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EUROPEAN SOCIAL CHARTER

Comments by the Georgian Young Lawyers' Association
on the 15th National Report on the implementation of the
European Social Charter

submitted by

THE GOVERNMENT OF GEORGIA

Articles 2, 4, 5, 6, 21, 26, 28 and 29

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EUROPEAN SOCIAL CHARTER
Alternative Report by the Georgian Young Lawyers' Association (GYLA)
on the
15th National Report
on the implementation of the revised European Social Charter
submitted by
THE GOVERNMENT OF GEORGIA
Articles 2, 4, 5
CYCLE 2022

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Introduction

Georgian Young Lawyers Association (GYLA) is a human rights non-governmental organization founded in 1994. GYLA has its main office in Tbilisi and 8 offices in the regions of Georgia. GYLA works on civil and political, as well as economic and social rights, provides free legal aid, and strategic litigation, conducts research and carries out human rights education activities. GYLA also works on transparency and accountability issues and advocates for legislative and human rights policy changes with government agencies.

GYLA has prepared various researches and reports on the labour rights issues and has been actively involved in the reform of labour legislation and representing employees in court disputes against public institutions. GYLA is also a member of the Georgia Fair Labour Platform, a coalition of independent trade unions, civil society organizations, and activists working to improve labour conditions for workers in Georgia. Website: www.shroma.ge.

GYLA conducts international advocacy and regularly submits alternative reports to UN human rights treaties and the UN Universal Periodic Review. Website: www.gyla.ge.

THE RIGHT TO JUST CONDITIONS OF WORK (ARTICLE 2)

Article 2.1

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;

The labour Code of Georgia establishes the duration of working time¹. According to the law, standard working time shall be any period during which an employee is working at the employer's disposal and is carrying out his/her activities or duties. Working time shall not include breaks and rest periods.² Based on the law, standard working time shall not exceed 40 hours a week.³ The duration of standard working time in enterprises with specific operating conditions requiring more than 8 hours of uninterrupted production/work process shall not exceed 48 hours a week. The Government of Georgia shall, after consulting social partners, compile a list of industries with specific operating conditions.⁴

¹ The Labour Code of Georgia, art. 24.

² The Labour Code of Georgia, art 24 (1).

³ The Labour Code of Georgia, art 24 (2).

⁴ The Labour Code of Georgia, art 24 (3).

Besides, according to the law, the duration of uninterrupted rest between working days (or shifts) shall not be less than 12 hours.⁵ Where the working day is longer than 6 hours, an employee shall be entitled to a break. The duration of a break shall be determined by agreement between the parties. Where the working day is no longer than 6 hours, the duration of a break shall be at least 60 minutes.⁶ According to the law, in addition to the 12 hours' daily rest period, employers shall ensure that, per each seven-day period, every employee is entitled to a minimum uninterrupted rest period of 24 hours. By agreement between the parties, the employee may enjoy a rest period of 24 hours twice in a row within not more than 14 days.⁷

The labour Code provides additional protection for women after the birth of the child, for minors and legal representative/supporter of person with a disability in the area of working hours. According to the law, employees who are breastfeeding infants under the age of 12 months may request an additional break of at least 1 hour a day. A break for breastfeeding shall be included in working time and shall be paid.⁸

The duration of working time for minors from the age of 16 to 18 shall not exceed 36 hours per week, nor 6 hours per working day.⁹ The duration of working time for minors from the age of 14 to 16 shall not exceed 24 hours per week, nor 4 hours per working day.¹⁰ A legal representative or supporter of a person with a disability may, in addition to rest days, enjoy another paid rest day once a month, or agree on working time other than that provided for by the internal labour regulations.¹¹

According to the Law of Georgia on Civil Service, an employee's working time is a part of the time during which an employee is obliged to exercise his / her official authority.¹² According to the law, a 5-day working week is established for a public official, as well as the duration of a public official's working time should not exceed 8 hours per day, and 40 hours per week.¹³ Unlike the Labour Code of Georgia, which stipulates a maximum period of standardized working time of 40 hours, the Civil Service Law additionally sets a limit on the number of working days (5 working days), which should be positively evaluated.

⁵ The Labour Code of Georgia, art 24 (4).

⁶ The Labour Code of Georgia, art 24 (5).

⁷ The Labour Code of Georgia, art 24 (7).

⁸ The Labour Code of Georgia, art 24 (6).

