



Ivane Javakhishvili Tbilisi State University

Faculty of Law

Journal of Law

№2, 2017

The following issue is dedicated to the bright memory of the prominent representative of Georgian legal science, Professor Emeritus Guram Nachkebia



უნივერსიტეტის
გამომცემლობა

UDC(uak) 34(051.2)
s-216

Editor-in-Chief
Irakli Burduli (Prof.,TSU)

Editorial Board:

Prof. Dr. Levan Alexidze - TSU

Prof. Dr. Lado Chanturia - TSU

Prof. Dr. Giorgi Davitashvili - TSU

Prof. Dr. Avtandil Demetrashvili - TSU

Prof. Dr. Giorgi Khubua - TSU

Prof. Dr. Tevdore Ninidze - TSU

Prof. Dr. Nugzar Surguladze - TSU

Prof. Dr. Besarion Zoidze - TSU

Prof. Dr. Paata Turava - TSU

Assoc. Prof. Dr. Lela Janashvili - TSU

Assoc. Prof. Dr. Natia Chitashvili - TSU

Dr. Lasha Bregvadze - T. Tsereteli Institute of State and Law, Director

Prof. Dr. Gunther Teubner - Goethe University Frankfurt

Prof. Dr. Bernd Schönemann - Ludwig Maximilian University of Munich

Prof. Dr. Jan Lieder, LL.M. (Harvard) - University of Freiburg

Prof. Dr. José-Antonio Seoane - University of A Coruña

Prof. Dr. Carmen Garcimartin - University of A Coruña

Prof. Dr. Artak Mkrtichyan - University of A Coruña

Published by the decision of Ivane Javakhishvili Tbilisi State University Publishing Board

© Ivane Javakhishvili Tbilisi State University Press, 2018

ISSN 2233-3746

Levan Zhorzholiani*

State Supervision of Labour Legislation in the Light of Association Agreement

Labour legislation plays the essential role in the life of each and every citizen and this is conditioned by the phenomenon of labour itself. The enforcement of law in this field is associated with the economic welfare of men to a certain extent, respectively, when employees and employers take full advantage of the opportunities, prescribed by labour legislation, this results in well-balanced employment relationships which are directly linked with the productivity of public and civil entities, organizations, enterprises. In certain cases, to keep the balance, it becomes necessary for the state to interfere and to introduce the state supervision of the legislation. The paper below discusses such cases and offers the justification of the importance of control over the enforcement of labour legislation both at national and international level.

Key words: labour, legislation, safety, inspection, Association Agreement, contract, investment.

1. Introduction

This paper offers the overview of legislative challenges of state supervision of labour legislation in the light of Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part (hereinafter the “Association Agreement”). The paper aims at revealing specific challenges in the field of state supervision of labour legislation, initiating scholarly dispute and offering the following issues for open discussion: 1) Importance of state supervision of labour legislation; 2) International commitments under Association Agreement in the area of perfection of labour legislation and state supervision; 3) Intersection of the interests of attraction of investments and state supervision of labour legislation.

According to EU-Georgia Association Agenda, the parties will cooperate to create efficient Labour Inspection in the spirit of ILO¹ standards, to ensure the supervision of administrative and enforcement authorities over the protection of health and safety at work and labour legislation.²

Under Paragraph 2 of Article 227 of Chapter 13 of EU-Georgia Association Agreement the Parties reaffirm their commitment to pursue sustainable development and recognise that economic development, social development and environmental protection are its interdependent and mutually reinforcing pillars. They underline the benefit of considering trade-related labour and environmental issues as part of a global approach to trade and sustainable development.³

The question discussed in this paper may prove to be topical for any practitioner or theoretician lawyer interested labour administration, as well as for any person interested in proper enforcement of labour legislation, whose domain of interest covers issues like: enforcement of labour legislation and state mechanism of enforcement, international commitments under the Association Agreement, which should ensure the sustainable devel-

* Doctoral Student, Ivane Javakhishvili Tbilisi State University Faculty of Law, Parliament of Georgia, Parliamentary Faction “Georgian Dream”, Head of Staff.

¹ International Labour Organisation, <<http://www.ilo.org/global/lang-en/index.htm>>.

