

Open Society Georgia Foundation

Tbilisi, October 2016



Kingdom of the Netherlands

This policy brief is prepared in the framework of the project “monitoring implementation of the EU-Georgia Association Agreement by coalition of civil society organizations” funded by the Embassy of the Kingdom of the Netherlands. The document does not necessarily reflect the views of the donor.

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OPEN SOCIETY GEORGIA FOUNDATION
ფონდი ოპენ სოციალიზმის საქართველო

This policy brief covers period from October 2015 till October 2016.

This policy brief is prepared within the framework of the Open Society Georgia Foundation's in-house project “monitoring implementation of the EU-Georgia Association Agreement by coalition of civil society organizations”. The views, opinions and statements expressed by the author and those providing comments are her only and do not necessarily reflect the position of Open Society Georgia Foundation. Therefore, the Open Society Georgia Foundation is not responsible for the content of the material.

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Maternity and Parenting – Georgia's Forgotten Obligations

POLICY BRIEF

Executive Summary

The section on equal treatment within part 2.1 on political dialogue and reform of the EU-Georgia Association Agenda (AA) highlights the importance of protecting maternity and parenting. It urges the Government of Georgia (GoG) to approximate Georgian legislation and practice to European health standards and safety rules, including rules on the protection of maternity and the reconciliation of parental and professional responsibilities.

Unfortunately, the GoG has not focused on the country's safety rules with regards to maternity and parenting in 2014-2016. Since signing the Association Agreement, the GoG has not improved its regulations, despite the fact that this is one of three priorities within the equal treatment section. The lack of progress in this area compromises the full implementation of the AA by Georgia. Therefore, it is important for the GoG to immediately take steps towards approximation with EU standards.

The present policy brief analyses Georgia's existing legislative framework for maternity and parenting and relevant EU directives and makes recommendations to the GoG to further approximate Georgian legislation with EU standards.

Introduction

According to National Statistics Office of Georgia, the population of Georgia is 3.7 million, out of which 51% are women. The labour force is 1.99 million, 46% of which are women. The monthly nominal salary for women is 617 GEL (approx. EUR 237) and for men 980 GEL (approx. EUR 376).¹

Table 1. Economic status of female and male population age 15 and above in 2014

Economic status	Female	Male
Economic activity	57.1%	77.4%
Employment	51.1%	66.6%
Unemployment	10.4%	14.0%

(National Statistics Office of Georgia - Women and Men in Georgia, 2015)

Georgian legislation regulates maternity and parenting through the Georgian Labour Code, Law on Gender Equality, Law on Civil Service and bylaws of Minister of Labour, Health and Social Services. All the relevant rules were adopted before 2014, prior to the AA being signed.

According to the Law on Gender Equality, every person is entitled to freely choose a profession and specialty based on his/her abilities and “free choice of occupation or profession, career promotion, vocational training” is guaranteed without discrimination.² The law also states that Georgian legislation shall ensure favourable working conditions for pregnant women and nursing mothers and excludes them from hard, harmful and dangerous working conditions and night work.³

In 2013 the Parliament of Georgia amended the Labour Code to increase maternity leave during pregnancy and childcare from 477 to 730 days and paid leave from 126 days to 183 days. The payment from the state budget also increased to 1 000 GEL (approx. EUR 380) for the 183 days. Prior to the amendments, women on maternity leave received 600 GEL (approx. EUR 230) for 126 days.⁴ The increased period of paid maternity leave is a positive development, however the payment from the state budget remains extremely low.

Approaches and Results

Maternity regulations

To assess the compliance of Georgian health and safety rules in the protection of maternity, Georgian legislation will be compared to Council Directive 92/85/EEC. The Directive calls on states to improve their regulations and judicial remedy to guarantee better protection of pregnant, breastfeeding women and women who have recently given birth.⁵ As stipulated in the AA, Georgia should comply with Council Directive 92/85/EEC by 2018. This policy brief analyses the progress achieved by the GoG in 2014-2016.

