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Equality and Labour Relations in Georgia: The Need for Legislative Amendments

Introduction

Ensuring the equality of certain groups in the sphere of labour relations remains a challenge in Georgia, in terms of legal rights as well as in practice. The legislative framework to address discrimination was established in 2013-2014.¹ However, existing norms do not fully respond to the existing types of discrimination and the scale of inequality. In addition, the norms fall short of the requirements of the European anti-discrimination law.² Consequently, the Public Defender³ and NGOs call on the government to realize the need to make relevant changes.⁴ According to the Public Defender's 2017 annual report, discrimination or the encouragement of discrimination was established in 16% of the cases heard by the Ombudsman's office; in 70% of the cases the proceedings have been suspended, as the party in question used an alternative remedy (court), or information (evidence) about the complaint was not provided by the defendant.⁵ According to the same data, the highest number of documented rights violations occurs at the work place.⁶ In this regard, women and persons with disabilities face particular challenges. The employment rate for persons with disabilities is still very low in the public sector (as of 2016, 0.1% of employees are persons with disabilities) and there is no indication that this indicator is improving; exact data from the private sector is not available.⁷ Regarding women, inter alia – gender-based discrimination, including frequent cases of sexual harassment at the workplace, unequal remuneration, termination of employment and low representation of women in decision-making – are particularly problematic.⁸

Under the framework of the Association Agreement⁹ as well as the visa liberalization process¹⁰ Georgia is obliged to review the national anti-discrimination legislation. By 2017, Georgia was responsible for implementing the following three equality directives: (1) Racial Equality Directive (2000/43);¹¹ (2) Employment Equality Directive (2000/78);¹² (3) Gender Equal Access to Goods and Services Directive (2004/113).¹³ The government has not met the agreed deadlines, however.

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In response to the above-mentioned commitments, the Parliament of Georgia is considering government-initiated legislative amendments, which aim to implement the equality directives in the field of labour relations.¹⁴ This process represents an important opportunity for the country to create an effective legislative framework against discrimination, based on best practices and taking into consideration European anti-discrimination legal standards. Unfortunately, however, the draft amendments do not fully meet Georgia's obligations to the EU and are limited to regulating the issues of minimal impact, ignoring the critical and complex issues that exist in Georgian reality today.

The legislation does not acknowledge all forms of discrimination

According to the existing legislation, in labour relations, individuals are supposedly protected from direct and indirect discrimination. Furthermore, the normative base establishes several special categories of discrimination. However, the legislation ignores several forms of discrimination such as sexual harassment,¹⁵ denial of reasonable accommodation, intersectional discrimination and segregation. Amendments related to these types of discrimination are not covered by the draft law, despite the directives' guidelines and established practices. In addition, it is problematic that the corresponding labour legislation regulating the civil service does not mention discrimination issues – which will not be addressed by the planned legislative amendments.

Disregarding sexual harassment as a form of discrimination

Georgian legislation does not define sexual harassment as a form of discrimination and does not create the necessary mechanisms to fight against it. Consequently there is no clear punishment for unwanted verbal, non-verbal or physical acts of a sexual nature, which intend or cause harm to human dignity, namely by creating an intimidating, hostile, degrading, humiliating or offensive environment (which is a classical definition of sexual harassment). Despite the extent of sexual harassment in Georgia, the detection rate of such cases is low. This is encouraged by the fact that sexual harassment is not considered a form of discrimination by Georgian legislation,¹⁶ which, in itself, contradicts the EU Equality Directives.¹⁷ Georgia has also undertaken the responsibility to prohibit sexual harassment under the Istanbul¹⁸ Convention, Convention on the Elimination of All Forms of Discrimination against Women,¹⁹ Convention on Discrimination in Employment and Occupation.²⁰

Due to the high risk of sexual harassment in the labour market,²¹ a significant number of European Countries (for example, Germany, Ireland,²² Croatia, Poland, Czech Republic, Spain) not only acknowledge sexual harassment as a form of discrimination, but also hold employers legally responsible in case they do not take active measures against sexual harassment. Such an approach is not reflected in Georgian legislation. Consequently, it is important that all future legislation takes into account the concept of sexual harassment and creates effective protection mechanisms/regulations.

Disregarding the denial of reasonable accommodation as a form of discrimination

Georgian legislation does not take into account the principle of reasonable accommodation in the field of labour and does not consider the denial of reasonable accommodation as a form of discrimination. Obviously, this is a major legal shortcoming for the realization of the equal rights' of vulnerable groups, including persons with disabilities. The problem becomes even more serious in the current context, i.e. the fact that the current legislation and practices are ineffective in terms of including persons with disabilities in the labour market.²³

The realization of the principle of reasonable accommodation implies making the necessary and appropriate modifications and corrections at the work place for individual employees whenever it does not cause irreversible and unjustified difficulties for the employer. The Employment Equality Directive (2000/78) acknowledges the principle of reasonable accommodation and calls on Georgia to implement it.²⁴ Furthermore, Georgia acknowledges the denial of reasonable accommodation as a form of discrimination as it ratified the Convention on the Rights of Persons with Disabilities (CRPD). However, to date, the principle has not been included in the current legislation and corresponding policies.²⁵

It is essential that labour and anti-discrimination legislation reflect the minimum requirements of both the directive and the convention: take into account the principle of reasonable accommodation; and establish a denial of reasonable accommodation as a form of discrimination.