² Association Agenda Between Georgia and EU, <www.3dcftas.eu/system/tdf/georgia-agenda_0.pdf?file=1&type=node&id=65&force=>>.

³ Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one Part, and Georgia, of the other Part, Adopted on 27.06.14, published on 11.09.14, registration code 480610000.03.030.016275.

opment of the country, interrelationship of investments and labour legislation, draft of legislation, which ensures the creation of legal framework for international commitments assumed under the Association Agreement.

In the present paper are the methods of comparative-law, critical and historical analysis.

For the analysis of the above issues the main body of the paper is divided into the following Chapters: Chapter I. State supervision of labour legislation (general overview). This Chapter will discuss the institutional importance, necessity of creation, basic duties and historical background of labour inspection; Chapter II. Commitments under Association Agreement in the area of improvement of labour legislation and state supervision. This Chapter offers the overview of commitments assumed by Georgia within the framework of Association Agreement and the timelines for their fulfilment; Chapter III. Interception of the interests of attraction of foreign direct investments and state supervision of labour legislation. This is a crucial question, which is frequently applied as an argument by sceptics, opponents to state supervision of labour legislation. Discussed is the relationship between foreign investments and regulation of the enforcement of labour legislation; Chapter IV. Legislative regulation of state supervision of labour legislation and challenges for Georgian state. Chapter IV is subdivided into two sub-chapters: 1) Legislative regulation of state supervision of labour legislation, which offers the analysis of both positive and negative steps taken by the State in this direction from 2015 till present; 2) Challenges of state supervision of labour legislation for Georgian state. This sub-chapter offers a draft of legislation as a recommendation, which should ensure the reaction to the legislative challenge of the Association Agreement in the area of state supervision of labour legislation.

The paper is summarised in the Conclusion with the idea that state supervision of labour legislation is the European basis of sustainable development of the state, amongst them, in the field of attraction of foreign investments and if the state wants to duly respond to these legislative challenges, envisaged by international commitments (meaning the Association Agreement), it necessary to elaborate a draft of legislation: 1) The Organic Law of Georgia - Labour Code should incorporate a stipulation about the enforcement of labour legislation and the state authority to supervise the enforcement; 2) Paragraph 1 (b) of Article 2 of the Law of Georgia on Control of Entrepreneurial Activities should stipulate that control over entrepreneurial activity should include the activities undertaken for the prevention of forced labour and labour exploitation and for addressing these violation, also the activities aiming at the prevention of and addressing cases of violation of labour legislation and labour protection rules; 3) It is important to adopt a special law in labour safety area, which will transform standards, envisaged by Article 35 into rights and obligations; 4) It is necessary for the Code of Administrative Infringements of Georgiatio provide for warnings and other sanctions (suspension of operation, pecuniary fine, etc.) for violation of labour rights and labour safety rules; respectively a special procedure should be incorporated into the Code of Administrative Procedure.

2. State Supervision of Labour legislation (General Overview)

Labour inspection is a public function of labour administration that ensures the application of labour legislation in the workplace. Its main goal is to convince the social partners in the need to observe the law at the workplace and their mutual interest in this regard, through preventive, educational and, where necessary, enforcement measures. Ever since the appointment of the first labour inspectors in the United Kingdom in 1833, labour inspectorates have been established in almost every country in the world. For about 175 years, labour inspectors have gone about their work improving working conditions.⁴ Labour legislation is the consequence of industrial revolution that began in Europe by the end of the eighteenth century and continued throughout the nineteenth. The whole of the nineteenth century was marked by numerous strikes and riots, often degenerating

⁴ Labour Inspection: What It Is and What It Does A Guide for Employers, International Labour Office, Geneva, 2010, 8.

