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EUROPEAN SOCIAL CHARTER

Comments by the Georgian Trade Union Confederation
(GTUC) on the
7th national report
on the implementation of the revised European Social Charter

submitted by

THE GOVERNMENT OF GEORGIA

for the period
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CYCLE 2014

REPORT

Of the Georgian Trade Union Confederation for 2014

Regarding compliance of the labor Code with the European Social Charter

On 12 June 2013 the Parliament of Georgia introduced certain changes and amendments to the Labour Code of Georgia. At the initial stage international organizations and social partners were involved in the working process of the draft-law, including the trade unions. As a result of this cooperation the document adopted on 16 May 2013 by the Parliament at the first hearing was in general in compliance with the international labour standards and Georgia's international obligations. However, after this stage the developments around the process were progressed in violation of the social partnership format as the government maintained the consultations only with employers. Such attitude resulted in changes of the draft to the worse for workers.

Trade Union received only post-factum information about further changes. Finally the document was adopted, which to the certain extent improved workers' situation. Namely: discrimination has been prohibited in the pre-contract relations (Article 2 para 3); the subjects of labour relations have been identified precisely; obligations of employers have been determined; oral and short-term agreements/contracts have been restricted considerably; the essential conditions of employment agreement have been defined and they may not be altered only under employer's sole decision; the term of individual contract will be declared null and void if it runs counter to the Labour Code or Collective Agreement, except the cases when the individual labour agreement improves the workers' conditions.

The government of Georgia was entrusted with the task to identify such enterprises and provide the relevant list by 1 November 2013 (Article 14). The Code also introduced the following changes: period of temporary incapability is prolonged (Article 36, lit 'i'); the grounds for termination of labour relations are identified; employer is obliged to provide advanced notice in case of termination of labour relations (Articles 37 and 38); special

chapter **IX**¹ and **XII**¹ are added – “Freedom of Association” and “Commission of Tripartite Social Partnership”; obligation on honest conduct of collective bargain is established (Article 41 para 4).

Despite the progress described above still there are many problematic issues in the Code and incompliance’s with the European Social Charter . Among others the following can be distinguished as the most alerting ones:

Article 2 – The right to just conditions of work

The Code determined the maximum weekly threshold of working hours and it amounts to 40 hours. There is an exception of those enterprises where the working process requires uninterrupted regime or the process which exceeds 8 hours. For these latter cases the weekly working hours amount to 48. GTUC considers such regulation as a clear discrimination and has already applied to the Georgian Constitutional Court requiring it’s unconstitutionality.

But the code does not provide for reasonable daily working hours and weekly rest period and also did not ensure progressively reduced working week , that are required by the points 2, 5 of the article 2.

There are no benefits provided in the Code for the night-shift workers, whereas the European Social Charter, which is ratified by Georgia and thus it is obligatory to honour its provisions, in its Article 2 ‘The rights on just conditions to work’ clearly states that the workers performing the night job shall enjoy certain benefits. The law, as a minimum shall repeat this provision and rest to the parties to negotiate the specific conditions, as it is in the case of overtime remuneration.

GTUC considers that it’s discrimination differential working time and applied to the Constitutional Court to declare this regulation as ant constitutional. The court discussed the case and we are waiting to the final decision.

Article 4 – The right to a fair remuneration

Article 17 (1, a.b.) of the Labor Code states that employee without consent must perform overtime labor to avoid natural disasters an or for liquidation of its results – without compensation; to prevent industrial accident and/or liquidate its results – with relevant *remuneration*. About latter situation in Labour Code there is no definition about how much can be considered as relevant remuneration. So article 17 (1, a.b.) constitutes in first point

overtime work without compensation and in second point overtime work with undefined remuneration. Finally it is clear that article 17 of Labour Code as a whole is not in compliance with Article 4 (2) of European Social Charter.

Article 4 (3) of Charter requests from Georgia to recognize the right of men and women workers to equal pay for work of equal value. Article 2 (3) of Georgian Labour Code provides a general restriction of employment discrimination including on the grounds of sex. Consequently, any differentiation between men and women in terms of their remuneration on these grounds is prohibited in accordance with this provision. However this general article might not be considered as a sufficient legal mechanism of the comprehensive and effective application of the equality of women and men. Moreover, mentioned article does not provide the definition of indirect discrimination. On the assumption of Article 2 (3) of Georgian Labour Code prohibiting employment discrimination is not enough legal mechanism to guarantee equal right of men and women workers to equal pay for work of equal value