⁹ The Labour Code of Georgia, art 24 (8).

¹⁰ The Labour Code of Georgia, art 24 (9).

¹¹ The Labour Code of Georgia, art 24 (10).

¹² The Georgian Law on Civil Service, art 60 (1).

¹³ The Georgian Law on Civil Service, art 60 (2).

The Law of Georgia on Civil Service does not regulate the issue of breaks during working hours, which is an important aspect of regulating working time.¹⁴ According to the Law of Georgia on Civil Service, the internal regulations of a public institution shall determine the time of the break during the working day.¹⁵ The Georgian public institutions internally regulate this issue, however, there is no uniform standard. **Therefore, it's recommended, that this aspect of working time be regulated under the Law on Civil Service.**

The Law of Georgia on Civil Service applies only the rules established by the Labor Code of Georgia regarding the regulation of the time of rest and holidays of a public official.¹⁶ The provisions of the Labor Code of Georgia are relevant for the Georgian civil service, according to which: a) the rest time is not considered as working time;¹⁷ b) the duration of continuous rest of the employee between working days should not be less than 12 hours;¹⁸ c) If the duration of working time during the working day exceeds 6 hours, the employee is entitled to a break;¹⁹ d) In addition to the 12-hour daily rest period, the employer is required to provide the employee with a continuous rest period of at least 24 hours during a 7-day period.²⁰

The Georgian Law on Civil Service does not provide legal ground for the women after the birth of a child regarding the additional 1-hour break in a day for breastfeeding. Public institutions have a discretionary power to regulate this issue internally. Some the public institutions provide this opportunity, but there is no uniform standard. **Therefore, it's recommended, that this aspect of working time be regulated by law.** The Law on Civil Service also establishes the same guarantee of paid rest day once a month or an agreement of flexible working time for a legal representative or a supporter of a disabled person.²¹

The internal regulations of public institutions additionally regulate the use of working hours by a civil servant for scientific, pedagogical, and/or creative activities. According to the Law of Georgia on Conflict of Interest and the fight against corruption in Public Institutions, a civil servant is not entitled to perform any remunerative work (except for scientific, pedagogical,

¹⁴ The Georgian Law on Civil Service, art 60.

¹⁵ The Georgian Law on Civil Service, art 112 (b).

¹⁶ The Georgian Law on Civil Service, art 60 (3).

¹⁷ The Labour Code of Georgia, art 24 (1).

¹⁸ The Labour Code of Georgia, art 24 (2).

¹⁹ The Labour Code of Georgia, art 24 (4).

²⁰ The Labour Code of Georgia, art 24 (7).

²¹ The Georgian Law on Civil Service, art 60 (4).

creative, or reserve work in the Defence Forces).²² However, in this case, public institutions have discretionary powers and there is no uniform standard.

According to the Annual Report of the Labour Inspection Office, 327 inspections/follow-up inspections were conducted throughout Georgia on the rights guaranteed under the Labour Code at 249 facilities.²³ The number of facilities inspected within the framework of planned inspections was 73, on the basis of a complaint – 36 and on its own initiative – 140. As a result, Labour Inspection Office issued 195 administrative actions.²⁴ In 192 inspected cases, a warning was used as a sanction and in 3 cases, an administrative fine was applied.²⁵ In total, Labour Inspection Office issued 1766 instructions which included various articles of the Labour Code of Georgia. In case of article 24, in 199 cases instructions were issued on the ground of violation of duration of working time.²⁶

Article 2.2

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to provide for public holidays with pay.

The labour Code of Georgia guarantees public holidays with pay and public institutions use the same standard defined by the Code.²⁷ According to the Labour Code, an employee has the right to request other rest days instead of the holidays provided for by this Law, which shall be determined by an employment agreement.²⁸ If an employee works during the holidays referred, it shall be deemed overtime work and should be compensated.²⁹

Article 2.3

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to provide for a minimum of four weeks' annual holiday with pay.

According to the Labour Code of Georgia, an employee shall have the right to enjoy paid leave of at least 24 working days annually.³⁰ An employee working under arduous, harmful, or

²² The Georgian Law on conflict of interest and fight against corruption, art 13 (2).

²³ The Labour Inspection Office, 2021 Annual Report, available at: <https://www.moh.gov.ge/en/456/>, last seen: 29.06.2022.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ The Labour Code of Georgia, art 30 (1).