into violent revolts which led Governments to realise that the State should intervene in the organisation of labour relations and the determination of working conditions. The earliest national legislation for improving working conditions dates from 1802, when British Parliament passed an “Act to Preserve the Morals of Apprentices”, where “morals” were defined in terms of safety, health and welfare, and the “apprentices” were child workers. Voluntary committees made up of local notables supervised the application of the Act. For various reasons, the application of the Act was ineffective and in 1833, the British Government appointed the first four inspectors. In 1844 the inspectors became civil servants. This system was subsequently copied throughout Europe, with variations due to the national administrative custom. In 1890 representatives of 15 countries attended a conference in Berlin to adopt the first standards for improving working conditions and for inspection services. The conference affirmed, that laws in each State should be supervised by an adequate number of specially qualified officers, appointed by government and independent of employers and workers. This initiative was given further impetus with the creation of the ILO in 1919.⁵ The Versailles Treaty stated that it was particularly important that “each State should make provision for a system of inspection, in order to ensure the enforcement of the laws and regulations for the protection of the employed”.⁶

Proper application of labour legislation depends on efficient labour inspection. Labour inspectors inspect how properly the state labour standards are applied at workplaces and give advices to employers and employees how to improve the application of national legislation with regard to working time, wages, labour protection and child work. Furthermore, the labour inspectors inform state authorities about the gaps in national legislation and the ways of overcoming them. They play an important role for labour legislation to be equally applied with regard to each and every employer and employee. As far as international community acknowledges the great importance of labour inspection, ILO gave priority to the promotion of the ratification of two Conventions on labour inspection (N81 and N129). As of to date the Convention of Labour Inspection (1947, N81) is ratified by 138 states (over 75% of Member States), and Convention N129 - by more, than 4 States. Despite the foregoing the problems are still maintained in countries, where labour inspection systems operate without adequate funding and personnel and respectively are not able to duly perform their work. Specific assessments demonstrate, that in some developing counties less than 1% of the country budget is allocated for regulation of labour issues and labour inspectors receive only small part of these funds. The other researches evidence, that costs and expenses related to industrial traumatism and occupational diseases, non-appearance at work, inadequate treatment of employees and labour disputes may happen to be much higher. Labour inspection may prevent all these problems and promote the enhancement of productivity and economic development.⁷

In the world of work, labour inspection is the most important of state presence and intervention to design, stimulate, and contribute to the development of a culture of prevention covering all aspects potentially under its purview: industrial relations, wages, general conditions of work, occupational safety and health, and issues related to employment and social security.⁸

Nowadays, labour inspectorates perform their duties in a challenging environment involving important changes in the economic and social context.⁹

The primary mission of any system of labour inspection is to ensure compliance with relevant labour laws meaning the set of national standards designed to protect all workers and where appropriate, their families. Modern systems also cover the self-employed and the environment from certain work-related hazards. The main purposes of labour inspection include the need to ensure that: relevant labour legislation is respected in workplaces

⁵ Ibid, 9.

⁶ Ibid, 9.

⁷ *Richthofen V.F.*, Labour Inspection: A guide to the Profession, ILO, Geneva, 2002, 121-133 and 146, by reference in: Rules of the Game, a Brief introduction to International Labour Standards, International Labour Organisation, revised edition, 2009, 40.

⁸ Labour Inspection: What It Is and What It Does A Guide for Employers, International Labour Office, Geneva, 2010, 8.

⁹ Ibid, 8.

with a view to achieving decent employment and working conditions; employers and workers get information and guidance about how to comply with legal requirements; enterprises adopt adequate measures to ensure that work practices and environment do not put employees into safety and health risks; and feedback information and lessons learnt from the practice are used as a means of developing legislation to improve the legal coverage, taking into account new social, physical and psychological work-related risks. There is a range of means at the disposal of labour inspection to achieve the desired result of decent working conditions.¹⁰

Inspection services ensure the effective application of legal provisions through two main functions: (1) securing enforcement and (2) supplying information and advice to employers and workers. These tasks of inspection, information and the provision of advice are closely connected and are often found together. The enforcement functions of labour inspectorates vary considerably from country to country, but labour inspectorates tend to perform both proactive (planning monthly and annual, national, field and sectoral inspection activities, identifying cases of non-compliance and taking corrective action), and reactive functions (dealing with complaints, accidents, incidents and disputes). Enforcement has a dual nature: it includes an advisory as well as an inspectorial function.¹¹

For example, in Brazil, the intervention of labour inspectors has not only helped firms bring their practices into compliance with the law but has also promoted innovative legal and/or technical solutions which in some cases enhanced firms' competitiveness and productivity.¹²

