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EQUAL OPPORTUNITIES FOR MEN AND WOMEN IN THE LABOUR MARKET IN THE CONTEXT OF THE EU-GEORGIA ASSOCIATION AGREEMENT

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Introduction

Equality between men and women is enshrined in the Constitution (of 1995), as well as laws and number of policies and strategies in Georgia (*see* Annex). The progress the country has made in setting up and refining its legislative and policy frameworks has been widely acknowledged nationally¹ as well as internationally.² Nevertheless, in terms of practice, gender equality in almost all fields of life remains a considerable challenge for Georgia and a daily struggle for women and women's rights activists here. Effective implementation of those laws and policies remains poor, there is low public awareness about existing provisions and no effective enforcement mechanisms.³ The situation in a number of spheres, including gender equality in the labour market and work rights, requires special attention.

Among Georgia's other obligations and commitments, enhancing "gender equality and ensuring equal treatment between women and men in social, political and economic life" is Georgia's obligation under EU-Georgia Association Agreement.

¹ Georgian Young Lawyers' Association and Partnership for Human Rights, Analysis of Georgian Labour Legislation – Gender-based Discrimination in the Workplace and Its Legal Implications, 2014

² Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Georgia, A/HRC/32/42/Add.3 (2016) [hereinafter UN Special Rapporteur, 2016] and Committee on the Elimination of Discrimination Against Women, Concluding observations on the combined fourth and fifth periodic reports of Georgia, CEDAW/C/GEO/CO/4-5 (2014) [hereinafter CEDAW report 2014]

³ CEDAW Report 2014

General Context of Women's Rights and Gender Equality in Georgia

Gender discrimination and violence [VAW] against women, particularly, domestic violence, including physical, sexual and psychological abuse, is still considered as a private matter and not a public concern in most parts of the country, and is hence widely and silently accepted by many in Georgia, owing to the persistence of entrenched patriarchal attitudes and gender stereotypes regarding the roles and responsibilities of women and men in the family and in society. These are even further strengthened by the increased sexualization of women in the media, undermining women's social status, participation in public life and professional careers.^{4 5}

As further noted by the UN Special Rapporteur on Violence against Women,

The incidence of domestic violence is still underreported, due to inter alia the lack of public awareness about this societal problem, the fear of retaliation and stigmatization, the lack of trust in law enforcement agencies, as well as the existing services and protection mechanisms for victims of violence.⁶

The Role of Economic Factors in Gender Discrimination and VAW

In addition to strong gender stereotypes and conservative moors of the society, root causes of gender inequality and VAW often can often be traced in economic factors. Available evidence suggests a direct link between women's economic independence with women's safety and dignified life, and vice versa – women with better socio-economic conditions are less prone to violence and discrimination.

As UN Special Rapporteur noted in her report about Georgia “ among the factors that most likely increase the risk of intimate-partner violence are discriminatory gender stereotypes and patriarchal attitudes, women's low awareness of their rights, the occurrence of child and forced marriages and the lack **of economic independence, among others.**”⁷

The most striking evidence of that link between gender discrimination/VAW and economic factors is the study carried out in Georgia about selective abortion [prenatal sex abortion].⁸ The study shows that “among the reasons for which families decide to undergo a sex-selective abortion are the greater value placed on sons, the pressure on couples to have a son, as **well as economic concerns, including the assumption that boys are more likely to provide financial support to their parents.**”⁹

According to the Public Defender's special report on violence against women

⁴ i.d.

⁵ UN Special Rapporteur 2016

⁶ i.d.

⁷ i.d.

⁸ According to the Special Reporter – citing a local study conducted by NGOs in which 1600 women were interviewed - the number of selective abortions was high, in particular in regions inhabited by ethnic minorities. She regrets that no unified data were available on the prevalence of this practice.

http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/GEO/INT_CEDAW_NGO_GEO_17610_E.pdf

⁹ i.d.

...in 2014 and 2015, the most common forms of domestic violence were psychological together with physical violence. According to the 2009 National Research, insults (14.3%), belittling/humiliations (5.3%) intimidation (5.1%) and threats (3.8%) were the most common components of psychological abuse reported by the women interviewed. 35.9% of women reported their exposure to acts intended to control their behaviour, **with a higher prevalence among the women with incomplete secondary education (60% of them) than those having completed their secondary, technical or higher education (35% of them) and among women who do not earn money (76.6%).**¹⁰

According to the 2010 reproductive health survey, verbal and/or physical abuse in marriage was, in general, greater among women with less formal education and **lowest socioeconomic status**, as well as among Azeri women or from other ethnic backgrounds.¹¹

Social stereotypes strengthening women's economic inequality

While, as showed above, womens' low (or poor) socio-economic status and financial condition makes them more vulnerable to abuse, it is concerning that social stereotypes nearly forbid women (especially outside the capital and big cities) to strive towards economic empowerment, thus – leaving them vulnerable to abuse.

