Shadow report on the combined fourth and fifth periodic reports of Georgia to the Committee on the Elimination of Discrimination against Women

Session 58, July 2014

(Submitted by the State party under Article 18 of the Convention, June 2012).

This shadow report has been submitted by a non-governmental organization and a trade-union: **Article 42 of the Constitution (Article 42) and the Georgian Trade Union Confederation (GTUC).**

Tbilisi, June 2014

General Overview

This report has been drafted in the framework of the project "Promoting Gender Equality in Employment" implemented by the NGOs "Article 42 of the Constitution" (Article 42), "Georgian Trade Union Confederation" (GTUC), "Center for Social Sciences" (CSS), Jumpstart Georgia and "New Media Advocacy Project" with the generous support of USAID[1].

The main aim of the project is to increase gender equality and women's economic empowerment in Georgia and to ensure economic growth in which women and men participate in the workforce on an equal basis.

The project started in March 2014 and will last for 30 months. It includes a research, advocacy and strategic litigation component, and strong campaigning for women's labor rights. It reaches out to the regions of Georgia, where in the most remote areas discrimination against women in the workplace is still hidden and not acknowledged. The project ensures that all women, representing different economic and social groups, equally benefit from the anti-discrimination actions targeting discrimination of women at the workplace.

The structure of the report focuses on women's labor rights in the framework of the UN Convention on the Elimination of All Forms of Discrimination against Women (UN CEDAW), Article 11.

Employment status of women in Georgia

In its 2013 parliamentary report the Public Defender of Georgia[2] states that participation of women in economic activities in the country is very low. As the Ombudsman reports, according to the data from the "Global Gender Gap Index", Georgia ranks 64th among 136 countries. According to the same source, instead of progressing, Georgia is regressing in comparison to the previous years. The 2012 data show that the country is ranked 57th while in 2011 it was still ranked 54th.

The index of equal pay for equal work ranks Georgia 14th and 114th for the ratio between annual income of women and men According to the data, salaries of women are lower in every economical sector, even in those sectors where the majority of employees are women such as: education, health care and etc.

Women's economic activity is directly linked to the index of their employment. Despite the number of positive steps made in legislative regulation, the issues of women's promotion, their equal participation in economic development and proper pay remain problematic. The feminization of poverty and a high rate of violence against women cause low female economic activity. Despite the fact that more women are employed, their average pay differs from the average pay of men. This is

[1] Following people were involved in the drafting of the actual report: Raisa Liparteliani (GTUC), Maka Gioshvili (Article 42), Anna Arganashvili (Article 42).

[2] Parliamentary report of the Public Defender of Georgia, 2013. http://www.ombudsman.ge/uploads/other/1/1563.pdf

caused by the employment of women in low-paying positions and the so- called “glass ceiling” in the workplace which prevents them from advancing in their career.

Legal overview

Georgia has been a member of the ILO since 1993 and has ratified 16 ILO Conventions so far. In 2012 Georgia had one of the lowest levels of ILO Conventions ratification among Western and Eastern European countries, the Caucasus and Central Asia. The last ILO Convention Georgia ratified was Convention #163 in 2004. Georgia is part of both the EU Neighborhood policy and the Eastern Partnership Agreement and is moving towards integration with the European Union. Georgia has also signed the Social Charter in 2005 as a member of the Council of Europe.

The ILO report[3] states that the Labor Code of Georgia adopted in 2006 was one of the most deregulated among the countries studied, even in comparison with liberal countries such as the USA, Canada and the United Kingdom. Several indicators were criticized, e.g. the probationary period, the regulation of employment contracts, dismissals and valid reasons for dismissals. In the former 2006 Labor Code of Georgia, no valid grounds were listed for terminating an employment contract. It is worth noting that upon the ratification of the European Social Charter in 2005, Georgia only accepted the minimum number of requirements. Article 24 of the Charter, elaborating the worker's right to protection in case of dismissal without valid reasons, was not ratified by the Government of Georgia . Neither was Article 3 – the right to safe and healthy working conditions or Article 8 - the right of female employees to maternity protection.

Moreover, the former Labor Code of Georgia authorized the termination of an employment contract by mutual agreement, upon completion of a specified work by a unilateral dissolution by either party. The employer had no obligation to justify such a dismissal. Consequently, several sources reported cases of discriminatory dismissals in Georgia. The grounds most frequently invoked, at the national level, in such cases are political opinions, sex and trade union activities. Nevertheless, these reasons for dismissal are explicitly prohibited by ILO Convention #158.