3. Commitments Under Association Agreement in the Area of Improvement of Labour Legislation and State Supervision

International legal acts in the field of labour law of particular importance are the ILO Conventions, ratified by Georgia, also the International Covenant on Economic, Social and Cultural Rights (ICESCR) and European Social Charter. Apart from that Georgia has committed itself to many international contractual obligations in the area of labour rights, of which, particular mention should be made of country's commitments under the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part.¹³

As already mentioned in the introduction part, under Paragraph 2 of Article 227 of Chapter 13 of EU-Georgia Association Agreement the Parties reaffirm their commitment to pursue sustainable development and recognise that economic development, social development and environmental protection are its interdependent and mutually reinforcing pillars. They underline the benefit of considering trade-related labour and environmental issues as part of a global approach to trade and sustainable development.¹⁴

The labour and employment policy should equally guarantee the rights of both an employee and an employer, who is the essential actor in the field of production and commerce.¹⁵ Chapter 13 concerns the key aspects like trade and sustainable development, that are vital elements for Georgia. It is worth mentioning, that the very first

¹⁰ Ibid, 14.

¹¹ Ibid, 15.

¹² Ibid, 16.

¹³ Research - Evaluation of Labour Inspection Mechanism and the Situation with Labour Rights of Employees in Georgia, Human Rights Training and Monitoring Centre, Tbilisi, 2017, 105 (in Georgian).

¹⁴ Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, adopted on 27.06.14, published on 11.09.14, registration code 480610000.03.030.016275.

¹⁵ *Jgerenaia E., Kardava E.*, Protection of Labour Rights as a Part of European Integration Policy - Development Perspectives Within the Framework of the Association Agreement, Visa Liberation Action Plan and Social Charter, Friedrich Ebert Foundation, Fountain Georgia, Tbilisi, 2016, 8 (in Georgian).

articles of Trade and Sustainable Development Chapter mention the obligation to adopt the European labour and environmental standards. For example, Under Article 229 of the Association Agreement, the implementation of the standards in the field of labour law is related with the promotion of productive employment and decent work for all, as key elements for managing globalisation, on the one part and on the other - the enhancement of trade.¹⁶

Under Chapter 13 of the Association Agreement, Georgia should be guided by fundamental principles set by ILO and incorporate the standards, contained in ILO Conventions into their laws and practice. Georgia is already committed to internationally recognised obligation to respect, promote and realise the freedom of association and effective recognition of the right to collective bargaining; elimination of all forms of forced or compulsory labour; effective abolition of child labour, and elimination of discrimination in respect of employment and occupation.

Annex XXX of the Association Agreement, in its turn, is divided into three parts: Labour Law; Anti-discrimination and Gender Equality; Health and Safety at Work. The Labour Law section lists 8 EU Directives, for the implementation of which Georgia is given 4-6 years' period. Anti-discrimination and Gender Equality section provides for the implementation of 6 EU Directives during a period of 3-4 years. Health and Safety at Work section lists 26 EU Directives to be implemented within 3-9 years.¹⁷

Georgia has undertaken to develop concurrent with the international standards labour policy, and amongst them to create the efficient labour inspection by virtue of a number of international agreements. In this respect, the Association Agreement is the important framework document providing cooperation format for Georgia to ensure conditions for decent work, also the health and safety at workplaces along with the other components of labour field.¹⁸ According to EU-Georgia Association Agenda the parties will cooperate in order to establish an effective labour inspection system in line with ILO standards in order to ensure administrative and enforcement capacities in the area of health and safety at work, and labour law.¹⁹

Labour law has specific characteristics. Income, earned through work is one of the most important parts of the everyday life of each citizen of a state. A product, produced through work is the means of efficient operation of state and business, growth of economy. Rules, prescribed by labour law, as well as domestic and international agreements and conventions, require efficient enforcement mechanism, which in this case is the state authority supervising labour. To make it clear, it will be reasonable to discuss the experience of the EU Member States in the area of supervision of labour legislation.

