

## **Protection of Labour Rights and Cultural Rights (Steps taken by the State necessary for the conservation, the development and the diffusion of culture)**

*Submitted for UPR of Georgia (2015) by Georgian Young Lawyers' Association (GYLA), Partnership for Human Rights (PHR) and Womens' Initiatives Support Group (WISG)*

### **Contact Person:**

Ana NATSVLISHVILI

Georgian Young Lawyers' Association Chairperson

J. Kakhidze str, 15, Tbilisi, Georgia, 0102, Tel: (+995 32) 93 61 01

Email: [ana.natsvlishvili@gyla.ge](mailto:ana.natsvlishvili@gyla.ge)

### **1. Labor Rights<sup>i</sup>**

- 1.1. Labor right, as the crucial part determining nature of the social state, is enshrined in the Constitution of Georgia. The Labor Code of Georgia regulates private labor relationships, while labor regulation of the public service is provided in the Law of Georgia on Civil Service. Further, some other aspects of labor relations are also regulated by different by-laws.
- 1.2. In 2013, Labor Code of Georgia was revised significantly. However, analysis of the changes implemented show that applicable standards are insufficient for proper protection of labor rights; some legislative flaws are also observed.
- 1.3. Article 35 of the Labor Code provides for the right to safe and healthy working environment, through to date, Georgia has not set up an effective mechanism to monitor implementation of this right. The current form of the labor inspection, which is so called Occupational Safety and Health Program (OSH)<sup>ii</sup> is the only one part of the whole system. It leaves unregulated such crucial aspects as working time, wages, labor contracts, discrimination, etc. In the absence of a strong and effective monitoring mechanism, fulfillment of employer's obligation in terms of ensuring safe working condition for the employee remains under serious risk.
- 1.4. Analysis of the current practice illustrates that elections and changes in the political life of the country inhibits observance of the principles of stability and independence of the public service and greatly affects the labor rights of civil servants. GYLA has documented (and litigated before courts) a number of cases when complainants alleged political motives behind their dismissal from work.<sup>iii</sup> Further problems of subjective and unsubstantiated decision-making were noted in 2015 in the work of competition and attestation commissions charged with the duty to recruit (test) employees of local self-governing bodies.<sup>iv</sup> Public Service reform to the end of ensuring its political neutrality, stability and career-based nature remains one of the pressing needs in the country.
- 1.5. Gender-based discrimination at work remains a problem, despite the existence of binding domestic and international standards in this field. There are facts of discrimination during pre-contractual period, job announcement and interviews, contractual relations (in terms of equal remuneration for work of equal value, issuing bonuses, promotions and sexual harassment). Among the factors causing discrimination of women in labour relations, stereotypes existing in the society still constitute a strong factor causing discrimination of women in labour relations among other factors. Impact of prejudices in society in favour of men is still strong

in the process of promoting women at work place. Women employed in private sector are discriminated in comparison with women employed in public sector in terms of maternity leave.

- 1.6. Women belonging to vulnerable groups (women with disabilities, ethnic, religious and/or linguistic minorities, LBT women, single mothers often face dual discrimination.<sup>v</sup>
- 1.7. Labour Code of Georgia expressly prohibits discrimination based on sexual orientation and gender (the bases of prohibition do not include gender identity)<sup>vi</sup>. Despite general prohibition, the Law included serious gaps creating broad discrimination opportunities at the stage of hiring and dismissing a person. This gap was remedied owing to a relevant amendment made in 2013.<sup>vii</sup> Nevertheless, these legislative acts still contain flaws and/or lack strong implementation mechanisms and therefore cannot be effectively utilized to fight against LGBT discrimination in practice. Some community members recalled that they were not employed or were fired because of their orientation/gender identity. Transgender persons are especially vulnerable in labor relations. Due to the established practice of legal recognition of gender,<sup>viii</sup> majority of transgender persons do not have identification documents that would be in line with their gender expression. Because of this they try to find unofficial employment and often have to agree to bad working conditions and remuneration. Part of transgender persons in Georgia (especially transgender women) may become involved in commercial sex work, which makes them even more vulnerable to violence.<sup>ix</sup>
- 1.8. The main factor that causes discrimination in labour relations is the lack of obligation of an employer to explain the reason of refusal for hiring.
- 1.9. The national legislation does not define and regulate principles of equal remuneration for work of equal value. In case of women with family responsibilities, the main problem regarding professional success and promotion is lack of retraining courses after returning from maternity leave.
- 1.10. There is no legal definition of sexual harassment at work in the Georgian legislation that would entailed proper administrative or criminal responsibility for such behaviour.
- 1.11. Therefore, despite the positive steps taken by Georgia on legislative level towards fighting against discrimination of women belonging to various vulnerable groups in labour relations, gender-based discrimination at work is still problematic.<sup>x</sup>
- 1.12. Court cases about the problem of gender-based discrimination (or discrimination of other types) at work are rare, which is often the result of nihilism and lack of awareness about legal protection mechanisms.<sup>xi</sup> On the other hand however it is questionable, whether court decisions on these issues are respected by the executive.
- 1.13. The following examples are emblematic and will be reviewed shortly: GYLA has litigated two cases of illegal dismissal of pregnant women from public service all the way to the Supreme Court. In both cases the Supreme Court in 2014 upheld the applicants' position and ordered the employer to reinstitute the women on their previous positions. Despite this, January 13, 2015 Order of the Gangebeli of Kareli Municipality (elected Governor) indicates that the applicant was dismissed lawfully and therefore, despite the positive decision of the Supreme Court, does not allow the claimant to return to her work. In March 2015, GYLA once again addressed Khashuri district court and requested to invalidate the individual administrative-legal act of the Kareli Municipality Gangebeli (act- Order #127, dated as of January 13, 2015) and requested to renew the employment of the claimant. The case is pending before the first instance court again. In the second case the applicant was reinstated on her previous position, however was dismissed again in a few months in reference to a different ground (reorganization.)<sup>xii</sup>