One of the main subjects of criticism concerns the notice period. According to the former Labor Code, the employer was not required to observe any notice period to dismiss an employee. The only legal requirement for the employer in order to dismiss a worker was the payment of one month’s salary. The former Labor Code of Georgia did not regulate collective dismissals for economic reasons. The only case mentioned as a reason for terminating an employment contract was the liquidation of an enterprise. Also, verbal and short term labor contracts which were not restricted by law laid ground for discriminatory practices.

[3]International Labour Organization (2012). Employment Protection Legislation in Georgia: A review based on ILO standards, OECD indicators and comparative labour law. http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_202301.pdf

Changing the Labor Code

2012: first set of changes

Based on the recommendations of the ILO Committee and local organizations regarding the application of international labor standards and norms, two amendments were made to Georgia's labor legislation on June 22, 2012. More specifically, these changes were made to the Labor Code of Georgia and to the Law on Trade Unions.

Article 49(8) which limited the right to strike for 90 calendar days was removed from the Labor Code and as a result of the amendment of Article 2(9) the required minimum number of members to create a trade union was reduced from 100 to 50 people. It should be mentioned that the involvement of GTUC in the drafting process of the abovementioned amendments and review at the parliament of Georgia have not been ensured. These mentioned modifications did not even slightly improve the extremely dire environment[4].

2013: second set of changes

As the Public Defender reports, the legislative initiatives of 2013 aimed at the improvement of labor rights are highly welcomed. These major changes were adopted by Parliament on June 12, 2013. Both international and local NGOs as well as the Georgian Trade Union Confederation were involved in the development of the draft law.

As a result of this cooperation the document adopted on May 16, 2013 by Parliament with its first hearing was generally in compliance with the international labor standards and Georgia's international obligations. After this initial stage, however, the process developments progressed in violation with the social partnership format since the government only consulted with employers. This practice resulted in changes to the draft which badly affected the workers.

The Trade Union only received post factum information about these changes. Finally, a document was adopted which improves the situation of the workers to a certain extent. Specifically, the following was introduced: the prohibition of discrimination during pre-contract relations (Article 2§3); the precise identification of subjects of labor relations; the determination of the employer's obligations; the restriction of oral and short-term agreements/contracts; the definitions of essential conditions of employment agreement which may not be altered by the employer's sole decision. The term of an individual contract would be declared null and void had it run counter with the Labor Code or the Collective Agreement, except in the cases where an individual labor agreement improves the workers' conditions. It also prohibits the dismissal of pregnant women.

The Code determined a maximum weekly threshold of working hours which amounts to 40 hours. There is an exception for those enterprises where the working process requires an uninterrupted regime and the process exceeds 8 hours. For these latter cases, the weekly working hours amount to

[4]Georgian Trade Union Confederation (GTUC) report for 2012 for ILO.

48 hours. The Government of Georgia was entrusted with the task to identify such enterprises and provide a relevant list by November 1, 2013 (Article 14).

The Code also introduced the following changes: the period of temporary incapability has been prolonged (Article 36, lit 'i'); the grounds for termination of a labor contract have been identified; the employer is obliged to provide advanced notice in case of termination of the labor contract (Articles 37 and 38); special chapters IX[1] and XII[1] have been added on the "Freedom of Association" and the "Commission of Tripartite Social Partnership" respectively; and an obligation of honest conduct of collective bargain is established (Article 41§4).

Despite the progress described above there are still many problematic issues in the Labor Code. Loopholes in the Labor Code open the possibility to use fixed-term employment contracts to restrain/limit/discourage employees from exercising their right to freedom of association and collective bargain; a vague provision on the grounds of collective labor disputes which entails the restriction of the right to strike; the discrimination of workers on the ground of working hours (40 hours week versus 48 hours week); a restricted list of grounds for termination of an employment contract and allowing the dismissals for "objective" reasons, thus discouraging an effective implementation of the rights to freedom of association and collective bargaining; insufficient regulation of the issues related to collective redundancies; safe work; and a lack of consideration for women's rights. A high risk of discrimination during the recruiting process still exists and is increased even by Article 5 (8): "The employer is not required to prove his/her decision on refusal of employment".