For example, The Austrian Labour Inspectorate comes as a section under the Federal Ministry of Labour, Social Affairs and Consumer Protection as laws enforced by the labour inspectorate fall within the federal competency (Austria is a federal State). The labour inspectorate is represented at central and regional level: It comprises five departments at central level: one on construction and mining industries, on technical safety and health at work, legislation and legal affairs, occupational medicine and health, and on innovation for labour inspectorates and international occupational safety and health. It is headed by a Director General, to whom the departments report. The labour inspectorate ensures compliance with occupational safety and health laws, laws on working hours and the protection of young and pregnant workers. It covers all possible workplaces, also within public administration. It does not cover self-employed workers and private households, public educational institutions, workplaces within the ambit of church and other religion related institutions. In the case of imminent danger to the health and safety of workers labour inspectors may impose measures with immediate executory

¹⁶ Ibid, 8.

¹⁷ Ibid, 9-10.

¹⁸ Research - Evaluation of Labour Inspection Mechanism and the Situation with Labour Rights of Employees in Georgia, Human Rights Training and Monitoring Centre, Tbilisi, 2017, 107-108 (*in Georgian*).

¹⁹ Association Agenda between Georgia and EU, Brussels, 2014, UE-GE 4656/14, 9, <www.3dcftas.eu/system/tdf/georgia-agenda_0.pdf?file=1&type=node&id=65&force=>.

force, such as the prohibition of work and suspension of operation, also in the absence of the management, and, if necessary, seek assistance of the police in the case of obstruction or resistance on the site. When the danger is not imminent, the labour inspectorate applies to the competent administrative body for the imposition of the necessary measures. In this case, the labour inspectorate becomes party to the administrative procedure.²⁰

Like Austria labour issues are managed by Federal Ministry of Labour and Social Affairs of Germany. This covers industrial relations, social security, employment and vocational training, occupational safety and health, respectively, the enforcement of labour law is ensured by central government.²¹

The mandate of Labour inspectorate of another EU Member State - Latvia extends to the enforcement of labour law related to general working conditions and occupational safety and health as well as any obligations derived from individual employment contracts and/or collective agreements. Inspectors must also provide advice to employers and workers on how to comply with national legislation.²²

Also worth mentioning is the mandate of Italian Labour Inspectorate, which covers the implementation of all labour laws and regulations on social security in industrial, commercial and agriculture as well as in all cases of wage earned situations. There are certain exceptions in heavy industry, where special department ensure the supervision. It should be mentioned, that Labour Inspectorate is also responsible for the application of labour laws in the public sector.²³

In February 2013 the European Commission submitted Visa Liberation Action Plan (VLAP) to the Government of Georgia, which provided for the benchmarks to be fulfilled by Georgia in order to gain short-term visa-free access to Schengen Area for Georgian citizens with biometric passports. Georgia-EU visa dialogue proved to be very important and particularly efficient instrument for the implementation of long-term and complex reforms, moreover in the area of administration of labour rights protection, labour migration and employment policy... Accounting for the importance of the wide range of issues, related to visa liberalisation and action plan, Georgia was assigned to implement measures in various fields and fulfil the necessary preconditions. The Action plan was related to respective four blocks of factors identified within the framework of the dialogue: document safety; integrated management of borders, migration management, asylum policy; public order, foreign relations and basic human rights. Amongst above blocks the main focus was accorded to labour field, specifically to the aspects of regulation of labour migration and labour inspection.²⁴

4. Intersection Between the Interests of Attraction of Investments and State Supervision of Labour Legislation

Under Article 235 of the Association Agreement it is inappropriate to encourage trade or investment by lowering the levels of protection afforded in domestic environmental or labour law.²⁵ Article 235 in a way defines the basic principles of future investment and trade policy of the state. The interpretation of this Article says that the EU attitude towards labour standards is equal to domestic interest in attracting foreign investments, what in its turn is of paramount importance for the enforcement of labour law.

²⁰ <http://ilo.org/labadmin/info/WCMS_122449/lang--en/index.htm>.

²¹ <http://www.ilo.org/labadmin/info/WCMS_209470/lang--en/index.htm>.

²² <http://ilo.org/labadmin/info/WCMS_209359/lang--en/index.htm>.