Weak and ineffective mechanisms for the implementation of the anti-discrimination policy

For years, the inefficiency of the protection mechanisms against discrimination has weakened the anti-discrimination policy – a problem that is manifested in the limited mandate and the insufficiency of enforcement mechanisms. So far, existing mechanisms for addressing discrimination are limited to the Public Defender Office and the Court of Georgia. The Labour Conditions Inspection Department, which is a newly created inspection body, cannot use its labour rights' inspection mandate in practice and thus is unable to identify and respond to cases.²⁶

The Public Defender's Office is a national equality body. Several important circumstances contribute to its inefficiency, including the fact that the legislation does not oblige private parties to provide information to the Public Defender. The Public Defender does not have the right to use sanctions and cannot even ensure that private companies/parties implement its recommendations. In addition, the 3-month period for applying to the court makes it impossible to use the Public Defender's mechanism: the Public Defender suspends proceedings when the dispute is pending in court. Victims often choose to address the court. Consequently, the Public Defender terminates proceedings when there is a court decision on the case. On the other hand, the time frame to address the court, notably three months, is unreasonably short and is an obstacle for the victim in question to fully

prepare a case outlining discrimination.²⁷

The Labour Conditions Inspection Department, which has been formed as a responsible organ for ensuring labour safety, is not a proper instrument for rights protection, as its powers do not apply to a large scale of labour rights, including the identification of discrimination cases. Thus, its mandate is significantly restricted, both in terms of its areas of work and the spheres where its authority is exercised.

Therefore, the existing system against discrimination does not fulfil its main responsibility to identify instances of discrimination and adequately address them – which undermines the effectiveness of Georgia’s equality policy. The establishment of mechanisms to protect human rights is not a self-sufficient goal in itself; it is also essential to ensure the policy’s efficiency and effectiveness, which can only be achieved by providing appropriate enforcement mechanisms. The need for strong enforcement mechanisms has been identified by NGOs²⁸ as well as the Public Defender, who included it in the 2015 legislative proposal,²⁹ which has not yet been discussed by parliament.³⁰

Considering these challenges, it is important to increase the mandate and efficiency of anti-discrimination mechanisms.

Recommendations

Based on the above, the following recommendations are being put forward:

To the Parliament of Georgia:

- Georgian legislation is expanded to include sexual harassment, denial of reasonable accommodation, intersectional discrimination and segregation as forms of discrimination and to establish the responsibilities of an employer to prevent and address sexual harassment;
- The framework of the anti-discrimination regulation is enlarged to include the entire public sector;
- The mandate of the Labour Conditions Inspection Department and the Public Defender should be enhanced by an effective enforcement mechanism, including the ability to use sanctions.

To the Parliament of Georgia and Ministry of Labour, Health and Social Affairs of Georgia:

- In order to create an appropriate enforcement mechanism, the Department of Labour Conditions Inspection should be given the mandate to respond to all cases of discrimination.

