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Urgent Remedy for the Effectiveness of Labour Inspection - Where does Georgia Stand?

POLICY BRIEF

Executive Summary

One of the core focuses of the Association Agenda in terms of labour rights is to improve workplace safety and create a mechanism and institution with adequate capacities to inspect working conditions in accordance with the new law and International Labour Organisation (ILO) standards.¹ The creation of the Labour Inspection Department at the Ministry of Labour, Health and Social Affairs (MoLHSA) was a positive initial step toward the fulfilment of the above-mentioned criteria. However, despite its establishment, there is no efficient mechanism to address the violation of health and safety conditions at workplaces. Unfortunately, the legislative act that established the Labour Inspection Department is broad and has only recommendatory and consultative powers, which makes the process completely dependent on employers’ good will.

The State Programme of Labour Conditions Monitoring² does not provide effective protection for preventing and sanctioning the violation of labour standards. The fact that the findings of the Labour Inspection Department are recommendations hinders the effective protection of labour rights and prevention of discrimination or accidents at workplaces. The Labour Inspection Department should be the primary body that promotes the enforcement of labour standards according to ILO terms and executes recommendations issued through an easily accessible, transparent and binding mechanism.

Introduction

On 21 April 2015 the Department of Labour Inspection was established within the MoLHSA.³ The main function of the department is to monitor labour conditions and to protect labour norms.⁴ According to the official data of the MoLHSA, the budget of the State Programme of Labour Conditions Monitoring in 2015 was initially 1 million GEL,⁵ however its funding was decreased to 250 000 GEL in September of the same year.⁶ The funding for 2016 was increased to 550 000 GEL.⁷ Twenty-five trained monitors are working under the Labour Inspection Department.⁸ From 1 May 2015 until 15 May 2016, 90 private and public enterprises participated in monitoring. In total, 130 places of employment underwent monitoring since the establishment of the department. Fifteen entities/organisations were monitored after the demand of supervision by the Labour Inspection Department.⁹

The impact of the inspection mechanism is limited by a number of factors. Firstly, per the regulation on Approval of the State Programme of Labour Conditions Monitoring, the programme's target group is employers who agree in writing to participate in the programme and the employees who work for these employers.¹⁰ Secondly, the written consent of the employer is required before the working conditions in a company can be monitored.¹¹ And thirdly, the inspectors of the Labour Inspection Department only have the power to make non-binding recommendations.

The most frequently identified violations include: inadequate fire protection and prevention systems; the absence of evacuation plans, proper ventilation and protection of individual and collective agreements; the high risk of occupational diseases; violation of the rules of micro climate; and the absence of a person responsible for protecting labour conditions.¹² According to a letter from the ministry, as a result of the recommendations issued, fire safety and electrical systems and collective and individual remedies were improved in the supervised entities.

Georgian legislation, including Article 35 of the Labour Code of Georgia¹³ and other civil law acts,¹⁴ does not clearly define the sanctions for the violation of labour standards. The newly adopted Georgian Law on the Elimination of All Forms of Discrimination covers cases of discrimination or harassment in employment,¹⁵ however, none of the abovementioned legislative acts empowers any entity to sanction violators. The MoLHSA should elaborate an efficient and transparent execution mechanism to identify violations and eliminate hazardous labour or health conditions.

¹ Association Agenda between the European Union and Georgia (2014-2016), p. 7. Available at: http://eeas.europa.eu/delegations/georgia/documents/eap_aa/associationagenda_2014_en.pdf

² The decree of the Government of Georgia №38, February 5, 2015, on approval of the State Programme of Labour Conditions Monitoring. available in Georgian: <https://matsne.gov.ge/ka/document/view/2719707>

³ Order №01-10 / N of the Ministry of Labour, Health and Social Affairs; April 21, 2015. Available at: <https://matsne.gov.ge/ka/document/view/2817403>

⁴ See footnote 2. Article 2.

⁵ See footnote 2. Article 4.

⁶ Decree № 482 of the Government of Georgia, 2015, September 15. Available in Georgian: <https://matsne.gov.ge/ka/document/view/2982446>

⁷ Decree № 19 of Government of Georgia, 2016, January 18. Available in Georgian: http://ssa.gov.ge/files/01_GEO/KANONMDEBLOBA/Kanon%20Qvemdebare/147.pdf Decree № 19 of Government of Georgia, 2016, January 18. available in Georgian: http://ssa.gov.ge/files/01_GEO/KANONMDEBLOBA/Kanon%20Qvemdebare/147.pdf

⁸ Official web page of the Ministry of Labour, Health and Social Affairs. Available at: http://www.moh.gov.ge/index.php?lang_id=GEO&sec_id=29&info_id=2501

⁹ Official letter of the Ministry of Labour, Health and Social Affairs №01/43243,, 06.06.2016

¹⁰ See footnote 2. Article 2.

¹¹ See footnote 2.

¹² See footnote 9.

