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The Labour Inspectorate in Georgia: Challenges and the Way Forward

Policy Brief

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Preface

The effective protection of workers' labour rights and safety has been a significant challenge in Georgia for a number of years. Hence, for the past ten years, a political consensus has existed that an efficient labour inspection system is essential for ensuring the effective application of labour legislation. The 2014-2020 Association Agreement established between Georgia and the European Union was an important catalyst for re-establishing the Labour Inspectorate in 2015, almost ten years after its abolition.¹ The current Labour Inspectorate model includes the supervision of occupational safety and labour rights issues. The inclusion of labour rights is one of the most important achievements of the 2020 labour reforms.

The purpose of the present document is to discuss the effectiveness of the mandate and practices of the Labour Inspectorate in light of workers' needs and how it addresses the challenges that exist in the Georgian labour market related to labour rights, occupational safety and health. The document will identify key shortcomings in the functioning of the Labour Inspectorate and make recommendations for actions to be taken in order to enhance and support its institutional capacity.

According to the Association Agenda 2021-2027,² Georgia *inter alia* has committed to "adopt and implement the legal framework, which establishes the supervisory functions of the Labour Inspection

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system for all labour and working conditions legislation.” Georgia also committed to ensuring an effective labour inspection system with adequate competencies, capacities and resources, including financial, human and administrative resources.

Drawbacks in Labour Inspectorate’s Work

At the end of 2021, the Social Justice Center published a study that used inspection reports to assess the performance of the Labour Inspectorate in the wake of the increased mandate and institutional strengthening prompted by labour reforms. The research analysed 56 inspection reports in the field of labour rights prepared in January-August 2021 (100% of the inspections at that time) and 108 inspection reports related to occupational safety from 2020.

The study³ revealed that the Labour Inspectorate relied solely on warnings as the only administrative penalty, regardless of the severity of the violation, even though it is legally entitled to apply other administrative penalties such as fines and suspension of the work process. The administrative penalty should be proportionate to the seriousness of the violation. Consequently, applying only warnings by the Labour Inspectorate, regardless of the gravity of the breach, raises questions about the proportionality of the penalty, as well as the effectiveness of the Inspectorate’s work, and urges a reconsideration of the existing practice.⁴ This approach was slightly shifted in 2022, when the inspection imposed fines on companies for violating labour rights, although rarely. Sanctions remain an essential part of the enforcement; institutions without coercive measures can play only a limited role in enforcing labour rights and safety. As for sanctions imposed by the Inspectorate with regard to occupational safety violations, it seems to lack consistency since the Inspection has applied more pressure on some industries (e.g. construction) and less on others (e.g. extraction). According to the study, in 2020 the extractive industry was inspected only nine times (compared to 141 inspections in the constructive industry) and eight out of the nine inspections were carried out against one employer.⁵ Furthermore, the Social Justice Center did not receive from the Inspectorate, upon request, the inspection reports carried out in the extractive industry, leading to the conclusion that the Inspectorate has not inspected the above-mentioned industry on any account. In contrast, the journalist investigation disclosed the existence of such reports. For years the high number of occupational deaths and injuries (see the data chart below) in Georgia has been a cause for concern, especially given that the industry is hardly accessible to media, CSOs and even independent trade unions.

¹ Social Justice Center - Labour Inspection Service Assessment, 2021, p. 13. Available at: <https://socialjustice.org.ge/en/products/shromis-inspektsiis-sakmianobis-shefaseba-2021>

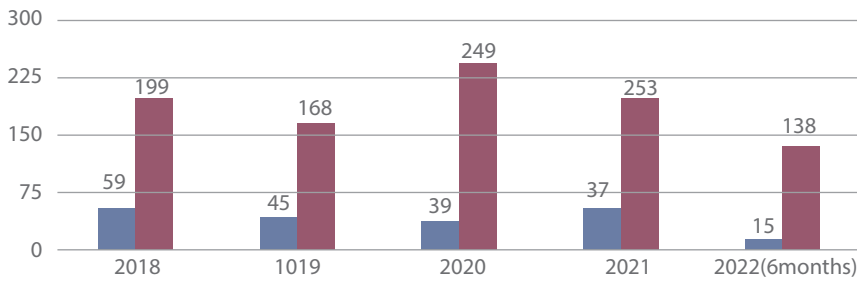
² https://www.asocireba.ge/learn/?s=read_more&id=30

³ Social Justice Center, *supra* note 1, Available at: <https://rb.gy/6sntcl>

⁴ *Ibid.* p. 48.

⁵ *Ibid.* p. 61.

