

European Social Charter

Shadow Report by Inclusive Foundation (Georgia) and the International Lesbian and Gay Association (European Region)¹ on the 1st National Report of Georgia on the implementation of the European Social Charter

Article 1§2 - Prohibition of discrimination in employment on the ground of sexual orientation and gender identity

Executive Summary

- a. The lesbian, gay, bisexual and transgender community in Georgia faces very high levels of discriminatory attitudes. It is therefore of great importance that provisions protecting from discrimination in employment are both effective generally and explicit in relation to both sexual orientation and gender identity.
- b. While the non-discrimination article of the Georgian Labour Code makes specific reference to sexual orientation, the Code contains serious weaknesses in relation to the prohibition of discrimination generally:
 - Article 5.8 gives the employer the right to reject a person's application for a job without any reasoning
 - Article 38 would appear to allow an employer to dismiss an employee at will, again without providing any reasoning
 - There is no protection from discrimination during the recruitment process
- c. The Labour Code provides no specific protection from discrimination on the ground of gender identity, and there is no case law interpreting provisions prohibiting discrimination on the ground of "gender" as including "gender identity".
- d. The procedures governing the issue of academic diplomas make no provision for re-issue following a change of gender identity. This constitutes a barrier to employment for transgender persons.
- e. The Georgian government has no strategies or policies of any sort for combating discrimination in employment on the ground of sexual orientation or gender identity.

We urge that the Committee on Social Rights return rulings of non-conformity with the Social Charter in respect of each of these factors.

General situation of lesbian, gay, bisexual and transgender (LGBT) people in Georgia

1. A recent report on the situation of LGBT people in Georgia summarised the situation as follows:

“A high level of hostility towards same-sex relationships and diverse gender identities prevails in virtually every aspect of Georgian society. Many believe them to be a disease, some see them as a sin, others as a perversion. Human rights of lesbian, gay, bisexual and transgender (LGBT) people are opposed by some prominent human

¹ Prepared with the help of Sopio Japaridze of the Georgian Young Lawyers' Association

rights defenders and other high-level figures. Stigmatisation is so pervasive that most LGBT people are forced out of communities, deprived of any chance to openly express their sexual orientation or gender identity, and suffer from discrimination and hate crimes.”²

2. Sexual relationships between men were only decriminalised in June 2000. The first organisation dedicated to the rights of LGBT people, the Inclusive Foundation, only began operating in 2006.

3. The dangers faced by LGBT people in Georgia were illustrated recently in events surrounding a project under the Council of Europe’s All Different, All Equal campaign. The project in question did not involve sexual orientation or gender identity issues at all. However, elements in the media chose to link it with LGBT rights. Despite efforts by the Secretary-General’s Special Representative to set the record straight, there followed what the Parliamentary Assembly’s Rapporteurs described in their recent monitoring report as “ferocious media attacks labelling the event as a gay pride”.³ The Patriarchate of the Georgian Orthodox Church joined the attacks, reportedly issuing a statement saying “The nation that does not ban incorrect sexual orientation and lifestyles is always condemned by God” and calling the event an “exhibition of the sins of Sodom and Gomorrah.”⁴ Unable to guarantee the safety of participants, the organisers cancelled the event.

4. A survey in 2006 of the general population found that **81.4% of respondents would not be on friendly terms with a homosexual**, while **71.4% would not want to work with a homosexual**.⁵

Legislation prohibiting sexual orientation discrimination in employment

5. The Committee has stated that it “considers that under Article 1§2 legislation should prohibit discrimination in employment at least on grounds of race, ethnic origin, religion, disability, age, sexual orientation and political opinion”.

6. The Committee has defined “discrimination in employment” as discriminatory acts that may occur in connection with recruitment or with employment conditions in general (in particular, remuneration, training, promotion, transfer and dismissal or other detrimental action).⁶

7. Article 2 of Georgia’s Labour Code (set out in Appendix 1) provides protection from discrimination in “employment relations” on a number of grounds, including sexual orientation.

8. However, other Articles of the Labour Code negate the effectiveness of this provision in some key areas:

Article 5.8 gives the employer the right to reject a person’s application for a job without any reasoning: “The employer is not required to prove his/her decision on refusal of employment”.

