IMPACT OF THE EU ASSOCIATION AGREEMENT ON LABOR RIGHTS (CASE OF GEORGIA)

TAMAR NADIRASHVILI

Caucasus International University, Faculty of Law, Georgia
E-mail: tamar.nadirashvili@ciu.edu.ge

Abstract - During the last decade Georgia has been in a transition from post-soviet regime to modern European country. Within this process, the labor rights constitute a cornerstone of development and sustainable economic growth of the state. Paper researches this process in the light of recently signed association agreement with the European Union and the derived responsibilities in this field. The Aim of the research is to understand the impact of Association Agreement with EU on internal labor regulations of Georgia and compare the challenges faced by neighboring countries in the similar processes, with particular attention to labor rights. On the other hand, I would like to share unique Georgian experience in the subject issue, taking into consideration our geographical and cultural uniqueness. Since Georgia is on the border of Europe and Asia and the fact that multinational population of both of these cultural identities are mixed in this country is creating a unique social blend. As a process of implementation of the Association Agreement Georgia has ratified several International Acts of International Labor Organisation. All of the above play a major role in sustainable development and economic growth of the country.

Keywords - Labor Rights, Association Agreement, Human Rights, Employee Rights, Sustainable Development.

I. INTRODUCTION

The issue of putting in place mechanisms guaranteeing protection of labor rights is a cornerstone of Association Agreement between Georgia and EU. The document mandates Government's responsibility to provide decent work conditions and guarantees of protection of health and safety for the employees on the work place.

Changes introduced to labor law since 2014, especially adoption of Law of Georgia on occupational safety provides additional legal means for protection of labor rights. Although it must be noted, that the above law has a limited scope and it only covers: 1. work in increased danger zones; 2. hard labor; and 3. work in harmful environments.

When protecting relevant legal rights we face overlapping of several legal norms, all the while limited scope of Law on Occupational Safety hinders equal distribution of labor safety standards on all employees. All of the above mentioned clearly demonstrates inconsistencies in the system of legal coverage thus resulting in increased risks of inefficient implementation of labor rights.

The research has demonstrated influence of Association Agreement on Georgian legislation, including its positive and negative aspects. Recommendations have been developed based on analysis of similar experience of other countries.

II. BRIEF HISTORY OF LABOUR RIGHTS IN GEORGIA

2.1Labour Rights in Georgia before Soviet Union

Historical development of Georgian labor law starts from the law of Georgian Democratic Republic of 14 August 1920 – "Law about labor contracts". The law included progressive vision about guiding principles of labor contracts and scope of Labor Code of Georgia: "All labor contracts that envisage giving of his/her labor power by one person – the Employee – to another person – the Employer – with or without a term or until completion of the agreed work and taking on responsibility to implement actions as instructed by the Employer for a remuneration – the cost of work - that is accounted by the time spent or any other means are subject to current law".

Even before the formation of Soviet Union, the importance of labor rights was recognized by the Constitution of 1921of the Georgian Democratic Republic, which acknowledged labor rights as a basis for decent living of human beings and existence of a State.

2.2 Labour Standards during Soviet regime

Labor relations in Soviet Georgia were regulated by the Soviet Labour Code (1973). The policy of labor law was strictly centralized and the code consisted of more than 250 articles. Despite the soviet regime, code contained some of the labor standards, which are recognized in comprehensive International law: Regulation of minimum wage, working hours per week, annual leave etc. But only recognition of labor standards didn't mean that the regulations were adequate to protect fundamental Human Rights.

2.3 Labour Rights after 90th– Collapse of the Soviet Union

According to the new constitution of independent Georgia, labor was announced to be free.

Changes in labor law were made only in 1997, when parliament adopted to the Georgian Labour Code. Before that, from 1991 to 1997, despite the collapse of the Soviet Union, labor relationships in were stillregulated by the Soviet Labour Code. However, the new labor legislation still contained soviet

elements that were inconsistent with the principles of contemporary market economy.

Almost 10 year later, after rose revolution, in 2006, Georgia replaced its Soviet-era Labour Code. The new code was designed to bring it into compliance with international and European standards. "But this was never achieved: unreasonable restrictions were imposed on the right to strike; working hours, protection of maternity leave and compensation for overtime and night work were insufficiently regulated."