¹³ Labour Code of Georgia, Article 35. Available at: <https://matsne.gov.ge/en/document/view/1155567>

¹⁴ Civil Code of Georgia, Book Three -Law of Obligations. Available at: <https://matsne.gov.ge/ru/document/download/31702/75/en/pdf>

¹⁵ Law of Georgia on the Elimination of all Forms of Discrimination. Available at: <http://www.ombudsman.ge/uploads/other/1/1662.pdf>

Analysis

Article 35 of the Labour Code of Georgia guarantees the right to a safe and healthy working environment. The Labour Code outlines the general standard and requires employers to provide employees with a working environment that is maximally safe for the life and health of the employees.¹⁶ However, there is no clear and effective executive mechanism. Rather, only general and exceptional provisions partially cover the issue. The Administrative Procedures Code of Georgia outlines the response to juvenile labour rights violations¹⁷ or universal regulations that work only when a violation has caused damage.¹⁸ In Georgian legislation, there is no mechanism that prevents the violation of labour rights and specifically imposes sanctions against those who violate safe and healthy working conditions.

In 2015, only 18 disputes brought before all levels of the Georgian courts (first instance, appellate, and supreme) related to the damage of a life or health of an employee.¹⁹ Victims' attitude toward appealing violations to the court and willingness to go through the complex civil proceedings in the courts is very low.²⁰ Prior to reaching the courts, the Labour Inspection Department should have the function of sanctioning the violation of labour rights. The process of appealing to the sanctioning mechanism of the Labour Inspection Department should be easily accessible for citizens.

Along with the Labour Inspection Department of the MoLSHA, there are methods in place to monitor labour conditions. The Public Defender's Office (PDO) is another institution with the authority to monitor issues regarding the elimination of discrimination and ensuring equality in employment.²¹ However, as in the case the Labour Inspection Department,²² the PDO only has the ability to make non-binding recommendations on its findings.²³ The PDO is authorised to apply to a court, as an interested person, according to the Administrative Procedure Code of Georgia.²⁴

Case Study²⁵

The PDO has the right to issue a recommendation on unequal treatment at the workplace according to the Law of Georgia on the Elimination of All Forms of Discrimination. Civil society organisations are actively using this tool to eliminate discriminatory treatment in employment. As a result, since the day of establishment in 2014, under the mentioned mechanism, five employees of the PDO's Equality Department issued four general proposals and nine recommendations to various entities. Four of those related to the protection of labour rights.²⁶

One exemplary case included the discrimination in employment, more precisely discrimination based on sex, age and marital status in pre-contractual relation. The job announcement included discriminatory language and was in violation of Article 8 of the Law of Georgia on the Elimination of All Forms of Discrimination.²⁷ The job announcement called for 'single girls, aged 16-25 that had loose moral standards' for the position of assistant at a Tbilisi-based technics company. The

¹⁶ Labour Code of Georgia, Article 35.1. Available at: <https://matsne.gov.ge/en/document/view/1155567>

¹⁷ Administrative Procedural Code of Georgia, Article 424. Available at: <https://matsne.gov.ge/ka/document/view/28216>

¹⁸ See footnote 6.

¹⁹ Part I, Civil Cases. Supreme Court of Georgia. Page 10. Available at: <http://www.supremecourt.ge/files/upload-file/pdf/2015-weli-wigni-samoqalaqo.pdf>

²⁰ Finding of the research: "Gender Discrimination in Labor Relations", L. Jalaghania; T. Nadareishvili, Tbilisi 2014, pp. 89-107. Available at: <http://tanastso-roba.ge/en/publications/2>. Herewith, Article 42 of the Constitution provides free legal aid and keeps records of its work. The organisation also requests free court representation in strategic labour disputes. The majority of people subject to discrimination or a violation of their working conditions refused to appeal to the court, as they were afraid of losing their jobs.

²¹ The Law of Georgia on the Elimination of All Forms of Discrimination, Article 6.1. Available at: <http://www.ombudsman.ge/uploads/other/1/1662.pdf>

²² See footnote 2. Article 2.2.b and 2.2.d.

²³ See footnote 15, Article 6.2.f.

²⁴ See footnote 15, Article 6.2.g.

²⁵ The decisions of the Labour Inspection Department are not public. The experience of the PDO's recommendation is similar and relevant to discuss in this particular case.

²⁶ Official web page of the Public Defender of Georgia : <http://ombudsman.ge/uploads/other/3/3392.pdf>

²⁷ Correspondence № 174 of Article 42 of the Constitution to the Public Defender's Office in Georgia. 03.08.2015

published announcement clearly violated article 2.3 of the Labour Code of Georgia. The Equality Department investigated the alleged discrimination, interviewed the perpetrator about the matter and issued a recommendation to urge the elimination of discriminatory treatment in pre-contractual relations.²⁸ However, the company did not respond to the PDO's request for a written explanation and did not comment on the recommendation.

