25/03/2010 RAP/RCha/GEO/III(2010)Add

REVISED EUROPEAN SOCIAL CHARTER

Comments from the
Educators and Scientists Free Trade Union of Georgia (ESFTUG)
on the
3rd National Report on the implementation of
the European Social Charter (revised)

submitted by

THE GOVERNMENT OF GEORGIA

(Articles 2, 4, 5, 6, 26 and 29
for the period 01/01/2005 – 31/12/2008)

Report registered by the Secretariat on 23 March 2010

CYCLE 2010

Educators and Scientists Free Trade Union of Georgia's (ESFTUG)

Report on the

Revised European Social Charter

3rd report on the implementation of the Revised European Social Charter

Submitted by

Government of Georgia

(articles 2, 4, 5,6,26 and 29

for the period 01/10/2005 – 31/12/2008)

CYCLE 2010

1. Article 2 – All workers have the right to just conditions of work

According to the article 14 of Georgian Labor Code:

1.„Unless otherwise provided by the contract of employment, duration of the working day determined by the employer during which the employee performs assigned work shall not exceed forty one hours per week. Break and leave is not included in the work time.

2. Duration of leave between working days (shifts) shall not be less than 12 hours."

The above-mentioned article of Georgian Labor Code is not in conformity with the article 2 of the Revised European Social Charter, which deals with the right of just conditions of work for all workers.

According to the Labor Code, exceeding freedom is given to the employer to establish as many working hours per week as they wish. Often forty one hours (per week) limit is violated.

The legislator should have established fixed working-hours limit per week. It should not be provided by the contract of employment, which often violates employees' rights.

According to the article 17 of Georgian Labor Code:

Georgian Labor Code gives the parties an opportunity to determine overtime work conditions by labor agreement. According to the article 17 of the Labor Code, fulfilling the work by the employee within the timeframe the duration of which exceeds the working time defined by the employment agreement is considered overtime work. If the employment agreement does not specify the working time, fulfilling the work within the period of time whose duration does not exceed 41 hours a week or the working time defined by the employer within the limits if 41 hours in accordance with part 1, article 14 of the present Code, is considered as overtime work. Conditions for overtimes can be determined by agreement between parties.

It would be better to define precisely what is overtime work. The defect of fourteenth article of Labor Code contributes to impossibility to define what is overtime work. The best regulation would be that overtime work is the work which exceeds 41 hours per week.

Article 20 of Georgian Labor Code defines a list of public holidays. According to the article 2, paragraph 2 „ The Parties undertake to provide for public holidays with a pay".

Georgian Labor Code (article 20) is a bit dubious. It cannot be clearly read from the article 20 that public holidays are payable. Everything depends upon the contract of employment, which gives the employer the possibility to act willfully (voluntarily).

The article 20, paragraph, 2 should be formed in another way. It would be better if we write in article 20, paragraph, 2, that „ The employee is authorized to request other days-offs instead of public days – offs." This formulation better safeguards employees' rights.

2. Article 4 – The right to fair remuneration

According to the article 4 of the Revised European Social Charter „ The Contracting Parties undertake to recognize the right of workers to remuneration such as will give them and their families a decent standard of living".

This paragraph is violated in Georgia. For example, as for the remuneration of public school teachers, it should be mentioned, that according to the „ Instruction (approved by the Order #576, 21.10.05, of the Minister of Education and Science) on the quantity and conditions of labor remuneration of public school teachers" (article 5, paragraph, 4, the second sentence), one category of teachers who work at school more than full time (work the most hours) more than 20 teaching hours (21, 22, 23 hours) are not remunerated for them. They only receive the salary of the full time teachers plus additional sum of money – 25 laries. 25 laries are very dubious. It is not a salary – it is some kind of additional compensation, which is not relevant to their labor (work). In fact, concrete category of teachers (who work more than full time) have to perform their duties free of charge.

Unfortunately this problem is not mentioned in the third report of the Georgian Government.

The article 17 of the Labor Code of Georgia is not in conformity with the article 4, paragraph 2, of the Revised European Social Charter.

According to the Charter „The Contracting Parties undertake to recognize the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases".

The article 17 of the Labor Code of Georgia does not definitely say that overtime work is remunerated. In practice, people work far more than 41 hours a week, but their work is not remunerated. It is often considered as an ordinary fact (general practice) by the employers.