#### 1.14. **Recommendations**

- Ensure meaningful implementation of the existing labour legislation;
- Set up a strong and effective Labour Inspectorate with a broad mandate to cover issues related not only to health and safety at work but also to working time, wages, labor contracts and discrimination at work;
- Eliminate existing gaps in the laws and by-laws governing labour relations, rights and duties;
- Bring the relevant bylaw in compliance with the Labour Code so that both women and men on the one hand, and biological mothers and surrogate mothers on the other hand are able to enjoy the right to maternity leave on equal footing;<sup>xiii</sup>
- Amend the Labour Code to provide a clear definition of sexual harassment at work;
- Amend the Labour Code to say expressly that discrimination based on any sign prohibited by law is a violation of employee's rights.<sup>xiv</sup>
- Ensure the same remuneration for the same work both for women and men;
- Develop regulations and introduce transparent procedures for promotion and career development;
- Consider ratification of the following of ILO Conventions No 81 and 129, 155, 156, 176, 183;
- Implement public service reform to bring the system in line with international standards and best practices;
- Speed up the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention);
- Train of judges, prosecutors, investigators and practicing advocates in dealing with the cases related to discrimination in labour relations;
- Identify specific needs of women from vulnerable groups in the context of labour market and labour relations and take efficient steps to address them.

## **2. Protection of Cultural Heritage<sup>xv</sup>**

### *2.1. Introduction*

The problems with respect to Georgia's cultural heritage have long been a subject of concern for local and international society. Regretfully, problems are not limited to individual cases and have a systemic nature. Moreover, individual cases also clearly illustrate the scale of problems in terms of protecting cultural heritage. It should be noted that in March 2014, the Government of Georgia publicized the Socio-economic Development Strategy of Georgia (2014-2020). However, this document does not refer to social value of culture and economic potential of culture, nature and cultural heritage.<sup>xvi</sup>

### **2.2. Current Situation**

- 2.2.1. To date, the State has not carried out re-registration of monuments registered in state registry and sites included in the list of sites with monument signs. Regretfully, as a result of introduced amendment to the Law on Cultural Heritage in 2013, the date for re-registration was postponed until January 1, 2018. Unfavorable results of undue fulfillment of obligation were illustrated in number of researches;<sup>xvii</sup>

