makes the system complicated. RA Government Decision No. 1089-N<sup>5</sup> prescribes the list of harmful and dangerous factors in the production environment and work process, the nature of the work performed, and the volume of medical examinations and medical exemptions. The purpose of this list is to identify persons undergoing primary and regular medical examinations for health maintenance, as well as for the prevention of infectious and occupational diseases, and to draft a 'Hygienic Description of the Working Conditions'. The list was for the use of the State Health Inspectorate, which is now reorganized into the Health and Labour Inspection Body (HLIB). According to this list, pregnancy and breastfeeding are considered general contraindications to involvement in work that is aligned with harmful and hazardous factors. However, the harmful and hazardous factors specifically for pregnant and breastfeeding women are not provided here, and the link with Government Decision No. 2308-N is not clearly indicated.
25. The above-mentioned three regulations, with their diverse approaches, risk complicating the implementation of the legislation by employers and the exercise of control by the Inspection Body. At the same time, domestic framework also does not provide specific lists of factor-based occupational risks to pregnant and breastfeeding women that can be used by the employers for effective assessment and further elimination of such risks.
26. **Based on the above, it is necessary to amend Article 258 of RA Labour Code. In particular, a) stipulate a woman's right to return to her former job after the elimination of risks related to pregnancy and breastfeeding; b) stipulate a woman employee's right to acquaint herself with the results of her employer's risk assessment of the workplace, an opportunity which the employer has the obligation to ensure. Furthermore, it is necessary to review the by-laws defining the lists of heavy, harmful and dangerous work, as well as the hygiene-based classifications of work, namely Government Decisions Nos. 1698-N, 2308-N and 1089-N. Replace list-based regulations with the factor-based assessment standard, and synchronize them for the workplace risk assessment and medical assessments. Ensure that all regulations include the specific standards for pregnant and breastfeeding women.**

## F) Recommendations

Based on the issues addressed in this submission, we urge the Committee to recommend the following to Armenia:

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<sup>5</sup> RA Government Decision No. 1089-N, available at <https://www.arlis.am/DocumentView.aspx?DocID=117803>.

**Recommendation 1.** Adopt the draft “Law on Ensuring Equality”, create or endow with additional powers a protection mechanism, such as equality body, labor inspectorate or another extrajudicial body, which can be applied to in case of discrimination in employment, improve the regulatory framework pertaining to the prohibition of discrimination in the Labor Code.

**Recommendation 2.** Amend the RA Law "On Trade Unions", as well as other related legal acts, and establish the right of police officers, prosecutor's office employees, judges (including the Constitutional Court), self-employed persons, workmen engaged in free occupations and workmen engaged in the informal economy to establish trade unions and to join them.

**Recommendation 3.** Establish that the decision to announce a strike is approved by the majority of employees who participated in a secret ballot, if at least half of the organization's employees participated in the vote, as well as to reduce the notification periods specified by the Labor Code.

**Recommendation 4.** Amend Article 258 of RA Labour Code. In particular:

- To stipulate a woman’s right to return to her former job after the elimination of risks related to pregnancy and breastfeeding.
- To stipulate a woman employee’s right to acquaint herself with the results of her employer’s risk assessment of the workplace, an opportunity which the employer has the obligation to ensure.

**Recommendation 5.** Review the by-laws defining the lists of heavy, harmful and dangerous work, as well as the hygiene-based classifications of work, namely Government Decisions Nos. 1698-N, 2308-N and 1089-N. Replace list-based regulations with the factor-based assessment standard, and synchronize them for the workplace risk assessment and medical assessments. Ensure that all regulations include the specific standards for pregnant and breastfeeding women.