UN Special Rapporteur noted:

....especially in rural areas, a lot is yet to be done to change patriarchal norms and public attitudes towards gender roles. **According to a 2014 Survey on Men and Gender Relations in Georgia, 89 of the respondents agreed that the main responsibility of women is to take care of their family.**¹²

Such social attitudes cause those women who are employed, to carry out full housework activities, in addition to official job activities, since there is no culture of equal division of household and childcare activities among men and women in Georgia. This makes women who want to participate in public life or strive towards minimum financial autonomy - be overworked and unacknowledged.

Labour Market and Gender Equality

Gender barriers while entering the labour market, as well as the issues of equal pay for equal work, prohibition of discrimination and career advancement remain a problem for women.¹³

¹⁰ UN Special Rapporteur, 2016

¹¹ Reproductive Health Survey Georgia, final report, National Center for Disease Control and Public Health, Ministry of Labor, Health, and Social Affairs, National Statistics Office of Georgia,2010,p.312.

¹² Men and Gender Relations in Georgia, Institute of Social Studies and Analysis,2014,p.12.

¹³ Public Defender of Georgia, Annual Human Rights Report, 2015 [hereinafter PDO Report 2015]

Although better than some 10 years ago, Georgia's legislation pertaining to labour relations and gender equality contains several important flaws.¹⁴

Interview and pre-contractual stage¹⁵

One of the key element of the right to work is the right to free choice of employment and access to work. Until 2013 amendments Labour Code of Georgia (LCG) failed to explicitly refer to prohibition of discrimination on pre-contractual stage. Therefore observance of the principle of gender equality and controlling of different perceptions and treatment of men and women was impossible.

Amendments of June 12, 2013 introduced a new provision in paragraph 3 of Article 2 concerning antidiscrimination in pre-contractual relations based on different grounds, including sex. However, as far as the LCG does not regulate *advertisement of vacancy* and *interview process*, application of the LCG new provision will only depend upon the judicial interpretation.

There is no comprehensive statistical data, however based on general overview of job-fear sites it may be stated that quite often employers set gender as a precondition employment. LCG does not specify the means of obtaining information about the candidate. There are no regulations on admissibility of interview questions. Moreover, the LCG does not regulate rights of pregnant women during pre-contractual stage; nor does the LCG provide inadmissibility of questions on pregnancy. Thus this stage of labour relations is not regulated, leaving a room for interfering in personal life of a candidate and arbitrary decision-making.

Wage gap

The law does not define the minimum amount of wage. The Decree N351 of the President of Georgia dated 4 June 1999, approved 20 GEL as a minimum wage. This amount is now 8 times less than the living-wage and can in no way be considered adequate.¹⁶

According to 2015 Global Gender Gap Report, Georgia belongs to a lower-middle income group. Georgia is 60th among 145 countries by women's economic participation and opportunity and 83rd by the labor force participation where men (79) exceed women (61). According to the same data, Georgia ranks 25th by the indicator of wage equality for similar work. The ratio of average income indicator differs by sexes with Georgia ranking 100th among 145 countries. **An average annual income of man is twice as many as that of a woman, amounting to 10,272 USD as compared to 5,183 USD earned by a woman on average.**¹⁷

¹⁴ See e.g., Georgian Young Lawyers' Association and Partnership for Human Rights, Analysis of Georgian Labour Legislation – Gender-based Discrimination in the Workplace and Its Legal Implications, 2014, see further Article 42 of the Constitution, Gender Discrimination in Work Relations, 2014

¹⁵ On this issue, see further detailed analysis in Georgian Young Lawyers' Association and Partnership for Human Rights, Analysis of Georgian Labour Legislation – Gender-based Discrimination in the Workplace and Its Legal Implications, 2014

¹⁶ PDO report 2015

¹⁷ i.d.

Sexual harassment at workplace

Reportedly, sexual harassment at workplace is “the most widespread and at the same time, underreported problem negatively affecting the quality of performed work, endangering the wellbeing of women and men and undermining the degree of gender equality.”¹⁸ However, no exact data is available on the prevalence of sexual harassment at workplace.¹⁹

Existing legal framework does not provide for legal response to sexual harassment at workplace.²⁰ Georgia has signed but still not ratified the Istanbul Convention, which addresses this issue, among others. However most recently the Ministry of Justice has sent a relevant legislative package to the Cabinet of Ministers for approval, after which the package will go to the Parliament for adoption. Hopefully, adoption of this package, in addition to many other gender equality problems, will create normative framework to effectively address workplace sexual harassment.