Workplace Deaths and Injuries by Year



Therefore, it is legitimately expected that the Labour Inspectorate will proactively inspect companies with high numbers of work-related injuries and impose adequate sanctions envisaged by the Law. However, so far, the agency has not met this expectation.

According to the Law, the Labour Inspectorate annually inspects workplaces based on scheduled or impromptu inspections and reasonable doubt or filed complaints.⁶ The priority areas for the scheduled inspections shall be determined under the rules defined by the Government. As for the list of specific organisations to be inspected, the Chief Labour Inspector determines it according to the established priorities.⁷ However, no such priority areas are set for inspections in the field of labour rights, creating the risk of abuse of power. In contrast, such risks are eliminated in occupational safety, where the Government Ordinance provides a detailed procedure for identifying priority areas. Consequently, legal regulation must establish clear criteria for setting priority areas for the scheduled inspections in the field of labour rights.

Developing appropriate recommendations by the Board of Advisors⁸ is essential to improve the efficiency of the Inspectorate. It is noteworthy that the representatives of independent trade unions are not in the composition of the board but only the members of the Confederation of Georgian Trade Unions, despite repeatedly expressing a desire to participate in tripartite formats and their important role in fighting for workers' rights. Accordingly, relevant changes should be implemented to ensure independent trade unions' inclusion in the Board of Advisors.

Another challenge identified is the inconsistency in determining what is a reasonable time for remedying the violation by employers.⁹ In most cases, the Labour Inspectorate determined 30 days as a reasonable time to fix violations. However, the Inspectorate set different lengths of time for public services without providing any objective justification. In order to achieve prevention and compliance, similar cases under similar conditions must be treated similarly. This approach shall apply to reasonable time determination and merit-based assessment. To this end, labour inspectors should be provided with guidelines for coherent and consistent intervention approaches.

⁶ Law of Georgia on the Labour Inspection Service, <https://bit.ly/3IEVN4B>.

⁷ "On the Approval of the Rules and Conditions of Entry and Inspection of the Facilities Subject to Inspection", Art. 10(1), 11(1).

⁸ Consultative body to the Labour Inspectorate. Representatives of parties to the Tripartite Social Partnership Commission and relevant committees of Parliament and the Public Defender's Office are included in the Board of Advisors of Labour Inspection Service composition. "Law of Georgia on the Labour Inspection Service", Art. 9.

⁹ Ibid. p. 52.

Institutional Challenges

While noting positive steps taken in terms of the institutional development of the agency, it is of paramount importance to address the remaining systemic problems that impede the labour inspectorate from truly becoming an effective mechanism for the protection of workers' rights and safety throughout the country.

Institutional Independence

Despite transforming the Labour Inspectorate into a legal entity under public law, there are still some concerns regarding its institutional independence. Namely, the Minister of Labour, Health and Social Affairs of Georgia is legally entitled to supervise the legality and efficiency, and the agency's financial and economic activities. This entitlement, coupled with his right to revoke decisions of the Chief Labour Inspector, creates room for interference in the institution's activities, limiting independence not only in the field of technical, financial, and organisational issues but also in the exercise of the Inspectorate's direct functions. While accountability of the agency is vital in eliminating risks of abuse, a proper balance has to be found between accountability and independence to exclude undue interference and abuse of power. An assessment¹⁰ prepared in 2022 within the framework of the Council of Europe project provides a similar conclusion, highlighting the possibility of improper implementation of the statutory rights by the minister and risks of political abuse.¹¹

Data Analysis

Difficulties in analysing data and providing interested parties with accurate statistics is another problematic issue, supposedly connected to the non-existence of digital databases at the Labour Inspectorate. Maintaining digital databases would allow the Inspectorate to collect accurate disaggregated data, further developing its analytical activities. Data analysis would further facilitate the generalisation of the Inspectorate's practice and frequent labour rights violations, enabling the identification of strategic institutional directions.

The lack of proactive disclosure of information undermines the transparency and openness of the agency. Although the names of the companies are provided in the inspection reports and made available to every interested person through a freedom of information request, the Labour Inspectorate persistently refuses to publish it proactively. This problem was clearly demonstrated within the Open Governance Platform (OGP) negotiations, where the agency refused to undertake the above-mentioned obligation despite pressure coming from local human rights organisations. Proactivity would contribute to the prevention of future violations as well as the establishment of a culture of compliance with labour norms.

Publicity and Awareness Raising

Another tough challenge is that the Labour Inspectorate remains unwilling to proactively disclose information regarding the companies violating labour rights and safety. The Inspectorate's unwillingness to

¹⁰ Marius Bartninkas - Institutional Capacity Assessment of Labour Inspection Service in Georgia, 2022.