According to the article 4.4 of the European Social Charter workers have right to a reasonable period of notice for termination of employment. Article 37 of the labor code (a result of latest changes and amendments) foresees such prior notice only in 4 cases of termination of labor relations such as: a) Economic circumstances, technological or organizational changes entailing a reduction in the workforce required for production or service; f) Incapacity of an employee to occupy his/her position due to a lack of qualification, professional skills and experience, i) Unless otherwise provided in the employment contract, long-term disability if the period of incapacity exceeds more than 40 consecutive calendar days or if, within 6 months, the period of incapacity exceeds more than 60 calendar days. In addition, the employee is entitled to take a paid or unpaid leave of absence in accordance with Article 21 of this Code; n) Other objective circumstances justifying termination of the employment contact. In the other circumstances the prior notice is not guaranteed, that contradicts the abovementioned article of the Charter.

Article 5 – The right to organize

And

Article 6 – The right to bargain collectively

Development of social dialogue through effective implementation of the rights to freedom of association and collective bargain is not encouraged at every level of industrial relations. Such development implies determination of labour conditions between employer and worker

through the collective agreement. This is the requirement of ILO Conventions 87 and 98, Articles 5 and 6 of the European Social Charter, and of many other international instruments.

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Article 7 The right of children and young persons to protection

Georgian Labour Code fails to adequately regulate principles of child labour. It is another issue which is not sufficiently reflected in Georgian labour legislation. For example right to fair remuneration of young employees and apprentices to a fair wage or other allowances guarantees by the points 5 and 9 of the article

Article 8 – The right of employed women to protection of maternity

According to the article 35.7 of the Labor Code the employer shall ensure the protection of the pregnant woman from work that endangers her physical and psychological health and that of her fetus, but there is no the same restriction for women who have recently given birth and women nursing their infants, that is against point 5 of the article 8 of the Charter. The law does not foresee the state`s obligation to take measures to provide: 1) the obligation of employer to maintain the salary of pregnant women before taking maternity leaves in case of necessity of changing of working place or shortening of working time, 2) the protection of women with reasonable time from dismissal after using maternity leave; 3) the obligation of employer/state to provide free vocational training for women employees after using maternity leave to reinstate/improve professional skills for eradication the backwardness cause by the objective circumstances.

Article 10 – The right to vocational training

The labor code does not properly regulate the right to vocational training that`s is against article 10.

Article 19 – The right of migrant workers and their families to protection and assistance

The labor code does not specifically regulate migrants labor rights that is violation of the point 4 of the article 19 of the European Social Charter

Article 27 – The right of workers with family responsibilities to equal opportunities and equal treatment

The labor code does not provide sufficient mechanisms to realize right of workers with family responsibilities to equal opportunities and equal treatment, is not taken into consideration the interests of this category of workers in the process of determination labor and social conditions. The labor Code, neither any other normative act do not foresee any benefits for women workers with family responsibilities.

Article 29 – The right to information and consultation in collective redundancy procedures

There is no provision regulating grave social consequences after mass redundancy, either advance warning reasonable time-period ahead and consultation with the workers' organizations. Such approach would include seeking for alternative possibilities for potential unemployed workers, possible reduction of wages and/or provision of salaries through subsidies, temporary introduction of part-time job, temporary annulment or reduction of social guarantees approved by the company or under the collective agreement, etc. The lack of such measures runs counter to Article 29-e of the European Social Charter ratified by Georgia in 2005.

The only Article **38¹**, which covers the mass redundancy issue, regulates the cases when more than 100 employees have been dismissed, without taking into account the total number of employees at the enterprise/company. We think that this regulation is not enough for preventing from negative social-economic consequences; neither has it provided good ground for the social dialogue and trade union's involvement in such dialogue.

This briefly analyze of conformity of Georgian Labour Code with European Social Charter illustrates that there are too many omissions and gaps into Georgian labour legislation. As a result, during the operation of Georgian Labour Code articles mentioned above had already caused a lot of disturbance of fundamental labour rights of Georgian employees. Furthermore, in return of trade unions argument that European Social Charter has more legal force than Georgian Labour Code, government and court declares that European Social

Charter is not compulsory for implementation and articles of Charter ratified by Georgian Parliament are only provisional recommendations.

It should be mentioned that Georgia has not ratified the important articles of the European Social Charter, such as: Article 3 – The right to safe and healthy working conditions, article 24 – The right to protection in cases of termination of employment and etc.

Sincerely,

President

Irakli Petriashvili

A handwritten signature in black ink, appearing to read 'I. Petriashvili', written in a cursive style.