This example illustrates the need to elaborate an executive mechanism that includes the power to impose sanctions or other types of enforcement tools when a violation of labour rights is substantiated. Otherwise, the violations could remain unaddressed, as in this case. Possible executive mechanisms for Labour Inspection Department inspectors could be authorisation to apply to court as a dispute side or issuance of an administrative offence.

Two models are presented below. One focuses on transparency and reducing the opportunity for corruption while the second is less resource intensive and addresses violations at the local level.

Proposed Model I

Protecting the rights of both workers and employers requires that the violation of labour legislation be sanctioned. This needs to be consistently applied throughout the Georgian labour market, not only in those places of employment that voluntarily participate in the government-led monitoring programme.²⁹ When the inspection results reveal a violation, the Labour Inspection Department should make appropriate recommendations to eliminate the violation and monitor the implementation of these recommendations.

One way of enforcing the monitoring results is to have the right to be a party to a case in the court. For effective execution, it would be appropriate for the Labour Inspection Department to have the right to appeal to the court if violators not fulfil the recommendation within a specified timeframe.

The main advantage of the proposed change is that this system would decrease the opportunity for arbitrary enforcement/sanction and reduce the possibility of corruption from the employees of the department. This method encourages court cases and enriches legislative practice in terms of the protection of labour rights.

Proposed Model II

Another proposed model includes a more efficient and resource saving mechanism of addressing the violation of labour conditions. After identifying a violation, the Labour Inspection Department should have the right to issue an administrative offence act. The act would require an employer to eliminate the identified violations and abuses; other benefits and remuneration can be assigned based on the particular labour relations' case. This can be considered a more efficient and

²⁸ Recommendation of Public Defender's Office: Discrimination based on age, sex and marital status. Available at: <http://www.ombudsman.ge/ge/recommendations-Proposal/rekomendaciebi/diskriminacia-sqesis-asakisa-da-odjaxuri-mdgomareobis-nishnit.page>

²⁹ See footnote 2.

effective alternative to court proceedings.

A similar system of labour inspection is in place in Poland.³⁰ The Polish experience could be relevant to the Georgian environment. According to the Polish Act on National Labour Inspectorate, Chapter II, Article 11, 'In case of identifying an infringement upon regulations concerning labour law or legality of employment, the competent officers of the National Labour Inspectorate shall have the right to issue administrative act [...] and order the employer to pay the employee due remuneration for work as well as other due benefits.'³¹

Accordingly, Chapter VIII on Protection of Working Conditions of the Labour Code of Georgia shall be amended with the provisions that entitle the Labour Inspection Department to sanction and eliminate the conditions that violate labour rights. Should an inspection find a violation of labour standards, an administrative offence act can be issued that orders the employer to eliminate the shortcoming and/or to pay the employee due remuneration for work as well as other due benefits in accordance with each particular case. The administrative act can be issued based on the request of the employee or the legal representative of the employee.

The above proposed model policy of issuing the administrative offence act is the easiest and the most efficient way of enforcing the recommendations issued by the Labour Inspection Department of the MoLSHA. Herewith, it is the fastest way to achieve fulfilment of the conditions, as not protecting the standards of health and safety can cause serious damage to health or even fatalities at the workplace.

Conclusion

Despite the creation of the administrative body charged with protecting occupational safety and health conditions at workplaces, the protection of the Georgian labour conditions has not been improved. It is both necessary to make legislative improvements and then build capacity and ensure enforcement of the new legislation. Unfortunately, in the case of labour supervision policy enforcement, the MoLHSA skipped the strategic step of elaborating an adequate legislative basis for the Labour Inspection Department and started institutional reform right away. Improving the legislative framework and introducing an appropriate enforcement mechanism for recommendations made by the Labour Inspection Department is urgent.

³⁰ Employment Discrimination of Sexual Harassment in Poland, 2002, pp. 39-41, available at: http://www.theadvocates-forhumanrights.org/uploads/poland_discrimination_2002.PDF

³¹ Labour Inspection of Poland. Available at: <http://www.ilo.org/dyn/natlex/docs/ELECTRON-IC/78032/83158/F-1468966974/POL78032%20Eng.pdf>

Recommendations

Accordingly, it is recommended:

- ▶ To elaborate a mechanism for executing the recommendations issued by the Labour Inspection Department and train the inspectors to fulfil this certain task.
- ▶ To amend the statute of the Labour Inspection Department with the provision that allows the department to appeal to the court as a party and present evidence during the litigation process.
- ▶ To amend Chapter VIII on Observance of Working Conditions of the Labour Code to include a provision that empowers the Labour Inspection Department to issue an administrative offence act in case the violator does not fulfil the recommendations within a specified and reasonable timeframe.
- ▶ To change and amend other legislative act assigning the sanctions for the labour conditions violations accordingly.
- ▶ The Association Agenda of 2017-2019 should include a detailed plan for effectively transferring sanctioning power to the Labour Inspection Department of the MoLSHA as well as legislative improvements to this end.