² “Forced Out: LGBT People in Georgia” - ILGA-Europe and COC - August 2007

³ *Honouring of obligations and commitments by Georgia* - Doc. 11502 rev - Para. 268 - 23 January 2008 Report - Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe

⁴ *Georgian Media Invent Gay Pride Rally* - By Anna Kamushadze - The Messenger - July 27, 2007

⁵ “Forced Out: LGBT People in Georgia” - ILGA-Europe and COC - August 2007

⁶ Conclusions XVI-1, Austria, P.25, as reported in the Digest of the Case Law

Article 38 would appear to allow an employer to dismiss an employee at will, again without providing any reasoning. The text of Article 38 is included in Attachment 1.

9. The Labour Code regulates conditions for those in employment, but does not cover the recruitment process. There is no legislation providing protection from discrimination in the recruitment process in relation to sexual orientation, or any other ground.

10. We therefore urge that the Committee concludes that the Georgian legislation with regard to discrimination in employment, including on the ground of sexual orientation, is not in conformity with Article 1§2 of the Revised Charter.

Legislation prohibiting gender identity discrimination in employment

11. There is no legislation specifically prohibiting gender identity discrimination in employment, nor any case law which would interpret “gender identity” as being protected by provisions relating to “gender”.

12. Under the Georgian health system gender reassignment surgery is possible. In June 2006 the Georgian courts recognized the right of a female-to-male transsexual to be recognized as a man⁷. The individual in question was a teacher with many years’ experience. Despite the court ruling, he has not been able to regain employment as a teacher.

13. One of the barriers to his re-employment relates to the Georgian procedures regarding academic diplomas: there is no procedure for reissuing diplomas to reflect a person’s changed gender. Thus, the individual in question was not able to present his academic qualifications when applying for jobs.

14. We request that the European Committee on Social Rights return a finding of non-conformity with the Social Charter in respect of these factors.

Other government measures to combat sexual orientation and gender identity discrimination in employment

15. While the government has adopted a number of policy documents regarding discrimination against ethnic and religious minorities, it has no strategies or policies to address discrimination in employment on the ground of sexual orientation or gender identity. By the same token, it has not involved employers’ or workers’ organisations in combating discrimination on these grounds.

16. Given the hostility faced by LGBT people in Georgia, the absence of any policies or practices combating such discrimination is very grave. We urge the Committee to return a finding of non-conformity with the Social Charter.

⁷ Case of N.K at the Sokhumi City Court on 7 July 2006

Labour Code of Georgia⁸

Non-discrimination provision

Article 2. Employment Relations

1. Employment relation means performance of paid labor by the employee to the employer in terms of organized labor arrangement.
2. Employment relations are established on the basis of the agreement reached between the parties as a result of voluntary expression of goodwill and equitability.
3. Any type of discrimination due to race, color, ethnic and social category, nationality, origin, property and position, residence, age, gender, sexual orientation, limited capability, membership of religious or any other union, family conditions, political or other opinions are prohibited in employment relations;
4. Direct or indirect oppression of a person, aimed at or causing creation of harassing, hostile, humiliating, dignity harming or insulting environment, or creation of such conditions which directly or indirectly impair his/her state compared with other persons being in the analogous conditions shall be construed as discrimination;
5. The necessity of making distinction between the people judging from the essence, specifications of the employment or the conditions of its performance, which serves to achievement of legitimate goal and is the reasonable and necessary way of its achievement shall not be deemed as discrimination;
6. In the course of employment relations the parties should adhere to basic humans rights and freedoms as defined by Georgian legislation;

Termination of employment

Article 38. Invalidation of the Employment Agreement

1. Employment agreement can be invalidated upon the initiative of either party, under the rule provided by the present Article.
2. If the initiator of the invalidation is an employee, he/she must notify the employer no lesser than thirty calendar days in advance in writing unless otherwise provided in the employment agreement;
3. In case invalidation of the employment agreement under the initiative of the employer, employee shall receive severance pay for not less than one month;
4. Requirements of clause 2 and 3 of the present Article do not apply to the occasions of default of commitments by either party;

⁸ Translation from: <http://www.doingbusiness.org/Documents/LawLibrary/Georgia-Labor-Code-of-Georgia.doc>