Later, in 2013 Georgian Labor Code has gone through major amendments. These changes were towards: Termination of the Employment Agreement; Temporary Disability Terms; Employment Agreement Terms; Labor Disputes. At that time the state was already preparing for the Association Agreement with EU.These changes in 2013 were even called "the reform of labour code".

III. DECENT WORK ACCORDING TO THE EU ASSOCIATION AGREEMENT

3.1 Obligations of Georgian Government about labor rights

In June 2014, the EU and Georgia signed an Association Agreement, which entered into force on July 1 2016. According to the agreement Georgia has obligations to ensure Decent work and decrease the unemployment in the country. EU and Georgia have adopted a revised EU-Georgia Association Agenda for the period 2017-2020. Every year since signing the document Government of Georgia approves National Action Plans for the Implementation of the Association Agreement.

3.2 Progress in implementation of International labor standards

According to the Association Implementation Report on Georgia(2019) of European Commission: "Unemployment in Georgia remains high (13.9% in 2017 according to GEOSTAT data), even if it continues on an overall downward trend, notably among young people. Overall, employment creation remains low and poverty remains an issue with 21.9% of the population under the absolute poverty line in 2017." In November 2017 Georgia has ratified the International Labour Organization (ILO) Priority Convention (#144) on Tripartite Social Dialogue. The convention will enter into force, in May 2019.

Besides, the Ministry of Health, Labour and Social Affairs of Georgia has formed the system of labour inspection, which requires further adjustments to be an effective mechanism for implementation of the ILO fundamental conventions on labour rights. In August 2018 the Law on Occupational Health and Safety entered into force allowing the labor inspectorate to perform unannounced checks and apply fines. In January 2019 a new pension system entered into force, which raised a lot of criticism from domestic and international experts. According to new regulations, every young employee (before the age of 40) is required to pay for the new pension fund 2%, employer and government are also paying the new pension tax.

IV. PRACTICE OF NEIGHBORING COUNTRIES

4.1. Ukraine

Association Agreementbetween EU and Ukraine was signed in May 2014, one month earlier than Georgia.

As the most socially significant result of the Agreements implementation, in particular labor, improvement of the labor conditions, increased occupational safety, reduced risks at the workplace for public health, and decreased unemployment is expected.

According to the Association Implementation Report (2018) on Ukraine of European Commission: "While in 2018 Ukraine has undertaken some steps in the approximation of legislation in line with the AA in the areas of employment, social policy and equal opportunities, it continues to face some delays. In 2018, Ukraine continued to implement the pension reform initiated in 2017, while there are delays on legislation on occupational safety and health, part-time work and parental leave. A review of the legislation in the areas of undeclared labour and occupational safety and health was undertaken in spring 2018 with support of an EU-funded project. The adoption of the new Labour Code, which would advance legal approximation, has not progressed since the draft law was prepared for second reading in 2017. The Government has initiated procedures to improve the targeting of social subsidies and plans to start with a gradual monetisation of subsidies in 2019. A modernisation of the social dialogue, including through the adoption of legislation on collective bargaining, is pending. Occupational prohibitions for women were abolished in late 2017. The minimum monthly wage was increased further to UAH18 3 723 (+16.3% y/y) after a substantial increase in 2017. In 2017, the first time since 2013, Ukraine recorded a reduction in the moderate poverty (according to the World Bank's national methodology for Ukraine) to an estimated 24.5% in 2017 from 26.7% in 2016, but still up sharply from 14.1% in 2013. The poverty rate (under USD 5.5/day in 2011 PPP19) is estimated at 5.7% in 2017."

4.2. Moldova

On 27^{h} June 2014 was signedAssociation Agreement between EU and Moldova. The massive banking fraud exposed in Moldova in 2014, that lead to the hindering of implementation of the Agreement. On 12 January 2018 entered into force new extended Law Regarding asset recovery and the investigation of the banking fraud, allowing the Agency for Recovery of Criminal Assets to prevent forced labour. According

to the Association Implementation Report on Moldova(2018) of European Commission: "The activity and employment rates remained at 42.6% and 40.8% respectively (2016). Official unemployment decreased to 4.2% of the active population, but youth unemployment remains twice as high. Low official unemployment reflects low labour market participation, informal work as well as migration. Employment in Moldova is largely based on agriculture, low productivity sectors and crafts. Approximately one third of the working population is employed in the informal economy (36.3%). Around a fifth of the labor force works abroad (around 800 000 citizens). The National Employment Strategy 2017-2021 and its Annual Action Plan for 2017 have been approved by the Government. The Action Plan is in line with the four priorities of the strategy."

