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SEXUAL HARASSMENT BEYOND LEGAL REGULATION IN GEORGIA

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INTRODUCTION

The EU-Georgia Association Agenda for 2014-2016 provides a list of priorities for joint work and has a subsection on equal treatment. Achieving gender equality and equal treatment between men and women requires the elimination of discrimination against women and girls, including sexual harassment.

This policy memo focuses on the need of regulation of sexual harassment as a form of gender based discrimination. Sexual harassment is acknowledged as a prevalent problem both within the labor market and in the public space. As defined by the Equal Employment Opportunity Commission (EEOC), "It is unlawful to harass a person because of that person's sex." Sexual harassment has been defined as a form of discrimination based on sex under various EU Council Directives. Georgia undertook an obligation to meet the requirements of these directives and adopt the regulations regarding sexual harassment. However, Georgia has currently no regulations on sexual harassment, thus this policy memo aims to demonstrate the urgent need of legislative changes.

The Georgian government has taken some actions to address gender equality in general; some of the ministries have gender equality action plans, others have gender advisers to the Ministers; also, the interdepartmental Gender Equality Commission was established, and gender focal points were appointed. The system of gender focal points was introduced in administrative and local bodies of Georgia to coordinate the implementation of the National Action Plans. The Parliament boasts a Gender Equality Council and the respective action plan, but so far the issue of sexual harassment has been ignored by state institutions.

BACKGROUND INFORMATION

Patriarchal mentality and culture in Georgia often appear as obstacles to the realization of equality for all. According to the traditional gender roles women are expected to be obedient to men and devoted to the family. Women usually prefer to remain silent about the humiliation they face in daily life and sexual harassment is still somewhat of a taboo for women to discuss, as it is often seen as the fault of the woman herself. Obviously, sexual harassment diminishes the quality of gender equality.

The prevalence of sexual harassment in Georgia has not been sufficiently studied, but all available data demonstrate that the problem is widespread. The "Rapid Assessment of Sexual Harassment in Metro Rail of Tbilisi, Georgia"¹ poll, conducted in 2014, demonstrated that 45% of female respondents have experienced some form of sexual harassment in the Tbilisi metro during the last 6 months prior to the conduct of the opinion poll. However, none of the victims has asked the police for help, let alone press charges. Only a relatively small number of women acknowledged to have been victims of sexual harassment at some point. It should be highlighted that even if women had reported sexual assaults to the police, the latter would not have been able to take legal actions, as this matter is simply not regulated under the Administrative Offenses Code of Georgia.

¹ "Rapid Assessment of Sexual Harassment in Metro Rail of Tbilisi, Georgia"; Women's Initiative Center, 2014, Available at: http://www.ginsc.net/upload_files/docs/ADB%20Research%20Harassment.pdf

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The existence of sexual harassment in the workplace has been revealed by research conducted in 2014² and shows that most common forms of sexual harassment (such as jokes of a sexual nature, comments on body and appearance, questions regarding private life, etc.), though quite frequent, are not identified by respondents as sexual harassment. This reveals that awareness of the concept of sexual harassment is rather poor in Georgian society. One of the reasons of this is the absence of prohibition of sexual harassment in the Georgian Labor Code, as well as the Administrative Offenses Code of Georgia.

Employers also are not legally obliged to have complaint procedures on sexual harassment in the workplace. Thus, sexual harassment is left beyond any legal regulations in Georgia.

The number of sexual harassment cases in the courts is also extremely low; only three women have appealed to the courts in recent years. One of the most notorious cases was launched in 2016, when a well-known Georgian actress claimed that she was sexually harassed in the workplace by her former superior. This court case is still ongoing.

As there are blatant gaps in the Georgian legislation, the interpretation of the court is of utmost importance. The judge might consider sexual harassment as a form of discrimination and decide according to the anti-discrimination law or might even disregard the law entirely as it does not mention sexual harassment as a form of discrimination.

The Georgian parliament did not support the recent legislative initiative of members of parliament from the opposition on the definition of sexual harassment and the introduction of a relevant sanctions catalogue in the Administrative Code. The government-led majority in the parliament rejected the initiative by claiming that the bill was too vague.

ANTI-HARASSMENT CAMPAIGNS

In spring 2017, the non-governmental organization “Sapari” launched a social media campaign on Facebook against sexual harassment titled “What happened on the streets”. The campaign aimed to raise awareness about sexual harassment and increase the visibility also of hidden forms of violence against women. In autumn 2017 the new worldwide campaign “#metoo” started regarding sexual harassment, which became popular in Georgia as well.

² “Gender Discrimination in Georgian Labor Market”, CSS, 2014, p.50, Available at: http://css.ge/files/documents/Project%20reports/Labour_discrimination_ENG.pdf

INTERNATIONAL OBLIGATIONS

The importance to regulate sexual harassment derives from the acute and obvious need itself, but is also due to Georgia's obligations prescribed by legally binding international conventions. For example, the Istanbul Convention was ratified by Georgia in spring 2017 and states that all parties have an obligation to make sexual harassment subject to criminal or legal sanctions. Also, of particular importance is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by Georgia in 1994. Its General Recommendation #12 obliges all signatory states to protect women from violence, including sexual harassment.

Surprisingly, the regulation of sexual harassment is not explicitly mentioned in the EU-Georgia Association Agenda, though it broadly mentions the enhancement of gender equality in economic and social life of men and women in Georgia. The absence of regulations of sexual harassment in Georgia worsens women's social and economic life, as neither the public space nor the workplace is protected from such offenses, and the respective environment can easily become hostile for women. The EU Council Directive 2004/113/EC is an integral part of the EU-Georgia Association Agreement. This directive, which is due for implementation by 2017, defines sexual harassment as a form of discrimination based on sex (art.4 (3)) and highlights that sexual harassment can take place in areas outside the labor market as well (principle 9). The Directive obliges all signatories to elaborate respective legal frameworks against discrimination and put into effect the principle of equal treatment between men and women.

RECOMMENDATIONS

To enhance equality between men and women and to eradicate discrimination against women, Georgia has to combat sexual harassment, as it is a form of violence against women and discrimination based on sex. To achieve this objective, Georgia has to undertake at least five specific steps on both the legislative and executive level:

- The parliament of Georgia has to come up with regulations prohibiting sexual harassment both in the labor market and in public spaces, notably by adopting legislative changes in the Labor Code and in the Administrative Offenses Code in line with EU Council Directive 2004/113/EC;
- The Ministry of Internal Affairs has to put in place a programme that trains and prepares the police on how to address sexual harassment;
- The government of Georgia has to take actions to raise awareness on sexual harassment via public campaigns;
- The Georgian authorities have to establish a system that monitors systematically the prevalence of sexual harassment, and collects and analyzes data;
- Lastly, the government of Georgia should support the adoption of concrete policies destined to combat sexual harassment in the private sector.