According to the Directive, employers must: a) assess any risks to the safety or health and any possible effect on the pregnancy or breastfeeding of workers and inform them of the results (art. 4); b) when there is a risk, an employer shall temporarily adjust the working conditions/hours of the worker concerned, grant leave, or move her to another job (art. 5); c) under no circumstances is it permitted to

¹ Women and Men in Georgia, 2015, National Statistics Office of Georgia, Available at: http://www.geostat.ge/cms/site_images/_files/english/Gender%20Statistics.pdf

² Gender Equality Law, 2010, art. 7, Available at: <https://matsne.gov.ge/ka/document/view/91624?impose=translateEn>

³ Ibid. art. 6(4).

⁴ Labor Code, 2010, art. 27, art. 29, Available at: <https://matsne.gov.ge/ka/document/view/1155567?impose=translateEn>

⁵ Council Directive 92/85/EEC, art. 12, art. 14, 19 October 1992, Available at: <http://eur-lex.europa.eu/legal-content/en/TX-T/?uri=CELEX%3A31992L0085>

jeopardise the safety or health of concerned worker (art. 6); d) no night work (art. 7); e) pregnant women are entitled to maternity leave of a least 14 weeks (art. 8(1)); f) there should be compulsory maternity leave of at least two weeks (art. 8(2)); g) pregnant women should be guaranteed time off, without loss of pay, in order to attend ante-natal examinations (art. 9); h) during the period from the beginning of their pregnancy to the end of the maternity leave, dismissal of women should be forbidden (art. 10).⁶

In addition, the Directive stipulates that payment of an adequate allowance to compensate for any loss of income must be guaranteed by the employer in case of articles 5, 6 and 7 when certain actions are necessary to avoid exposure of workers to risks. Consequently, an adequate allowance should be ensured during any adjustment of the working conditions, granting leave or offering another job (art. 11(1)).

In relation to pregnant women and mothers who have recently given birth or who are breastfeeding, the Georgian Labour Code provides certain safety rules. Namely, assigning pregnant women and breastfeeding mothers to hard, harmful or hazardous work⁷ and the night shift is prohibited.⁸ In addition, an employer is obligated to protect pregnant women from performing work that would endanger them or their foetus’ wellbeing, physical or mental health.⁹ Under the Georgian Labour Code it is possible to suspend working relations for maternity, adoption and childcare leave,¹⁰ while termination of labour relations for these reasons is forbidden.¹¹

Thus, Georgian legislation is in compliance with EU standards and Council Directive 92/85/EEC regarding safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. At the same time, Georgian legislation still needs to be brought into compliance with EU standards in relation to risk assessments and adjustments of working conditions with adequate allowance. There is no compulsory maternity leave envisaged in the Labour Code of Georgia. It is up to the woman to decide whether or not to use maternity leave and in some cases it becomes a subject of negotiation between employees and employers. Mandatory maternity leave would eliminate the risk that an employer might urge a female employee not to use maternity leave.

An important guarantee of the Directive is maintenance of a payment of, and/or entitlement to, an adequate allowance for pregnant women, breastfeeding mothers and women who have recently given birth (art. 11(2)(b)). There is no obligation under the Labour Code to maintain payment for these workers. While the Civil Service Law stipulates that maternity leave should be paid in an amount equal to the employee’s remuneration,¹² in the private sector it is at the employer’s discretion whether payment for maternity leave will be maintained or not. Most of the time, women are compelled not to use maternity leave at all or to use it for a short period of time because of the small maternity allowance provided and the lack of willingness of a private employer to pay a full salary to women on maternity leave.

Another problem is the maternity leave allowance paid by the state. First, maternity leave is paid only to those women who are currently employed and not to women who are unemployed. Second, the allowance of 1 000 GEL (approx.

⁶ Ibid.

⁷ Labour Code, 2010, art. 4(5), Available at: <https://matsne.gov.ge/ka/document/view/1155567?impose=translateEn>

⁸ Ibid, art. 18.

⁹ Ibid, art. 35(7).

¹⁰ Ibid, art. 36(2)(g).

¹¹ Ibid, art. 37(3)(c).