²⁸ The Labour Code of Georgia, art 30 (2).

²⁹ The Labour Code of Georgia, art 30 (3)

³⁰ The Labour Code of Georgia, art 31 (1).

hazardous labour conditions shall be granted additional paid leave of 10 calendar days annually.³¹ Based on the law, an employment agreement may define the terms and conditions different from those provided for by this article. Such terms and conditions shall not worsen the condition of an employee.³² A term in an employment agreement that either denies or ignores the right to enjoy paid leave annually shall be void.³³ Furthermore, if an employment agreement is terminated on the initiative of an employer, the employer shall compensate the employee for the unused leave in proportion to the duration of labour relations.³⁴

The Civil Service Law establishes the main standards of paid leave and internal regulations of public institutions additionally define: a) rules and procedures for taking leave; b) the period of advance notice of the head of the institution while taking leave; C) issuance/ refusal of the relevant legal act by the head of the public institution and relevant justification; D) the rules and conditions for calling a public servant from leave. The Civil Service Law stipulates the minimum length of paid leave for an employee - 24 working days³⁵ and the right to request arises 11 months after the appointment.³⁶ The Law of Georgia on Civil Service provides for an exception, according to which, with the consent of a responsible person, a civil servant may be granted leave before the expiration of this term.³⁷ The Civil Service Act provides for the possibility of paid leave in parts, although there is no defined minimum amount for any part.³⁸ The possibility of deferring unpaid paid leave by an official during a calendar year has also been established.³⁹ It is also necessary to agree on the periodicity of these days of leave with the head of the public institution.⁴⁰

According to the Civil Service Law, a civil servant will be granted leave at any time after the expiration of one year.⁴¹ The Civil Service Law does not contain a provision similar to the Labor Code, according to which a person may refuse to take paid leave in the current year, if this may adversely affect the normal conduct of the work process.⁴² However, some of the public institutions (Ministry of Environment and Agriculture; Ministry of Defense; Batumi

³¹ The Labour Code of Georgia, art 31 (2).

³² The Labour Code of Georgia, art 31 (4).

³³ The Labour Code of Georgia, art 31 (6).

³⁴ The Labour Code of Georgia, art 31 (5).

³⁵ The Georgian Law on Civil Service, art 62 (1).

³⁶ The Georgian Law on Civil Service, art 62 (2).

³⁷ The Georgian Law on Civil Service, art 62 (2).

³⁸ The Georgian Law on Civil Service, art 62 (2).

³⁹ The Georgian Law on Civil Service, art 62 (4).

⁴⁰ The Georgian Law on Civil Service, art 62 (4).

⁴¹ The Georgian Law on Civil Service, art 62 (4).

⁴² The labour Code of Georgia, art. 35 (1).

City Hall, Tbilisi City Hall) directly states in the internal regulations that the head of a public institution has the right to refuse to use public leave "due to work necessity, if it is not appropriate." Such regulations of the internal statutes contradict the law on public service.

Based on the research, civil servants of most the public institutions should follow the following recommendations during using paid leave: a) to use the leave days for not more than 2 weeks at a time; B) agree on a leave period and / or work out a joint schedule with other employees employed in their structural units; C) refrain from using the days off during the busiest working period for a public institution, about which the head of the public institution will provide information.⁴³

According to the Annual Report of Labour Inspection Office, as a result of conducted inspections on the implementation of labour Code, in 2021 a) in 10 cases, instructions were issued on the ground of violation of provisions on holiday; b) in 51 cases, instructions were issued on the ground of violation of provisions on the duration of leave; c) in 6 cases, instructions were issued on the ground of violation of the procedure for granting leave; d) in 24 cases, instructions were issued on the ground of violation of provisions on leave pay.⁴⁴

During 2021, 2,321 (ministries - 1393, self-governing cities - 928) civil servants in the Ministries and self-governing cities of Georgia took paid leave, which is 56% of the full-time civil servants (3941 civil servants) employed in the target public institutions for this period.⁴⁵ In the target ministries and self-governing cities, the number of fully paid leave (800 cases) by public servants is significantly lower than the number of partially paid leave (1,521 cases) and accounts for only 34% of the leave used. Consequently, 66% of civil servants enjoying the right to leave were only partially able to exercise this right. Furthermore, it should be noted that the rate of full utilization of annual paid leave by public servants employed in the target ministries is significantly lower (169 cases) compared to the self-governing cities (631 cases).⁴⁶ **Therefore, the exercise of paid leave has some difficulties in Georgian public service and requires further effective implementation.**

⁴³ Tsukhishvili N., Svimonishvili M., Georgian Young Lawyers' Association, Labour Rights in Civil Service, Ministries and Self-Governing cities, 2022. Available: <https://gyla.ge/ge/mod/publications/24>. [To be published in Georgian on 7 July 2022].