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- ¹ Organic Law of Georgia on “Changes to the Labour Code of Georgia”, N729-II (2013); Law of Georgia on “Elimination of all Forms of Discrimination”, N2391-II (2014)
- ² Specifically, legislative frames under the EU anti-discrimination directives and the relevant case law
- ³ According to the Constitution of Georgia, the Public Defender exercises supervision over the protection of human rights and freedoms within the territory of Georgia. See: “The Public Defender called on the Parliament to make amendments to strengthen the anti-discrimination mechanism” <<http://www.ombudsman.ge/en/news/public-defender-calls-on-parliament-to-adopt-amendments-for-strengthening-anti-discrimination-mechanism.page>> accessed 19 May 2018
- ⁴ Human Rights Education and Monitoring Center (EMC), Public Defender, as an Equality Mechanism (2017) <<https://emc.org.ge/2017/08/01/emc-343/>> (in Georgian) accessed 19 May 2018
- ⁵ Public Defender’s report on The Situation of Human Rights and Freedoms - 2017, 124 (2018). <<http://www.ombudsman.ge/uploads/other/4/4957.pdf>> accessed 19 May 2018.
- ⁶ *ibid.*
- ⁷ Human Rights Education and Monitoring Center (EMC) & Partnership for Human Rights (PHR), Rights of Persons with Disabilities, Preliminary Results of Monitoring of the Implementation of the Human Rights-related Strategies and Action Plans (2016-2017), 88 (2018)
- ⁸ Union “Sapari”, Gender Equality and Women’s Rights, Preliminary Results of Monitoring of the Implementation of Human Rights-related Strategies and Actions Plans (2016-2017), 11-130 (2018)
- ⁹ Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, 120, Art. 348, 349, Annex XXX, 601- 605 (27 June 2014); Association Agenda between the European Union and Georgia - 2017-2020, 10, 18-19, 46
- ¹⁰ Report from the Commission to the European Parliament and the Council: First Report under the Visa Suspension Mechanism, COM (2017) 815, 12 (20 December 2017) <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/news/20171220_first_report_under_suspension_mechanism_en.pdf> accessed 19 May 2018
- ¹¹ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180 (Racial Equality Directive 2000/43/EC)
- ¹² Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303 (Employment Equality Directive 2000/78/EC).
- ¹³ Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373 (Gender Equal Access to Goods and Services Directive 2004/113/EC)
- ¹⁴ Draft Law No. 07-2/157/9 <<https://info.parliament.ge/#law-drafting/14955>> (in Georgian) accessed 19 May 2018.
- ¹⁵ Georgian legislation on gender equality stipulates that “any unwanted verbal, non-verbal or physical behaviour of sexual nature with the purpose or effect of violating the dignity of a person or creating an intimidating, hostile, or offensive environment” is not allowed in labour relations. In addition, according to the general rules of ethics and behaviour in a public service, sexual harassment is inadmissible. However, there is no explicit indication that sexual harassment is a form of discrimination and this concept is not included in the anti-discrimination and labour laws, which limits the verification of claims of sexual harassment using the safeguard mechanisms
- ¹⁶ Public Defender’s report on the Situation of Human Rights and Freedoms in Georgia - 2017
- ¹⁷ Gender Equal Access to Goods and Services Directive (2004/113) prohibits sexual harassment. The directive does not cover the labour sphere, however equal treatment directive (2006/54) covers it, and the deadline for its normative meaning to be reflected in the legislation in 2018. See: Gender Equal Access to Goods and Services Directive 2004/113/EC, Art. 2(d); Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and

occupation (recast) (Equal Treatment Directive 2006/54/EC), OJ L 204, Art. 2(1)(d)

- 18 See: Convention on Preventing and Combating Violence against Women and Domestic Violence, CETS No.210, Istanbul, 11.V.2011, Art. 40. Chart of signatures and ratifications of Treaty 210 <<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures?desktop=true>> accessed 19 May 2018
- 19 General Recommendation No. 19: Violence against women, UN Committee on the Elimination of Discrimination against Women (CEDAW), para. 18 (1992); General Recommendation No. 12: Violence against women, UN Committee on the Elimination of Discrimination against Women (CEDAW), para. 18 (1989)
- 20 On application of the principles of the Convention 111 ILO standardizes: “the elimination of sexual abuse in work relations should be an integral part of a legislative or other policy, independently of policies on discrimination on the basis of sex”. See: Equality in Employment and Occupation, Special survey on equality in employment and occupation in respect of Convention No. 111, para. 179 (1996); C-111, Discrimination (Employment and Occupation) Convention (1958), Art. 1
- 21 Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, CETS No.210, Istanbul, para. 209 (11.V.2011) <<https://rm.coe.int/16800d383a>> accessed 19 May 2018
- 22 Gender Equal Access to Goods and Services Directive 2004/113/EC European Implementation Assessment, the European Union, 1-17 (2017)
- 23 Public Defender’s monitoring report on the State Programmes on Promoting Employment of Persons with Disabilities (2017); Human Rights Education and Monitoring Center (EMC), Rights of Persons with Disabilities: Preliminary Monitoring Results on Realisation of Human Rights Protection Strategies and Action Plans in Georgia 2016-1017 (2017)
- 24 Employment Equality Directive 2000/78/EC, Art. 7(2)
- 25 Convention on the Rights of Persons with Disabilities, A/RES/61/106, Art. 3 (24 January 2007)
- 26 Subdivision of the Ministry of Labour, Health and Social Affairs of Georgia, created in 2015. See: The decree of the Minister of Labour, Health and Social Affairs of Georgia “On Approval of the Provision of the Subdivision of the Ministry of Labour, Health and Social Affairs of Georgia”, №01-1/n (6 January 2015)
- 27 Law of Georgia on „Civil Procedure Code of Georgia“, №1106 –I, Art. 3632 (2)
- 28 Coalition for Equality, Enforcement of Anti-Discrimination Legislation: One Year Results (2015); Human Rights Education and Monitoring Center (EMC), Public Defender, as an Equality Mechanism (2017)
- 29 Legislative Proposal <<http://www.ombudsman.ge/ge/diskriminaciis-preveneciis-meqanizmi/siax-leebi/sakanonmdeblo-winadadeba-saqartvelos-parlaments-diskriminaciis-yvela-formis-agmofxvris-shesaxeb-kanonis-gaumdjosebesebis-miznit.page>> (in Georgian) accessed 19 May 2018
- 30 Emphasis should be placed on the fact that Human Rights and Civil Integration Committee and Legal Issues Committee adopted a positive conclusion on the draft law. In addition, this process is being closely watched by the EU. See: Association Implementation Report on Georgia 2017, European Commission, SWD (2017) 371, 4 (9 November 2017)