²³ <http://ilo.org/labadmin/info/WCMS_126019/lang--en/index.htm>.

²⁴ *Jgerenaia E., Kardava E.*, Protection of Labour Rights as a Part of European integration policy - Development Perspectives Within the Framework of the Association Agreement, Visa Liberation Action Plan and Social Charter, Friedrich Ebert Foundation, Fountain Georgia, Tbilisi, 2016, 92-93 (in Georgian).

²⁵ Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, adopted on 27.06.14, published on 11.09.14, registration code 480610000.03.030.016275.

It can be said, that inflow of foreign investments is important for every country and this is proved by impressive growth in the number of bilateral investment agreements²⁶ since 1990s. If only about four hundred such agreements were executed in 1959-1989, over 2400 agreements were added to them for the past fifteen years and their number is constantly increasing. China, Switzerland and Germany have more than 100 bilateral investment agreements in place. As of 2012 overall some 3000 bilateral investment agreements were executed worldwide. If during the cold war bilateral agreements were executed between developed and developing countries, more than quarter of such agreements executed by the end of 2007 accounted just for developing countries.²⁷

The above statistics backs up the presumption, that both developing and developed countries try to attract as much foreign investments as possible, in order to ensure the sustainable development of their countries. When attracting foreign investments a state tries to create the most comfortable investment environment, to what end it introduces relevant treatments: 1) fair and equitable treatment; 2) legitimate expectation; 3) national treatment; 4) most-favoured nation treatment; 5) full protection and safety of investments.²⁸

The existence of stipulation of Article 235 speaks for permanent straggle between the attraction of investments and improvement of labour law standard.

Chinese Republic has very interesting experience with intersection of the interests of foreign direct investments²⁹ and those of labour law.

In 2007 China enacted three laws that reformed its labour market and amended specifically the 1994 Labour Law: the Labour Contract Law, the Law on Mediation and Arbitration of Labour Disputes, and the Labour Promotion Law. The objective was to promote “social harmony” and end widespread abuse of workers who had no contracts and hence no rights.³⁰

Together, the laws made China’s labour market more rigid and transform the formal work relationship to standards that are similar to many modern European countries. For example: Labour Contract Law requires that 1) basically any labour relationship should have a written contract; 2) any employment relationship must be formalized in writing within a month after work begins, otherwise the employee receives double pay starting in the second month until the contract is drawn up and signed. If there is still no contract after a year, the labour relationship is automatically considered to be indefinite or open-ended, with all the benefits associated with this kind of contract. The new Law on Mediation and Arbitration of Labour disputes left in force the same approach: “one mediation, one arbitration and two trials”, meaning that any labour dispute has to be solved first by mediation, then by arbitration if the mediation fails, and finally by courts if the arbitration fails. It opens the range of disputes that can be referred to arbitration to almost any issue: Article 2 refers to potential disputes arising from the employment relationship, working hours, rest and holidays, medical cost for injury at work, economic compensation or damages. The period of time for bringing a claim is extended from 60 days to one year from the time a dispute arises (Article 27). In addition to the Labour Contract Law and the Law on Mediation and Arbitration of Labour Disputes, the Standing Committee enacted a “Labour Promotion law” in 2007 that is a further step toward the objective of achieving social harmony. Following the Chinese legal tradition of considering law more as a policy tool than a normative act, the two first chapters invite the government at all levels (national, provincial and local) to “treat the expansion of employment as a major objective of economic

²⁶ Bilateral and multilateral investment agreements create the international standard of regulation investments, by reference in: *Tsertsvadze G.*, Introduction to International Investment Law, Meridiani, Tbilisi, 2013, 60 (in Georgian).

²⁷ *Tsertsvadze G.*, Introduction to International Investment Law, Meridiani, Tbilisi, 2013, 60 (in Georgian).

²⁸ *Ibid*, 171, 178, 182, 184,195.

²⁹ <<http://www.investopedia.com/terms/f/fdi.asp>> Foreign direct investment (FDI) is an investment made by a company or individual in one country in business interests in another country, in the form of either establishing business operations or acquiring business assets in the other country, such as ownership or controlling interest in a foreign company.