⁴⁴ The Labour Inspection Office, 2021 Annual Report.

⁴⁵ The target ministries of the research include all the Ministries except Ministry of Internal Affairs, the Ministry of Education and Science, the Ministry of Culture and Sport.

⁴⁶ Tsukhishvili N., Svimonishvili M., Georgian Young Lawyers' Association, Labour Rights in Civil Service, Ministries and Self-Governing cities, 2022.

THE RIGHT TO A FAIR REMUNERATION (ARTICLE 4)

Article 4.2

With a view to ensuring the effective exercise of the right to fair remuneration, the Parties undertake to recognize the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases.

According to the Labour Code of Georgia, overtime work shall be paid for at an increased hourly rate of remuneration.⁴⁷ **However, the rate of remuneration is not defined by the Law.** During the reform of Labour Code, the draft of the labour Code suggested 1.25 percent of hourly remuneration for overtime work based on the standard of International Labour Organization and the practice of Georgian common courts. However, this suggestion was denied by the Parliament of Georgia. Therefore, the Labour Code establishes, that the amount of the said payment shall be determined by agreement between the parties.⁴⁸

The conditions for overtime pay in public service are defined by the Law of Georgia on Remuneration in Public Institutions. According to the Law, overtime work performed by an employee is remunerated by issuing a salary supplement or giving a rest time in proportion to the overtime work.⁴⁹ According to the Law of Georgia on Remuneration of Labor in Public Institutions, overtime work and night work performed in a public institution, on holidays / weekends or in working conditions endangering health shall be remunerated according to the hours worked and salaries, within the limits established by this law.⁵⁰

Unlike the Labor Code of Georgia, the Law on Remuneration of Labor in Public Institutions does not stipulate that overtime work must be remunerated in the amount of the increased hourly rate of remuneration. Also, the law does not provide for a detailed rule for calculating overtime pay. Accordingly, public institutions have the discretionary power to determine for themselves the rules of overtime pay. The marginal amount of the salary supplement is as follows: the simultaneous amount of the salary supplement should not exceed the amount of 1-month salary for the relevant position, and the amount of the total salary supplement received during the year - 20% of the annual salary.⁵¹ A similar rule for overtime pay applies

⁴⁷ The Labour Code of Georgia, art 27 (2).

⁴⁸ The Labour Code of Georgia, art 27 (2).

⁴⁹ The Law on Remuneration in public institutions, art. 27.

⁵⁰ The Law on Remuneration in public institutions, art. 27.

⁵¹ The Law on Remuneration in public institutions, art. 26.

in the case of persons employed in public service under administrative and employment contracts.⁵²

Based on the research, **there is no unified approach in public institutions to the registration and remuneration of overtime work**, namely: part of the target public institutions registers and reimburses overtime work, part – no. Some public institutions register overtime work through the relevant electronic program and/or by preparing a report card by the immediate supervisor, which is the basis for remuneration for overtime work. Some public institutions do not/cannot record overtime work due to technical difficulties, however, after overtime work, the immediate supervisor informally reduces the work to be done in the coming days or gives days off, as well as this circumstance in the results of the annual evaluation. **Based on the research, the registration of overtime work performed by public servants became especially difficult during the pandemic period, due to the remote work of public servants and its remuneration was not possible.**⁵³

According to the Annual Report of Labour Inspection Office, as a result of conducted inspections on the implementation of labour Code, in 2021, a) in 117 cases, instructions were issued on the ground of violations of provisions on overtime work; b) in 155 cases, instructions were issued on the ground of violation of form, amount and time of payment of remuneration; c) in 28 cases instructions were issued on the ground of violation of provisions on deduction from remuneration.⁵⁴

According to the Annual Report of Labour Inspection office, in 2021, 110 clinics were inspected for the purpose of examining the lawfulness of additional remuneration/bonus for medical personnel involved in the process of managing Covid-19. Based on the inspections, the Office issued 86 administrative acts on violation of the Labour Code in these aspects. Labour Inspection Office imposed warnings as sanctions in 78 cases and administrative fines in 3 cases.⁵⁵

During 2021, in the Ministries and self-governing cities, 1949 civil servants performed overtime work (civil servant - 1073; person employed under employment contract - 811, person employed under administrative contract - 64), of which there were - 481 civil servants employed in ministries (297 civil servants, A person employed under a labour contract - 184),

⁵² The Law on Remuneration in public institutions, art. 13 and art. 16.

