

SHORT NOTE ON THE COMPLIANCE OF GEORGIAN LABOUR LEGISLATION WITH INTERNATIONAL LABOUR STANDARDS IN LIGHT OF EU GENERALIZED SYSTEM OF PREFERENCES

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Abstract: As it is well known under the Council Regulation No 980`2005 (EC) of 27 June 2005 and the Commission Decision 2005`924`EC of 21 December 2005, Georgia benefits from a special incentive arrangement for sustainable development and good governance, the so-called Generalized System of Preferences or the GSP+.

The Council Regulation contains detailed rules on how this regime should be applied (Articles 8-11). In order to qualify for GSP+ the country should meet two types of criteria. First, it should belong to the group of so-called vulnerable countries or, in other words, those countries which lack a diversification in their exports and are insufficiently integrated into the international trading system (the Regulation precisely defines the criteria for the determination of a “vulnerable” country) and, second, the country should have ratified and effectively implemented a number of international conventions. The mandatory conventions are listed in Annex III of the Regulation. The conventions are divided into two parts. Those referring to:

- Core human and labour rights UN`ILO Conventions (Annex III, Part A) and
- Conventions related to the environment and governance principles (Annex III, Part B).

Pursuant to the Regulation, the Commission will monitor the ratification of the conventions and their effective implementation upon a regular basis. Before the expiration of the validity of this Regulation (31 December 2008) and in time for the discussion on the next Regulation, the Commission shall present to the Council a report concerning the status of the ratification of such conventions including recommendations by monitoring bodies. Consequently, the issue of granting the GSP+ arrangement to Georgia in the future will depend upon the Commission’s assessment of the status of the implementation of relevant conventions by Georgia.

Key Words: Labour Law, Employment, Contract.

1. Compliance of Georgian Legislation with International Labour Standards

As mentioned above, those conventions relating to the ILO make up a major part of those listed in the Annex of the Regulation. Georgia has ratified all (eight) labour conventions listed in the Annex. These conventions are:

- Convention concerning Minimum Age for Admission to Employment (No.138);
- Convention concerning the Prohibition and Immediate Action for the Elimination of the

Worst Forms of Child Labour (No.182);

- Convention concerning the Abolition of Forced Labour (No.105);

- Convention concerning Forced or Compulsory Labour (No.29);
- Convention concerning Equal Remuneration of Men and Women Workers for Work of

Equal Value (No.100);

- Convention concerning Discrimination in Respect of Employment and Occupation (No.111);
- Convention concerning Freedom of Association and Protection of the Right to Organise (No.87);
- Convention concerning the Application of the Principles of the Right to Organise and to

Bargain Collectively (No.98).

In this article, we will review the formal transposition of the requirements of these conventions into the Georgian legislation but will not touch upon the problems of their effective implementation given that this is a subject of a separate and thorough study. Attention, therefore, will be given to only those conventions which are not sufficiently reflected in Georgian labour law. The assessment of legislative gaps which appears below is mainly based upon the assessments made by the ILO in various Experts Committee documents because the European Commission will use these very ILO assessments for their reports.

Moreover, we will briefly review the compliance of Georgia's Labour Legislation with the provisions of the European Social Charter of the Council of Europe for this question has been repeatedly voiced by the European party within the context of the GSP.

2. Convention concerning Minimum Age for Admission to Employment

Georgian legislation meets the provisions of the Convention almost in full. Those issues which still remain outstanding are discussed below.

Pursuant to the Convention, the safeguards provided therein shall apply equally to both hired labour as well as all other types of labour (including self-employment). Since the Labour Code regulating all main aspects of the protection of the labour of minors applies only to hired labour, the issues of self-employed minors remains outstanding. Herein, it should be mentioned that Georgian legislation does not regulate the working conditions of self-employed persons.

According to the Labour Code (Article 4 II), employees between the ages of 14 to 16 may be employed only in so-called "light" work. In order to bring the legislation in compliance with Article 7 of the Convention, the types of light work and the working hours and labour conditions of minors employed in such work should be clearly specified.