¹¹ According to the Georgian Young Lawyers' Association's report, the inspection of the Sakpatenti was related to the persecution of the Sakpatenti Chairman on political grounds. Georgian Young Lawyers' Association – 2021 Local Self-Government Elections GYLA Long-Term Observation Mission, II Interim Report, 2021, p. 37. Available at: shorturl.at/bhkm6

disclose the information allegedly is connected with their policy to put less pressure on employers. This approach might have been somewhat tolerated in the first year of expanding their mandate to labour rights since it was a novelty for employers. However, it should be re-evaluated as continuing this policy will not contribute to ensuring labour rights and safety standards in the country.

Conducting intensive awareness-raising campaigns is of paramount importance in providing employers and employees with adequate information about their rights and responsibilities and the activities of the Labour Inspectorate. Establishing a full-fledged website will further facilitate this process since it will promote the Inspectorate's reach among the wider public. However, although establishing a user-friendly website was planned in 2020, it was launched in test mode only on 13 September 2022.

It is also noteworthy that according to the annual statistics in 2021, the first year when the Inspectorate undertook the supervision of labour rights, only 36 complaints regarding labour norms violations were filed before the Inspectorate. In its annual report, the Public Defender highlighted that the low number of complaints might be connected with employees' lack of awareness of the available remedy.¹² Among others, it should be actively communicated to employees that the disclosure of violations by the employer to the Labour Inspectorate is a safe remedy, protected by the confidentiality principle.

Informal and Non-Standard Employment

Like most post-Soviet countries, Georgia is a leading country¹³ in terms of informal employment, with 31.7% of the country's workforce consisting of informal workers.¹⁴ While formal data on non-standard employment is scarce, the Statistics Office estimated that "atypical workers" (defined as atypical in labour regimes: e.g. night work, temporary employment, etc.) made up 52% of the labour force in 2019.¹⁵ For a worker, informal and non-standard employment generates greater insecurity regarding their labour rights and safety protection, urging state intervention. It should be noted that only the precise regulation of norms and clearly defined powers at the legislative level can create conditions for the proper functioning of the Labour Inspectorate. The Inspectorate should be legally entitled to identify the informal sector or non-standard labour relations; otherwise people engaged in these sectors will be left beyond the protection afforded by the legislation.

Resources

The Labour Inspectorate shall be equipped with the necessary resources (human, financial and administrative) for the inspection of all working conditions and labour relations. In Georgia, a country with a transitional economy with 1,763,300 workers, the minimum number of labour inspectors has been determined as no less than 80 (1 per 20 000 workers).¹⁶ The number of inspectors in 2021 amounted to 109,¹⁷ meaning that the above-mentioned minimum standard set by the ILO is formally met.¹⁸ However, according to ILO standards, the number of

¹² "Public Defender's 2021 Parliamentary Report", Public Defender of Georgia, 2021, page 210, <https://rb.gy/uujt6z>

¹³ Giorgi Mzhavanadze, "Does Georgia Have One of the Largest Shadow Economies in the World?", *Forbes Georgia*, 2018, <https://forbes.ge/does-georgia-have-one-of-the-largest-shadow-economies-in-the-world/>.

¹⁴ <https://www.geostat.ge/ka/modules/categories/683/dasakmeba-umushevropa>

¹⁵ Social Justice Center – Informal and Non-standard Employment in Georgia, 2021, p. 49. Available at: <https://socialjustice.org.ge/en/products/araformaluri-da-arastandartuli-shromasakartveloshi>

¹⁶ Monika Smusz-Kulesza, Report on the Needs Assessment in respect of Social Rights in Georgia, 2021, p. 27, <https://rm.coe.int/needs-assessment-report-georgian/1680a4b2de>.

¹⁷ 2021 Report, page 13.

¹⁸ Social Justice Center- *supra* 1. p. 28. Available at: <https://socialjustice.org.ge/en/products/shromis-inspektsiis-sakmianobis-shefaseba-2021>

inspectors should be increased if they perform additional functions unrelated to the supervision of labour rights and safety.¹⁹ During the pandemic, for example, a significant proportion of human resources was directed at overseeing Covid-19 regulations. Given these additional functions, the increase in the number of labour inspectors likely does not meet the ILO standards and the question of how adequate and sufficient the number of inspectors is remains. A report²⁰ prepared within the Council of Europe project²¹ also stresses the importance of allocating institutional resources in such a way as to allow the conduct of a minimum number of regular inspections to ensure that the largest possible number of employees enjoy the protections guaranteed by the law.²²

Territorial Coverage

Particular importance is also attached to the territorial coverage of the Inspectorate, which in Georgia should be assessed as insufficient. Despite the functioning of two regional offices in Imereti and Adjara, statistics reveal that the agency's activities are concentrated in Tbilisi.²³ Furthermore, the absence of offices in regions with a concentration of various heavy, harmful and hazardous places of employment (e.g. at natural resource extractive factories in Chiatura, Tkibuli, Bolnisi, etc.) impedes the protection of labour safety in these regions. However, during the interview,²⁴ the Chief Labour Inspector found existing territorial units sufficient, noting that greater centralisation helps to avoid corruption. Such an approach should be re-evaluated, given that the proximity of territorial units to the workplace would facilitate collaboration among labour market actors, contribute to the dissemination of information, and allow a more accurate assessment of regional specificities.