Lack of institutional mechanisms for the protection of labour rights

One of the key problems in the field of work right, including from gender equality perspective, is the lack of a state institution responsible for the monitoring of the labour rights and the safe working environment. Although in early 2015, the State Programme for Monitoring the Labour Conditions was approved by the Governmental decree, this cannot be considered as an effective monitoring mechanism. In particular, in the framework of the programme, only those enterprises are monitored, which express their consent beforehand in case of finding the violations, the monitors have the right to issue the non-binding recommendations.²¹ In case of the lack of consent of the employer, except for implementing inspection for identifying the forced labour and labour exploitation, no mechanism exists for identifying the violations and responding to them.²² In addition, the mandate of the programme does not include e.g. monitoring the issues relevant for gender discrimination, e.g., compliance of interview stage or concluded contracts with the laws of Georgia, etc.

Recommendations

- Introduce measures, including awareness raising campaigns, to counter gender stereotypes and fight effectively gender discrimination and VAW
- Define sexual harassment in the law and determine corresponding system of sanctions.

¹⁸ i.d.

¹⁹ UN Special Rapporteur 2016

²⁰ Article 40 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) sets the obligation to states to take all measures to make any form of sexual harassment punishable under a national law.

²¹ PDO report 2015

²² PDO report 2015

- Public as well as private institutions must establish an internal institutional mechanism of preventing sexual harassment and respond effectively to such occurrences
- Introduce independent, fully-fledged Labour Inspection with the mandate of, inter alia, monitoring gender dimension of labour relations
- Regulate the issue of minimum wage by law, so that the State ensures the protection of the employees from receiving the tight wages.
- Introduce measures to address gender wage gap

Annex

Georgia has the following laws in place:

(a) Act on the Elimination of All Forms of Discrimination, in 2014, which includes the prohibition of discrimination based on sex, as well as on sexual orientation and gender identity,

(b) Act on Internally Displaced Persons — Persecuted from the Occupied Territories of Georgia, providing for protection of the rights of internally displaced persons and their reintegration, in 2014;

(c) Amendments to the Labour Code, enhancing the protection of the rights of women in the workplace, in 2013;

(d) Amendments to the Criminal Code, introducing provisions defining the scope and categories of domestic violence, in 2012;

(e) Amendments to the Election Code and the Organization Act on the Political Unions of Citizens, providing for financial incentives to political parties that nominate women candidates for parliamentary elections, in 2011 and 2013, respectively;

(f) Act on Gender Equality, defining legal mechanisms and conditions for the implementation of equal rights and opportunities of women and men, in 2010;

(g) Amendments to the Criminal Code, criminalizing the use of services of (statutory) victims of trafficking in persons, in 2007.

As far as the policy framework is concerned, Georgia has the following:

(a) Strategy of Health Protection System 2014-2020, aimed at promoting the health of mothers and children;

(b) National Action Plan on Gender Equality for 2014-2016;

(c) National Action Plan for the Implementation of the Gender Equality Policy for 2007-2009;

(d) National human rights strategy and action plan for the period 2014-2015; which had as specific objective the realization of gender equality through the empowerment of women and the fight against domestic violence

(e) Action Plan for Combating Domestic Violence and Implementing Measures for the Protection of Victims of Domestic Violence for 2013-2015;

(f) National action plan for the implementation of Security Council resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009) and 1960 (2010) on women and peace and security, covering the period 2012-2015;

The 2014-2016 Gender Action Plan elaborated by the Ministry of Internal Affairs was adopted with the objective to improve gender equality in all aspects of political, economic and social life.

To implement these laws, policies/strategies, the following bodies have been set up

(g) Gender Equality Council, as a standing parliamentary body, in 2009;

(h) Permanent Inter-Agency Coordination Council for the Prevention of Domestic Violence, in 2008.

In addition, Georgia is a party to the following relevant international instruments:

(a) Convention on the Rights of Persons with Disabilities, in 2014;

(b) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2010;

(c) 1954 Convention relating to the Status of Stateless Persons, in 2011;

(d) United Nations Convention against Transnational Organized Crime; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; and the Protocol against the Smuggling of Migrants by Land, Sea and Air, in 2006.