⁵³ Tsukhishvili N., Svimonishvili M., Georgian Young Lawyers' Association, Labour Rights in Civil Service, Ministries and Self-Governing cities, 2022.

⁵⁴ The Labour Inspection Office, 2021 Annual Report.

⁵⁵ *Ibid.*

and in the self-governing cities - 1467 civil servants (public servant - 776, a person employed under a labour contract - 627, a person employed under an administrative contract - 64). During 2021, the amount of the salary supplement paid for overtime work amounted to GEL 1,421,721 (civil servant - GEL 993,335, a person employed under a labour contract - GEL 428,386), of which 71 were paid by the Ministries. Namely 1 017 646 GEL (public servant - 698 946 GEL, a person employed under a labour contract - 318 700 GEL), and self-governing cities - 29% of the amount issued, 404 075 GEL (public servant - 294389 GEL, a person employed under a labour contract - 109 686 GEL). **Based on the research, the majority of civil servants surveyed estimate that they have to work overtime at least once a week (43%) or twice a week (31%), and most of them receive overtime pay in the form of a salary supplement or bonus. However, one-fifth of the surveyed public servants were not remunerated for overtime work.**⁵⁶

THE RIGHT TO ORGANISE (ARTICLE 5)

With a view to ensuring the effective exercise or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

The Civil Service Act establishes the right of a public servant to form a trade union or to be a member of a trade union in order to protect his or her rights.⁵⁷ It also defines the possibility of being elected to the governing bodies of a trade union and participating in its activities.⁵⁸ It is noteworthy that the officer should carry out such activities in his spare time without pay.⁵⁹ In addition, the rules for establishing a trade union and other peculiarities are established by the Law of Georgia on Trade Unions.

The Civil Service Law also prohibits discrimination against a public servant, restriction of his or her legal rights, freedoms and legitimate interests, or obstruction of their exercise on the

⁵⁶ Tsukhishvili N., Svimonishvili M., Georgian Young Lawyers' Association, Labour Rights in Civil Service, Ministries and Self-Governing cities, 2022.

⁵⁷ The Civil Service Law, art 67 (1).

⁵⁸ The Civil Service Law, art 67 (1).

⁵⁹ The Civil Service Law, art 67 (1).

grounds of membership of a trade union.⁶⁰ In addition, the additional authorities of the trade unions are defined, which implies the participation of a representative of the trade union in the competition decision-making commission.⁶¹ Also, upon approval of the internal regulations of a public institution, a copy of it shall be sent to the professional association of that institution.⁶²

Unlike the Civil Service Law, the Labour Code additionally stipulates: a) the right of the employees' union to develop its own charter and regulations, to form a federation, a confederation and to join it. Such a union, a federation, a confederation has the right to join an international union;⁶³ b) the right of the employee to participate in the activities of the employees' union during working hours in agreement with the employer.⁶⁴

According to the information provided by the Ministries and self-governing cities, during 2021, there is no professional union and/or union of public servants in public institutions. The absence of professional union may be explained by the lack of information among civil servants regarding the professional associations and their influence on the decision-making process, a low level of trust towards professional union and the fear of discriminatory behaviour by the supervisor or public institution. Based on the research, most public servants believe that it is possible to establish trade unions in their organization, however 38% of the surveyed public servants expressed their willingness to join a trade union, although only 24% of respondents agreed to pay the membership fee.⁶⁵

Sincerely,

Human Rights Program Director

Mariam Svimonishvili



⁶⁰ The Civil Service Law, art 9.

⁶¹ The Civil Service Law, art 38 (1).

⁶² The Civil Service Law, art 123 (2).

⁶³ The Labour Code of Georgia, art 52.

⁶⁴ The Labour Code of Georgia, art. 53 (2).

⁶⁵ Tsukhishvili N., Svimonishvili M., Georgian Young Lawyers' Association, Labour Rights in Civil Service, Ministries and Self-Governing cities, 2022.