Women rights should be more paid attention to in the Labor Code of Georgia. Despite the fact that on the legislative level our government declares gender equality, certain problems remain about the women issues. The defects of the Labor Code of Georgia are the following:

- **The Code does not envisage the short-hour working day for women and those who work in risky and dangerous conditions;**
- **The Code does not envisage the social protection of pregnant women, for example when the problem deals with dismissing from work;**
- **The duration of the maternity leave should be increased in a Labor Code (It implies duration of remunerable maternity leave);**

One of the biggest defect of the Labor Code of Georgia is that it does not envisage the preliminary warning of the employee by the employer about the termination of work (the reasonable notice for termination of employment). This defect is not in conformity with the article 4, paragraph, 4 of the Revised European Social Charter.

Article 5 – The right to organize

According to the article 5 of the Revised European Social Charter „The Contracting Parties undertake that national law shall not be such as to impair, nor shall it be applied as to impair the freedom of the right to organize".

Georgian legislation stipulates independence and protection of associations including trade union. In practice everything is diverse.

The demands of Educators and Scientists free Trade Union of Georgia (ESFTUG) is somehow ignored by the authorities. This is particularly seen in the lack of real social dialogue.

According to the Tbilisi City Court decision (Administrative Board, decision February, 20, 2007) The Georgian Ministry of Education and Science was obliged to start collective bargaining with ESFTUG.

Article 6 – The right of workers to bargain collectively

The Georgian Government does not pay vital attention to the process of strengthening of the Social Dialogue formats. There is lack of political will from the government' side, not only the legal barriers.

Georgian legislation stipulates the rights to strike, in case of individual and collective labor disputes. Despite this fact, political methods are used by the Georgian Government to avoid the strike. For example, it deals with threatening, intimidating and bribing the teachers not to participating in the strike. The Government influences the teachers by the elections. The teachers are not able to exercise the right to strike relevantly.

Article 26 – The right to dignity

Georgian legislation forbids the sexual harassment. According to Georgian labor Code (article2 paragraph 3) „In labor relations any kind of discrimination is forbidden because of race, color, language, ethnic and social belonging, nationality, origin, property and rank situation, place of residence, age, gender, sexual orientation, limited possibilities, religious or belonging to any union, marital status, political and other opinions".

There is one dubious formulation in the Georgian Labor Code which should be changed. According to the article 2, paragraph 5 of Georgian Labor Code „It should not be considered as a discrimination when the different approach of people contributes to achieving lawful aim and when the different approach is relevant and necessary means to achieving the above-mentioned goal". This formulation contributes to voluntary (willful) actions from the governing authority. The Government can often claim that different approach of people contributes to achieving lawful (may be unlawful who knows) aims. The unlawfulness of the measure performed by the government is difficult to prove.

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

According to the Georgian Law on Trade unions (article 11, paragraph 2), employers, coalitions of employers (unions, associations) provide respective trade unions at least two months in advance with the information about temporary termination of liquidation, reorganization or operation of enterprises, establishments and organizations, which will lead to reductions of working places or conditions to provide protection of rights and interests defined by the legislation, collective agreements (treaties) for the employees. The trade union has the right to submit proposals for the discussion of respective bodies of state authority on extending the terms of measures related with mass freeing of employees or temporary termination.

According to the Labor Code (article 38, paragraph, 3), in case of invalidation of the contract of employment by initiative of the employer, employee shall receive at least a one-month wage.

It is not mentioned in the Labor Code of Georgia that the administration (The employers) should be obliged to inform the employees about the coming reorganization, liquidation and staff reduction.

Other defects of the Labor Code of Georgia are the following:

- **Socially unjustified norm of the Code is that the basis of ceasing the employment (labor) contract is the prolonged disability (exceeding 30 calendar days) and during six months general term exceeds 50 calendar days;**
- **The Code does not envisage additional remunerable leave for those who work in dangerous, non-hygienic conditions;**
- **The Code envisages no privileges for those who work at night;**
- **According to the Labor Code of Georgia (article 37, paragraph, „d"), „the basis of the termination of a labor contract is the breach of the contract", which gives the employers rights to violate employees rights and to act voluntarily.**