Third set of unrealized changes

Soon after the abovementioned developments, the Parliament of Georgia initiated a new set of changes on September 27, 2013. However, these new amendments were not initiated or agreed upon with the government's third set of gender-sensitive amendments. The new amendments were only partially referring to women's rights and did not offer any holistic picture of the law from a gender perspective. According to these amendments, the term of leave and remuneration for pregnancy, maternity and child care is increased. Since January 1, 2014, at an employee's request, they will be granted 730 calendar days, from which 183 calendar days of maternity and child care leave of absence will be paid. In case of a complicated delivery or twins 200 calendar days will be allowed, which the employee can distribute on pregnancy and post-delivery periods, according to her own will.[5] Employees, who adopted an infant under 12 months, will be granted newborn adoption leaves of absence of 550 calendar days and 90 calendar days of this leave will be paid.[6]

[5] Until the amendments of September 27, 2013, at employees' request, they were granted a maternity and child care leave of absence of 477 calendar days. 126 calendar days of maternity and child care leave of absence were paid, and in case of a complicated delivery or twins – 140 calendar days;

[6] Until the amendments of September 27, 2013, employees, who adopted an infant under 12 months, were granted newborn adoption leave of absence of 365 calendar days. 70 calendar days of the leave was paid;

The cash allowance for the period of paid maternity or child care leave of absence will be covered by the state budget. The cash allowance for the period of paid leave absence will be GEL 1000 maximum. Employers and employees may agree on extra pay.[7] The law guarantees extra compensation, apart from the GEL 1000, for women working in public service.

Despite the government's promise that a third wave of legal amendments to the Labor Code will incorporate gender equality principles and concrete provisions, these have not been adopted as of yet.

Labor Inspection

The ILO Committee notes with concern the Government's indication that further to the abolition of the Labor Inspection Service in 2006, there is no longer a labor supervisory body. From the government's report the Committee understands that the supervisory body to be established in the future will be responsible for enforcing only occupational safety and health provisions. The Committee draws the government's attention to the need to put adequate and effective enforcement mechanisms in place to ensure that the principle of equal remuneration between men and women for work of equal value is upheld and to allow workers to avail themselves of their rights. Without the creation of a labor supervisory body, the existing provision ensuring women's labor rights, as well as those to be introduced, will stay unattended and unreported.

Discrimination

The latest report of the Public Defender states[8] that there are multiple forms of discrimination in labor relations towards women, however, these facts are relatively less explored due to the following reasons: a lack of statistics, a lack of court cases and a lack of reporting on behalf of the victim. Often, the female victim does not realize that she has been discriminated and sees unfavorable conditions of overt and covert discrimination as normal.

Covert discrimination is very much related to cultural stereotypes and prejudices which are internalized by many victims. However, it is also frequent that the female victim of discrimination is simply afraid to report this. In case of ineffective reaction, she will be further discriminated and isolated. The report says that even those who are illegally dismissed are afraid to file the case. In the cases where the victim does apply to the court, other significant barriers include the difficulty of gathering relevant evidence and the burden of proof.

One of the most covered and unreported forms of discrimination is sexual harassment. It has been declared illegal by the Gender Equality Law of Georgia, however, this law does not give a flexible enough definition to enable women to name certain behavior as a manifestation of sexual harassment.

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[7] Until the amendments of September 27, 2013, the cash allowance for the period of paid maternity or child care was maximum GEL 600.

[8] Office of the Public Defender of Georgia (2014). Special Report on Discrimination in Labour Relations.

It also does not include any sanctions. There is also no qualified unit/mechanism to research the cases of sexual harassment. Regular mechanisms of administrative complaints do not guarantee any privacy requested by the victim. The victim cannot independently investigate the case, since the community at the workplace as well as in general does not show any solidarity and are mainly blaming her.

Women's promotion barriers, the "glass ceiling", also represents a common form of discrimination but is difficult to prove. As the report states, women and women's rights organizations do not have much practice in gathering relevant data and evidence to qualify an action as the result or the process of discrimination due to "glass ceiling".

Discrimination during pre-contact relations is common and already starts in the job announcement phase. It includes the format and the content of the job interview and the conditions of the contract. As the report states, there are still numerous cases where women report pre-contract discrimination but do not file a complaint with the court.

The ILO Committee of Experts on the Application of Conventions and Recommendations (SEACR) has been raising concerns regarding the absence of legislation which gives full expression to the principle of equal remuneration for men and women for work of equal value.

The Committee recalls that the principle of the Convention no.100 is not explicitly reflected in the Labor Code of 2006, section 2(3) which contains a general prohibition of discrimination in labor relations, nor in Article 14 of the Constitution which ensures equality before the law, or in the Law on Gender Equality adopted on March 26, 2010. The Committee notes that the government refers to the equality provisions in the Constitution, the Labor Code and other legislation as well as to the Action Plan on Gender Equality for 2011–13. The same general prohibition provisions are also characteristic for the Labor Codes of 2010 and 2013.