Labour Inspectorate and the Covid-19 Pandemic

Since the significant expansion of the Labour Inspectorate's mandate, one of several challenges to the effective functioning of the Labour Inspectorate was the implementation of large-scale Covid-19 pandemic management measures. Since the pandemic, the Inspectorate has been tasked with overseeing compliance with Covid-19-related regulations, drastically increasing their workload, as it took up most of their resources. This decision indicated that ensuring workers' labour rights and safety was not prioritised in the country. According to the annual statistics for 2021,²⁵ 57 290 Labour Inspectorate activities were carried out to supervise the execution of Covid-19 regulations. In contrast, only 1 401 inspections were conducted in terms of enforcing labour rights and safety. These figures indicate that only 2% of the Labour Inspectorate's activities were dedicated to the performance of their mandate to supervise labour safety and labour rights.²⁶

Nowadays, with the lifting of all Covid-19 restrictions, there is the legitimate expectation among workers and CSOs that the Labour Inspectorate will make full use of the resources allocated to it for its primary legislative duty—the enforcement of labour rights and safety

¹⁹ ILO, International Labour Conference, 95th session, General Survey of the reports concerning the Labour Inspection Convention, 1947 (No. 81), and the Protocol of 1995 to the Labour Inspection Convention, 1947, and the Labour Inspection Recommendation, 1947 (No. 81).

²⁰ Monika Smusz-Kulesza, *supra* 16, p.27.

²¹ Strengthening Protection of Social and Economic Rights in Georgia. <https://rb.gy/bxjk3l>

²² Monika Smusz-Kulesza, *supra* note 16, p. 25.

²³ 57% of occupational safety and health and 62% of labour rights related site inspections were conducted in Tbilisi in 2021; "2021 Report", pp. 21, 30.

²⁴ The interview was conducted in zoom with Beka Peradze on 12 November 2021.

²⁵ "2021 Report on the Activities of the Labour Inspection Service". Available at: https://drive.google.com/file/d/1cvJE89L9yTZLALtYxq_Os-plAec9hpG/view?fbclid=IwAR3EBcivniYw_MgOC1xjiQ-4NIWfLn3pAQ10DXvR-rCCl99Vhd6loEs5EE; <https://www.facebook.com/Labourinspection/posts/287622306854930>

²⁶ Social Justice Center, *supra* note 1, p. 13. Available at: <https://socialjustice.org.ge/en/products/shromis-inspektsiis-sakmianobis-shefaseba-2021>

in the country. Moreover, the previous experience made it evident that in the event of a future outbreak, the state should apply a different approach and separate the obligation to control the enforcement of Covid-19 regulations from the core activities of the Labour Inspectorate.

Considering the above-discussed challenges, it is necessary to take relevant measures to ensure an effective Labour Inspection system with adequate competencies, capacities and resources.

Recommendations:

The effectiveness of the Labour Inspectorate could be improved by:

- Ensuring the agency is equipped with the necessary human, financial and administrative resources for inspecting all working conditions and labour relations.
- Increasing regional access to the Labour Inspectorate, especially in the regions where heavy, harmful and hazardous places of employment are primarily located (Tkibuli, Chiatura, Bolnisi, Poti).
- Separating the obligation to enforce Covid-19 regulations from the core activities of the Labour Inspectorate to fully perform its primary legislative duties.
- Establishing objective criteria and transparent procedures for suspending or revoking the Chief Inspector's decisions by the Minister of Labour, Health, and Social Affairs to prevent the possibility of political abuse.
- Setting clear criteria at the legislative level for determining priority areas in the field of labour rights, according to which the Labour Inspectorate will conduct scheduled inspections.
- Establishing criteria for selecting the type and level of sanction through legislation or consistent institutional practice in order to ensure both the proportionality of the sanctions and their uniform application.
- Developing digital databases and establishing a full-fledged website, promoting analytical evaluation of available statistics and transparency and awareness raising of the Labour Inspectorate's activities.
- Ensuring that the Labour Inspectorate is legally entitled to identify the informal sector or non-standard labour relations as labour relations, affording legal protection to workers in these sectors.