- 2.2.2. Practically, there is no relevant form of the contract that should be made between the Ministry of Culture and Monument Protection and a private owner of the monument;
- 2.2.3. On 12 November 2013 the Government of Georgia introduced amendments to the Law of Georgia on Cultural Heritage to the Parliament for examination. According to the amendments, the Government of Georgia became authorized to cancel the monument status (save for national category monuments and those included in the list of world heritage) in exceptional conditions and in case of state necessity upon initiation of entities authorized to initiate draft of the legal act before the Government, with relevant justification and consensus of the Ministry of Culture and Monuments Protection. It should be noted that Georgian legislation gives no definition to "state necessity", which gives to the decision-maker opportunity for free interpretation of the provision. Notwithstanding public protests revealed in different forms,<sup>xviii</sup> which terminated adoption of the law, the draft is still pending before the Parliament and may become a law any time.
- 2.2.4. Amendments introduced on 4 April 2014 to the Government Resolution on "the Procedures for Issuing Construction Permit and Construction Conditions" deserve negative assessment. With application of some vague definitions initiation of constructions of social importance and of "special state importance" are "sometimes" allowed without necessary documentation specified by law. It seems that introduction of such amendments in restricted period were matched to concrete projects or cases. It should be noted that amendments suspiciously coincided in time with introduction of the initial version of "Panorama Tbilisi".
- 2.2.5. Since 2007, after enactment of the Law of Georgia on Cultural Heritage, no State Policy Document for Protection and Development of Cultural Heritage was drafted. Neither the new government has carried out any meaningful actions in that direction. Further, in April 2014 it became known that the Ministry of Culture and Monument Protection delegated number of its important authorities, related to cultural heritage, to the National Agency for the Protection of Cultural Heritage ('Agency').<sup>xix</sup> Decisions made by the Council of the Agency and its General Director on 12 December 2014 are the result of foregoing delegated authority. As a result, Sakdrisi-Khachagiani ancient goldmine has lost its status in suspicious circumstances.<sup>xx</sup> While so far, the State has no State Policy Document for Protection and Development of Cultural Heritage, massive delegation of authorities indicates chaotic development of events, rather than on existence of systemic vision in the field.
- 2.2.6. On 24 June 2014, based on the order of the Minister of Culture and Monument Protection, the staff was recruited in the Council for Protection of Cultural Heritage ('Council').<sup>xxi</sup> The Council has been formed as an interagency body consisting of the representatives from the Ministry of Culture and Monument Protection, the Government Administration, the Ministry of Regional Development and Infrastructure, the Ministry of Finance and the Ministry of Economy and Sustainable Development of Georgia.<sup>xxii</sup> However, the Council, in light of the type of composition, represented agencies and the authorities granted to it, envisages serious risks in terms of protection of cultural heritage.
- 2.2.7. Developments around Sakdrisi-Khachagiani ancient goldmine and the chain of decisions made by different state agencies in 2013-2014 cannot stand any criticism. Regretfully, the situation is unchanged to date.<sup>xxiii</sup> Notwithstanding the great public protest, at the end of 2014 the government granted to RMG Gold authority to dismantle the archeological site. Consequently, the company renewed wide scale activities on the site. Even though such conduct of the company comes in conflict with enforced ruling of Tbilisi City Court,<sup>xxiv</sup> the government ignored this circumstance and the company continues to operate.<sup>xxv</sup>
- 2.2.8. The Ministry of Culture and Monument Protection and the National Agency for Protection of Cultural Heritage, as the main state structures functioning in the field of cultural heritage, fail to ensure discussion on issues of high public interest with participation of the relevant professionals and do not disclose the information timely and proactively.<sup>xxvi</sup>
- 2.2.9. In the course of rehabilitating historic parts of Tbilisi and Batumi, significant monuments of cultural

heritage were damaged along with identification of some suspicious and corruption risky facts. However, in this process the government was not consistent and no one was brought to justice with respect to the foregoing facts.<sup>xxvii</sup>

#### 2.2.10. Recommendations:

- The state should ensure elaboration of State Policy Document for Protection and Development of Cultural Heritage and its effective introduction in practice. Furthermore, the process should be conducted transparently with maximal involvement of stakeholders;
- Applicable rule of recruiting councils in the system of cultural heritage and their operation should be revised. State authority should ensure better transparency and independence of councils;
- Relevant state agencies should carry out timely re-registration of monuments registered in the state register and sites included in the list of sites with the sign of monument. The process should end until 1 January 2018 with no additional postponement of the set date;
- In the course of drafting/adopting laws and other normative acts that are directly or indirectly linked to cultural heritage, state authorities should, at the most, consider interest and the spirit of cultural heritage. Further, State authorities should ensure compliance of domestic laws with international obligations undertaken by the State as per various Conventions.
- The state should carry out the process effectively in a manner that cultural heritage was not sacrificed to economic or other investment projects, as it was in the case of Sakdrisi-Khachagiani goldmine.

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<sup>i</sup> This part of the report was prepared by Georgian Young Lawyers' Association (GYLA), Partnership for Human Rights (PHR) and Womens' Initiatives Support Group (WISG)

<sup>ii</sup> OSH is mainly oriented on fostering safe and healthy work environment;

<sup>iii</sup> <https://gyla.ge/geo/news?info=2263>

<sup>iv</sup> <https://gyla.ge/eng/news?info=2420>

<sup>v</sup> <http://issuu.com/gylasaia/docs/kvleva-eng>

<sup>vi</sup> The Labor Code of Georgia. Article2(3)

<sup>vii</sup> 12 June 2013 amendments to the Labor Code (729-II).