The Committee once again recalls that while general non-discrimination and equality provisions are important, they normally are not sufficient to give any effect to Convention no.100 because they do not capture the key concept of "work of equal value". This concept lies at the heart of the fundamental right of equal remuneration for men and women for work of equal value, and the promotion of equality.

Due to historical attitudes and stereotypes regarding women's aspirations, preferences and capabilities, certain jobs are predominantly or exclusively held by women (such as caring professions) and others by men (such as construction work). Often "female jobs" are undervalued in comparison with work of equal value performed by men when determining wage rates. The concept of "work of equal value" is fundamental in tackling occupational sex segregation, as it permits a broad scope of comparison, including, but going beyond equal remuneration for "equal", "the same" or "similar" work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value.

The Committee once again urges the government to take concrete steps in giving full legislative expression to the principle of equal remuneration for men and women for work of equal value to ensure the full and effective implementation of the Convention.

Case law

In the framework of this project, the NGOs submitting this report have analyzed the case law (administrative and civil law) on women's labor rights cases with the domestic courts. The analysis covers a period of five years. Researchers have retrieved information from the Supreme Court online registry and from the NGO and trade union databases. In total 49 cases were identified nationwide on the referred matter. An absolute majority of the cases involved a request to declare acts of dismissal as null and void, reinstatement and compensation for the forced suspension of work caused by the employer. Only in two cases claimed the plaintiff's compensation for moral damages. Exceptionally, two cases related to maternity leave payment. None of the cases dealt with discrimination based on gender. It should also be taken into account that the applicants themselves did not indicate sex as an alleged motivation for the violation of their labor rights.

Following the recent change of government in Georgia after the 2012 elections, several hundreds of public servants reported to be dismissed illegally. Among them, women constituted a large group. Even after the amendments in the legislation, they were not always effective in filing their cases with the court. The biggest problem here is the lack of legal aid and consultancy, since they often cannot afford private legal aid and there are only a few NGOs (GTUC, GYLA, Article 42 of the Constitution and others) that can represent them in court. Consequently, these women report about the lack of legal remedies and the violation of their labor rights.

In 2013 the Public Defender of Georgia revealed the dismissal of pregnant women from local self-government bodies. Most of them resigned themselves, but after an investigation into these cases had been launched by the Public defender it became obvious that their resignations were written as a result of pressure and cheating. Because of covert discrimination, the dismissed had no evidence of the acts. The Public Defender issued recommendations to the Telavi and Kareli municipalities, but these were not taken into account by the local authorities. Nevertheless, Kareli case was satisfied by the court, the woman was reinstated and received compensation from the local municipality.

Categories of women most affected by discrimination

No unified research has been conducted to reveal the group of most affected women, however, different research reports identified that the group of most affected women include:

- Women with disabilities;
- Women representing sexual minority (LBT women);
- Women from the internally displaced population (IDP women);.
- Women living in remote and mountainous areas;
- Female victims of early marriages;
- Women with family responsibilities;
- Women with disabled children; and
- Single mothers.

Contributing factors to the violation of labor rights (immediate, historical, systemic, etc.).

The violation of women's labor rights is a multi-factorial issue and needs to be explored within several cross-cut areas. It has to consider the traditional cultures and stereotypes which generally hinder female participation, the lack of positive actions and excessive gender neutral legislation, the lack of employment opportunities, the lack of legal aid and consulting etc.

Domestic tasks have always been considered as a woman's role. Stereotypes about the ineffectiveness of women in managerial and decision-making positions are still deeply ingrained. Unfortunately, the Government of Georgia has not initiated any important awareness raising campaigns yet. Neither have these stereotypes been excluded from the school curriculum, and so they persist to influence society.

The legal frameworks, though undergoing significant changes, are still lacking gender-sensitive provisions. Unfortunately, the need for positive actions is not well acknowledged (e.g. governmental officials do not take gender quota into consideration and still publicly joke about this).

The lack of employment opportunities becomes an excessive barrier for women who are not supported by proper facilities (pre-schools etc.) and who have to deal with family responsibilities along their labor responsibilities.

The only child care facilities to support working mothers are kindergartens, schools and daycare centers for children with disabilities. However, kindergartens do not exist in many regional centers or villages, while attendance at daycare centers is only free of charge for children whose families are registered as a family living below the poverty level. These two factors are depriving many woman of the chance to exercise their family and working rights simultaneously. As a result, a great number of women with children are not able to engage in labor relations or to realize their full potential.