¹² Law on Civil Service, 2015, art. 64(2), Available at: <https://matsne.gov.ge/ka/document/view/3031098?impose=original>

EUR 380) over a six month period is barely above subsistence level. The maternity allowance translates into 166 GEL per month while the subsistence level is 156 GEL per month.¹³ Thus, the allowance paid for maternity leave, which should be enough for a mother and child, is ten GEL more than what is minimally necessary for one person.¹⁴

As there were no legislative changes to approximate Georgian legislation to EU standards with regard to maternity protection, official data was requested from the Ministry of Justice and the Ministry of Labour, Health and Social Affairs regarding implementation of the AA. The Ministry of Justice responded that information regarding maternity and parenting protection falls beyond its competence.¹⁵ An official letter from the Ministry of Labour, Health and Social Affairs enumerates the actions it has undertaken, including in the areas of access to prenatal services, sex-selective abortions, universal healthcare and reform of prescription of medication no information was provided regarding health and safety rules or rules on the protection of maternity.¹⁶ Unfortunately, the protection of maternity has not been a priority for the GoG.

Parenting regulations

The AA calls for the GoG to undertake steps to reconcile parental and professional responsibilities. Though Georgia has no obligation to approximate with EU Council Directive 2010/18/EU, Georgia does have an obligation to support work-life balance in order to achieve gender equality, promote women’s participation in the labour force and encourage the sharing of childcare responsibilities between women and men. Council Directive 2010/18/EU sets out minimum requirements and provisions for parental leave, distinct from maternity leave. We will therefore use Council Directive 2010/18/EU to assess the GoG’s efforts to implement the AA.

Council Directive 2010/18/EU sets minimum requirements on parental leave, as an important means of reconciling professional and family responsibilities and promoting equal opportunities and treatment between men and women.¹⁷ The Directive entitles both male and female workers to an individual right to parental leave for the birth or adoption of a child (art. 2(1)); the parental leave shall be granted for a minimum four-month period. To encourage a more equal take-up of leave by both parents, at least one of the four months shall be provided on a non-transferable basis (art. 2(2)); at the end of parental leave, workers shall have the right to return to the same job or, if that is not possible, to an equivalent or similar job (art. 5(1)); states shall protect workers against less favourable treatment or dismissal on the grounds of parental leave (art. 5(4)); states shall ensure that workers, when returning from parental leave, may request changes to their working hours and/or patterns for a set period of time (art. 6(1)); states shall take the necessary measures to entitle workers to time off from work on grounds of force majeure for urgent family reasons in cases of sickness or accident (art. 7(1)).

Issues related to parenting are regulated under Chapter VI of the Labour Code of Georgia on maternity, childcare and new-born adoption leaves. According to

¹³ National Statistics Office of Georgia, 2016, Available at: http://www.geostat.ge/index.php?action=page&p_id=179&lang=eng

¹⁴ Law on Subsistence Minimum, 1997, Available at: <https://matsne.gov.ge/ka/document/view/29824>

¹⁵ Official Letter #6340 from Ministry of Justice of Georgia, dated 24 September 2016.

¹⁶ Official Letter #01/74533 from Ministry of Labour, Health and Social Affairs of Georgia, dated 3 October 2016.

¹⁷ Council Directive 2010/18/EU, 2010, Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32010L0018&from=EN>

Article 27 of the Labour Code, pregnancy, maternity and parental leave can be granted for 730 calendar days at an employee’s request, out of which 183 days are paid. According to Article 29, maternity, childcare and new-born adoption leaves of absence shall be paid a maximum of 1 000 GEL (approx. EUR 380) from the State Budget of Georgia.¹⁸ These articles do not define the sex of the parent for childcare leave, thus both male and female parents are entitled to childcare leave. But the practice and bylaws reveal a different picture that will be discussed below.