In 2018, Vice-President of the European Commission, Federica Mogherini, published a joint Association Implementation Report on Moldova, calling for further efforts in justice reforms and the fight against corruption.

On 24nd February 2019 Moldova is having the parliamentary elections. The EU regards upcoming elections as a test for Moldovan government on which the resumption of the financial assistance also depends.

CONCLUSION

Georgia, as well as Ukraine and Moldova bears the obligation of harmonization of national labour law with EU standards according to Association Agreements.

Association Agreements must be the result of European Neighborhood Policy (ENP), which is a program designed to enhance political and economic relationships between the EU and its eastern and southern neighbors. This Partnership should be beneficial for every party of the Agreement.

However, the Government of Georgia is taking actions, mostly by changing or enforcing legal regulations. Thus, is some cases there are no progress towards decreasing unemployment; Occupational safety, equal pay or other fundamental labor rights. Georgia is piloting of a new model of public employment services, which continues slowly in the selected regions. Further amendments are expected to the Labour Code are expected in order to meet European and international standards. According to the reports of European Commission about implementation of Association Agreements in all signing parties (Georgia, Ukraine and Moldova), each country faces different issues and problems, taking into consideration their own geographical and cultural uniqueness (sometimes also political will). In the case of Georgia, it is obvious that the EU's support, in this case exercised by the Association Agreement, is positively impacting the State.

REFERENCES

[1] Law of Georgia on Occupational Safety, № 07-2/84/9,https://info.parliament.ge/#law-drafting/13972, Parliament of Georgia [01.06.2017].

[2] Ibid.

[3] Ibid.

[4] Collection of lecal acts of Georgian Democratic Republic, Tbilisi, "Iverta Mkhare", 1990, Law of labor contract of the Founders' Congregation and Government of the Republic on 14th August 1920, Article 1.

[5] Constitution of Georgia, forced into entry on 21st February, Georgian National Archive, http://constcentre.gov.ge/failebi/1921_clis_konstitucia_33442.pdf,[19.12.2018], Article 116, 117.

[6] Zoidze, B., The Essence of Freedom of Labor in the Practice of Georgian Contitutional Court, Labour Law I (Collection of Scientific Papers), Zaalishvili V. Ed., Tbilisi, 2011, 2.

[7] CONSTITUTION OF GEORGIA, Departments of the Parliament of Georgia, 31-33, 24/08/1995, https://matsne.gov.ge/en/document/view/30346?publication=35, Article 26.

[8] Shvelidze, Z., Transition from Soviet to Liberal Labour Law: Labour Standards in Georgia, Ivane Javakhishvili Tbilisi State University, Law Faculty Tbilisi Georgia, 2012, 2.

[9] Labor Code of Georgia, LHG, 23, 19/06/2006, Expired 27/12/2010, Legislative Herald of Georgia.

[10] Equal Times, Georgia's new labour code marred by "loopholes and gaps", published 12 July 2013, https://www.equaltimes.org/georgia-s-new-labour-code-marred#.XG_ndOgzY2w [22.02.2019].

[11] Transparency International Georgia, Proposed changes to the Labor Code, 11 December, 2012, https://www.transparency.ge/en/blog/changes-labor-code [22.02.2019].

[12] Delegation of the European Union to Georgia, EU/Georgia Association Agreement, 13/09/2016, https://eeas.europa.eu/delegations/georgia_en/9740/EU/Georgia%20Association%20Agreement [22.02.2019].

[13] European Commission, Association Implementation Report on Georgia, Brussels, 30.1.2019.

[14] Law of Georgia on Funded Pensions, Parliament of Georgia, Website, 06/08/2018.

[15] Sushko O., Zelinska O., Khorolskyy R., Movchan V., Solonenko I., Gumeniuk V., Triukhan V., Eu-Ukraine Association Agreement: Guideline for Reforms, Konrad-Adenauer-Stiftung, Ukraine, 2012, 7.

[16] European Commission, Association Implementation Report on Moldova, Brussels, 3.4.2018.

[17] Cenuşa D., Year of disruptions in Moldova's European integration: Top 3 accomplishments and failures in 2018, OP-ED, 28/12/2018, 1.

★★★