According to Article 4 III of the Labour Code, minors under the age of 14 may be employed in the field of art and culture. This exception is also provided for by the Convention although Article 8 of the Convention additionally requires that a competent authority shall issue a permit in each particular case thereby setting the limits of the working hours and the conditions under which the employment of a minor is allowed.

In accordance with Article 9 I of the Convention, all necessary measures including the provision of appropriate penalties shall be taken by the competent authority to ensure the effective enforcement of the provisions of the Convention. Upon the abolition of the Labour Inspectorate by the new Labour Code, no administrative body is available to monitor the implementation of labour legislation thus putting the "effective enforcement" of this Article under question. Additionally, pursuant to Article 9 III of this Convention, an employer is obliged to maintain a special register of employed minors which is provided for under Georgian legislation.

3. Convention concerning Equal Remuneration of Men and Women Workers for Work of Equal Value

Article 2 III of the Labour Code provides for a general restriction of discrimination in labour relations including on the grounds of sex. Consequently, any differentiation between women and men in terms of their remuneration on these grounds is prohibited in accordance with this provision. This general norm of the law, however, might not be considered as a sufficient legal mechanism of the comprehensive and effective application of the equality of women and men as guaranteed under the Convention. Namely, the cornerstone of the Convention is the notion of “work of equal value” allowing for quite a broad application of this principle. In particular, “work of equal value” includes but goes beyond equal remuneration for “equal,” the “same” and “similar” work and also encompasses the work that is of an entirely different nature but which is nevertheless of equal value. Furthermore, the application of the Convention’s principle is not limited to comparisons between men and women in the same establishment or enterprise. It allows for a much broader comparison to be made between jobs performed by men and women in different places or enterprises or between different employers. Consequently, a separate provision might be needed to be added to the Labour Code regulating this very issue.

Pursuant to Article 3 of the Convention, it might also be necessary to develop a methodology of a performance assessment and objective comparison of the different types of work.

4. Convention concerning Discrimination in Respect of Employment and Occupation

As mentioned above, Article 2 (paragraphs 3 and 4) of the Labour Code provides for a general provision prohibiting discrimination. This provision needs to be improved in at least two directions. First, formulating the wording of the provision so that prohibition of discrimination applies unambiguously to pre-contractual relations (so that this issue does not depend on how the court interprets this norm) would work towards assuring more clarity and, second, the Code should appropriately provide for the definition of indirect discrimination.

5. Convention concerning Freedom of Association and Protection of the Right to Organize

After the reformation of the Labour Law in 2006, rights guaranteed under this Convention are not adequately regulated by the Georgian legislation as observed and noted by the ILO. The following comments are made in different ILO documents:

The new Labour Code lacks provisions on the freedom of association (the right of workers and employers to create and join organizations, the rights of such organizations, the procedure of strikes and other issues related thereto, etc.). As a result of the abolishing of laws on collective bargaining and collective disputes, the existing legislation (Labour Code and Law on Trade Unions) fails to adequately regulate all aspects of the freedom of association.

Provisions regulating the right to strike under the Labour Code needs improvement: the grounds for the exercise of the right to strike by workers shall be expanded and cover disputes around collective agreements, solidarity strikes and protest strikes etc. (Articles 47III), 49 I, 51 IV, 51 V). Exceptions to the right to strike (by which workers are not entitled to participate in a strike) shall be strictly and precisely determined (Article 51 II). Instead of setting the maximum duration of the strike (Article 49 VIII), the law should offer the mechanisms of mediation and voluntary arbitration. Article 49 V refers to the rule of

“reconciliation procedure” set by the Code although the Code does fail to define this rule at any place within.

The threshold set by the Law on Trade Unions, stating that “trade union may be established at the initiative of at least a hundred persons,” is considered to be extremely high.

6. Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively

The Labour Code does not fully regulate the anti-trade union discrimination as guaranteed by Article 1 of the Convention. Although paragraph 3 of Article 2 of the Code covers general restriction of discrimination (including on the grounds of trade union membership), this norm is insufficient in to adequately protect workers from anti-union discrimination according to the ILO. The ILO requires the formulation of a separate norm prohibiting anti-union discrimination including dismissal from work upon the grounds of trade union activity and providing for relevant procedures of the protection of workers’ rights (including the reinstatement in employment) and remuneration.

After abolishing the Law on collective contracts and agreements and failing to include relevant provisions in the new Labour Code, the Georgian legislation does not actually provide for the procedures of collective bargaining. Moreover, the Code misunderstands the essence of collective contract per se (concluded from reading Articles 13, 41-43 in conjunction).

7. European Social Charter

Georgia ratified the Council of Europe’s European Social Charter on 1 July 2005 although it only accessed to 63 out of the 98 paragraphs of the Charter. The comparative analysis of the Georgian legal framework with relevant provisions of the Charter reveals the gaps with regard to the issues given below:

The Right to Just Conditions of Work:

According to Article 2 I of the Charter, reasonable daily and weekly working hours should be provided for. In order to bring the Labour Code in compliance with this norm it is necessary to:

- clarify within the Code that the modification of a 41-hour work week is allowed under the contract only in favour of the worker. Although the proper interpretation of the Code leads to this very legal consequence, it is necessary to formulate this norm more clearly and without any ambiguity in order to have clarity and avoid the need for the court to interpret this issue;
- determine the limit of daily working time;
- determine the limit of overtime work.

The Labour Code does not provide for the principle of providing for paid public holidays thus violating the requirement of paragraph 2 of this Article.

In addition, the Code fails to envisage the right under Article 2 V of the Charter according to which weekly rest period shall, as far as possible, coincide with the day recognized by tradition or custom as a day of rest in the country or the region concerned.

Paragraph 7 of the same Article of the Charter states that workers performing night work shall benefit from measures which take into account the special nature of the work which is lacking in the Labour Code.

The Right to a Fair Remuneration:

Pursuant to Article 17 IV of the Labour Code, the conditions of overtime work shall be determined by the parties which conflicts with Article 4 II of the Charter guaranteeing the right of workers to an increased rate of remuneration for overtime work.

Article 4 III of the Charter provides for the right of men and women workers to receive equal pay for work of equal value. Please see paragraph 2.2 of this document for further information in this regard.

Article 4 IV of the Charter envisages the right of all workers to a reasonable period of notice for the termination of employment which is not specified in the Labour Code of Georgia.

With regards to right to organise (Article 5 of the Charter) and the right to bargain collectively (Article 6 of the Charter), please see the comment made in paragraphs 2.4 and 2.5 of this Article.

The Right of Children and Young Persons to Protection:

The requirements of paragraphs 4 (reduced working hours), 5 (right to a fair wage), 6 (the principle that the time spent by young persons in vocational training during the normal working hours shall be treated as forming part of the working day) and 9 (regular medical control) of Article 7 of the Charter are not observed.

8. Conclusion

This comparative analysis illustrates that the Georgian legislation reflects key principles under the Conventions with regards to particular issues but certain legislative actions are necessary for the further perfection of the legislative framework and a full compliance with international standards. These issues are the labour rights of minors, the prohibition of discrimination and the equality of work between women and men. On the other hand, there is a set of issues, such as the right to organise and collective bargaining, which is inadequately regulated under the existing legislation. Due to the fact that one of the strategic objectives of the ILO is presumably to encourage tripartism and the development of social dialogue in Member States, particular attention will be paid to the hitherto inadequate regulation of the right to organise and collective bargaining whilst assessing the progress of the implementation of the ILO conventions. Moreover, a regulation of the termination of a labour contract which is too liberal will be in conflict with the European Social Charter may also cause harsh criticism.