<sup>viii</sup> <sup>viii</sup> Under the pursued practice, undergoing irreversible sterilization, hormonal treatment, and preliminary surgical procedures is mandatory for a person to receive new identification documents. If a person undergoes sex reassignment procedure fully, s/he is entitled to change data on the sex in official documents. Rights of LBT Women in Georgia. Shadow Report for CEDAW. Submitted for the 58<sup>th</sup> Session. WISG. 2014. [http://women.ge/wp-content/uploads/2014/06/WISG\\_LBT-women-in-Georgia\\_CEDAW-58th-session.pdf](http://women.ge/wp-content/uploads/2014/06/WISG_LBT-women-in-Georgia_CEDAW-58th-session.pdf)

<sup>ix</sup> N. Gvianishvili "The situation of transgender persons in Georgia", WISG. 2014. [http://women.ge/wp-content/uploads/2015/02/Transgender\\_survey-to-send.pdf](http://women.ge/wp-content/uploads/2015/02/Transgender_survey-to-send.pdf)

<sup>x</sup> <http://issuu.com/gylasaia/docs/needs>

<sup>xi</sup> <http://issuu.com/gylasaia/docs/kvleva-eng>

<sup>xii</sup> <https://gyla.ge/eng/news?info=1400>

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- <sup>xiii</sup> The Order of the Minister of Health (231/N) dated by August 25, 2006
- <sup>xiv</sup> <http://issuu.com/gylasaia/docs/kvleva-eng>
- <sup>xv</sup> This part of the report was prepared by GYLA
- <sup>xvi</sup> Is available in English - <http://www.adb.org/sites/default/files/linked-documents/cps-geo-2014-2018-sd-01.pdf>;
- <sup>xvii</sup> Is available in Georgian - For example: "Results of revision of Cultural Heritage List" (authors Nano Zazanashvili, Sulkhan Saladze, Nino Kordzakhia, Maia Chichileishvili) publication of Tiflis Hamkari, 2014.
- <sup>xviii</sup> Is available in English-The Statement of the Civil Society Organizations on the Initiated Amendments to the Law on Cultural Heritage - <http://gyla.ge/eng/news?info=1846>; Georgian Young Lawyers' Association and "Tiflis Hamkari" assess negatively initiated legislative amendments on removal of the status to the historic monuments - <http://gyla.ge/eng/news?info=1839>; GYLA submitted legal opinion on the pending amendments to the Law on Cultural Heritage - <http://gyla.ge/eng/news?info=1868>; GYLA applied to the UNESCO concerning the pending amendments to the law on "Cultural Heritage" - <http://gyla.ge/eng/news?info=1889>;
- <sup>xix</sup> Is available in English - <http://www.culture.gov.ge/topicdetals-1.10392.html>;
- <sup>xx</sup> The order#2/271(December 12, 2014) of the General Director of the National Agency for Protection of Cultural Heritage; minute of the session of the strategic issues unit of the Cultural Heritage Council of the National Agency for Protection of Cultural Heritage of December 12, 2014;
- <sup>xxi</sup> The order # 03/129 of June 24, 2014 of the Ministry;
- <sup>xxii</sup> The order # 05/83 of April 16, 2014 of the Ministry;
- <sup>xxiii</sup> GYLA's research (Is available in English) - „Sakdrisi-Khachaghiani: from the cultural heritage to modern gold mining” - <http://gyla.ge/uploads/publications/researchpaper.pdf>;
- <sup>xxiv</sup> Is available in English- The Court Suspended the Right to Conduct the Broad-Scale Works at Sakdrisi-Kachaghiani - <http://gyla.ge/eng/news?info=2137>;
- <sup>xxv</sup> Is available in English - Sakdrisi-Kachaghiani - the Law is Being Violated Again - <http://gyla.ge/eng/news?info=2386>;
- <sup>xxvi</sup> Is available in English - Address of NGOs to the Ministry of Culture and Historic Monument's Protection - <http://gyla.ge/eng/news?info=2032>; The Address of the NGOs towards the Ministry of Culture and Monument Protection of Georgia and the National Agency of the Cultural Protection of Georgia - <http://gyla.ge/eng/news?info=2375>;
- <sup>xxvii</sup> Is available in English- "Rehabilitation Process beyond the Facade" - <http://gyla.ge/eng/news?info=1237>; GYLA's research GYLA Held Presentation of the Report Prepared on Batumi Rehabilitation - <http://gyla.ge/eng/news?info=1725>; <http://gyla.ge/uploads/RehabilitationProcessBeyondtheFacade-BatumiRehabilitationExecutiveSummary.pdf>