Effects of discrimination

According to national surveys on domestic violence, and the reports of the Public Defender (2011, 2012 and 2013), the financial dependence on the perpetrator is the major reason why women keep silent about gender-based violence. A high number of the female population cannot enter the labor market until their children are old enough to not need additional childcare services anymore. Before this time, women are financially fully dependent on their partner/husband. In many cases of domestic violence these women, who did not inherit any property from their parents either because all property is inherited by the son, only have a choice between leaving the house or tolerating the violence. Since the governmental program, administered by the State Fund, only provides accommodation for six months to victims of domestic violence, these victims do not feel safe to leave the perpetrator's house. Particularly, if they are not employed. They cannot afford to rent a place and earn a living for themselves and the children. Consequently, the unemployed status of the women leads to unreported cases of domestic violence and to a high tolerance towards gender-based violence.

Additionally, denied rights under Article 11, often causes isolation and social disintegration of women. They cannot fulfill their self-realization, their self-efficacy and as a result their self-evaluation abruptly fails. They do not have an equal voice, since they are often reminded about their financial

dependence on others by their family members. The violation of the rights of female workers has multiple impacts. The discrimination cases that are difficult to prove put the entire guilt on women. Discrimination causes serious negative economic results and the feminization of poverty.

Observations on the government's report

The major problematic issues with the governmental CEDAW report are: (1) the lack of indicators to measure progress; (2) the lack of result-oriented planning and (3) the lack of empirical data proving the progress made.

The current governmental report includes statements which are not based on reliable measurable data. The introduction of relevant legislation amendments is often seen as sufficient to achieve change. However, this is not true. The adoption of special provisions or regulations is no guarantee for any beneficial action. Consequently, providing the CEDAW Committee with a list of actions, without measuring the actual results, is not very relevant in measuring the actual situation of women. Provision 71 of the governmental report states: *" Rules defined by the Georgian legislation shall ensure provision of favorable conditions of work for pregnant women and breastfeeding mothers, which does not allow for their employment in extreme, harmful or hazardous conditions, as well as in night shifts"*, but it does not say whether pregnant and breastfeeding women are protected from hazardous conditions.

In some cases the governmental report provides quantitative data about women employed in the public sector, but the CEDAW Committee cannot see the full picture without any qualitative data (e.g. the increase of the number of women employed at the Ministry of Internal Affairs does not reflect the subordinate status of those women). The proportion of women in decision-making positions in the same ministry is very low and cannot be seen as a real success. Providing only numbers without further context does not meet the standards of the UN CEDAW.

Another part of the report is loaded with numbers and statistics which, again, are not analyzed in the context and do not show whether they make any change in the women employment status.

The government should make a shift towards result-based planning in which each reform is measured following the results and its actual impact on the female population (e.g. the value of newly introduced provisions in the Labor Code cannot be measured without observing its realization through the case law). The current report does not count the number of claims and court cases of discrimination.

The report does not use any monitoring data, except from international donor activities, and only mentions that certain governmental structures have monitoring functions but in none of the cases the monitoring results were used to evaluate the actions and planning of future reforms.

Since the government's actions and action plans are not budgeted or accompanied by a relevant financial calculation document, one cannot judge the adequacy of how resources are allocated. Neither has the government conducted a comprehensive situation analysis or did it conduct a needs assessment

to improve the employment status of women. As a result, civil society does not have any information on the required resources.

Recommendations

- ✓ Adoption and implementation of specific regulation, based on the principle of positive discrimination, which is aimed at ensuring de facto equality between women and men at work.

- ✓ Specifically express the principle of equal remuneration for men and women for work of equal value in the law in respect of fully and effectively implementing ILO Convention no.100.

- ✓ Adoption of a special principal in the labor code according to which ”in case of dispute on a fact of discrimination during pre -contractual and labor relations the burden of proof lies with the employer”.

- ✓ Implementation of effective enforcement mechanisms (labor regulatory body) to guarantee the principle of equal remuneration between women and men for work of equal value is put into practice

- ✓ Provide a flexible definition of sexual harassment and associated sanctions in the Labor Code and implement specific mechanisms for administrative complaints which guarantee the victim’s privacy.

- ✓ Adoption of urgent measures for improving the pre-school child care system and establish pupil care systems (after school) in order to support working mothers.

- ✓ Inclusion of a “gender and education” module in education at both the secondary and high school level, to increase awareness concerning the social construction of gender.