Decree №231/N of the Ministry of Labour, Health and Social Affairs stipulates that the maternity, adoption and childcare allowance of 1 000 GEL (approx. EUR 380) could not be granted to the relatives of the mother. The only exception is when the mother dies and the father takes care of a newborn child. In this case, the father will be granted the allowance.¹⁹ This childcare allowance is designed only for women in Georgia. The abovementioned regulation clearly contradicts the Law on Gender Equality, according to which equal opportunities should be guaranteed for both parents in childcare and professional occupation.²⁰

In the private sector, Georgian legislation guarantees no paid leave for either male or female employees. Paid childcare leave for men is guaranteed only for civil service employees, but the practice shows that it is not used. According to data from 2015, during the last 18 months, paid childcare leave was used by 211 women and 0 men.²¹ One of the reasons for this is non-supportive legislation. Another obstacle is cultural: in Georgia men’s role in taking care of children is deemed insignificant. It is even considered to be shameful and ‘unmanly’.²² In this light it is extremely important to facilitate male parenting and promote the role of fathers in child rearing and family life in Georgia.

The comparison of Georgian legislation with EU standards reveals significant inadequacies in the areas of reconciliation of parenting and professional life. More specific regulations regarding parenting are needed, such as equal take-up of leave by both parents, right to request changes to their working hours and/or patterns for a set period of time on return from parenting leave, right to take time off from work, on grounds of force majeure, etc.

So far in 2014-2016 no specific regulation or policy has been improved to facilitate parenting in Georgia.

Conclusion

The analysis of Georgian legislation and practice and official data collected from state institutions show that in 2014-2016 the GoG has not implemented any changes in relation to improving safety rules for mothers or facilitating parenting. The GoG has not yet fulfilled its obligations in the area of protection of maternity and parenting as part of the AA’s section on equal treatment. It is unclear whether the government considers these obligations as already fulfilled, or plans to implement Council Directive 92/85/EEC by 2018 in compliance with the AA.

¹⁸ Labour Code, 2010, art. 29, Available at: <https://matsne.gov.ge/ka/document/view/1155567?impose=translateEn>

¹⁹ Decree №231/N of the Ministry of Labour, Health and Social Services, 2006, art. 10(6), Available at: <https://matsne.gov.ge/ka/document/view/66208>

²⁰ Gender Equality Law, 2010, art. 10(3), 2010, Available at: <https://matsne.gov.ge/ka/document/view/91624?impose=translateEn>

²¹ Men in Paternity Leave, info graphic, by CSO “Article 42 of the Constitution”, 2015, Available at: <http://tanastsoroba.ge/en/publications/13>

²² UNDP Public Perceptions on Gender Equality in Politics and Business, 2013, p. 19, Available at: http://www.ge.undp.org/content/georgia/en/home/library/democratic_governance/public-perceptions-on-gender-equality-in-politics-and-business.html

The comparative analysis of Georgian legislation and EU standards demonstrates that the Georgian Labour Code contains some basic guarantees but needs further improvement to come in line with Council Directive 92/85/EEC on safety rules and protection of maternity. For positive assessment of the implementation of Association Agenda 2014-2016, the GoG needs to facilitate fathers’ involvement in child rearing on both the legislative and practical level to support the reconciliation of parental and professional life of working parents. Thus far, the GoG has not changed a single law or policy to meet the requirements set out by the AA regarding the protection of maternity and parenting.

Recommendations

To fully implement Council Directive 92/85/EEC and approximate Georgian legislation to European standards in the area of reconciliation of parental and professional responsibilities, the GoG should improve its legislative framework and legally define that:

- Employers have the obligation to assess the risk to the safety or health and any possible effect on pregnant or breastfeeding workers and inform them regarding results;
- Employers must temporarily adjust the working conditions for pregnant and breastfeeding mothers, including the possibility of granting leave or moving to another job;
- Maternity leave of at least two weeks is compulsory;
- Time off must be provided to pregnant women to attend antenatal examinations without loss of pay. (Currently it is guaranteed only for women employed in the civil service);
- The amount of payment from the state budget for maternity leave should be increased. (Current allowance is 1 000 GEL (app. EUR 380) for 183 days);
- Maternity leave allowance should be paid to all pregnant women, regardless of their employment status;
- Men should be entitled to the individual right to paid parental leave for the birth or adoption of a child;
- Workers shall have the right to return to the same job or an equivalent or similar job after parental leave;
- When returning from parental leave, the state shall ensure changes to working hours and/or patterns for a set period of time on request;
- State shall take the necessary measures to entitle workers to time off from work, on the grounds of force majeure for urgent family reasons in cases of sickness or accident.