³⁰ *Allard G., Garot M.*, The Impact of the New Labor Law in China: New Hiring Strategies for Foreign Firms?, *Revista Direito*, Sao Paulo, 2010, 527, <<http://www.scielo.br/pdf/rdgv/v6n2/a09v6n2.pdf>>.

and social development, include it in the national economic and social development plan and formulate the medium- to long-term plans and annual working plan for employment promotion”. Article 17 foresees preferential tax treatment to encourage companies to comply with the law. The law also outlaws discrimination in the workplace against women, ethnic groups, disabled persons, carriers of infectious diseases and rural workers (Articles 27-31). Governments at all levels are to provide employment assistance to persons with difficulties obtaining employment and disabled persons (Articles 52 and 55). Workers may present a complaint to the people’s court if they encounter discrimination in employment that violates the provisions of this Law (Article 62). Finally, the law obliges firms to set aside training budgets for staff and workers according to relevant state provisions, to provide vocational training and continuing education (Article 47).³¹

According to UN World Investment Report of 1998 China’s current Foreign Direct Investment boom, in its sixth consecutive year, was showing signs of coming to an end and one of the main reasons of the foregoing was said to be the investments oriented on cheap labour.³² The same report sets out labour market regulations as one of the determinants of FDI. Some studies have found a clear negative association between labour costs and FDI (see, for instance, Cooke and Noble, 1998 or OECD, 2000). Rigid labour market regulations are often considered to be a negative feature of countries in the eyes of potential foreign investors. There is also evidence that labour-market flexibility improves financial performance and raises productivity at the firm level. However, it is impossible to overlook the fact that much of the world’s FDI flows to countries with strong employment rights and relatively rigid labor markets.³³

5. Legislative Regulation of State Supervision of Labour Legislation and Challenges for Georgian State

5.1 Legislative Regulation of Supervision of Labour Legislation

Administration of labour rights protection in Georgia started through protection of labour conditions at enterprises. Introduction of the new model of labour inspectorates in the country within the framework of VLAP, with due consideration of new practical approaches, in its turn, is an unprecedented case, unlike the practice of the countries in the world. The Labour Inspection operated until 2006 using Soviet standards, but the Inspectorate was abolished and unfortunately, no new alternative structure was set up for the enforcement of labour legislation. The reason of the abolition was said to be the corrupted nature of the system, however the system was subjected to no reform, unlike Road Inspection, which was later transformed into Patrol Police.³⁴

It should be said, that based on achieve data, statistics of industrial accidents, reported by Labour Inspection in 1197-2005 clearly evidence the decreasing tendency maintained for years. Unfortunately, after the abolition of Labour Inspection in 2006 no accident statistics is gathered any more.³⁵

After nine years of institutional gap, on February 5, 2015 the Government of Georgia approved the State Programme for Monitoring Labour Conditions by its Resolution N38 (hereinafter the “State Programme”).³⁶ By

³¹ *Allard G., Garot M.*, The Impact of the New Labor Law in China: New Hiring Strategies for Foreign Firms?, *Revista Direito*, Sao Paulo, 2010, 529-532, <<http://www.scielo.br/pdf/rdgv/v6n2/a09v6n2.pdf>>.

³² World Investment Report Trends and Determinants, Overview, United Nations, 1998, 21.

³³ *Allard G., Garot M.*, The Impact of the New Labor Law in China: New Hiring Strategies for Foreign Firms? *Revista Direito*, Sao Paulo, 2010, 534, <<http://www.scielo.br/pdf/rdgv/v6n2/a09v6n2.pdf>>.

³⁴ *Jgerenaia E., Kardava E.*, Protection of Labour Rights as a Part of European Integration Policy - Development Perspectives Within the Framework of the Association Agreement, Visa Liberation Action Plan and Social Charter, Friedrich Ebert Foundation, Fountain Georgia, Tbilisi, 2016, 113 (in Georgian).

³⁵ *Ibid*, 111.

³⁶ State Programme for Monitoring Labour Conditions adopted by the Government of Georgia, adopted on 05.02.2015,

this Resolution the so-called pilot programme was launched, which was to play an important role during the transition period in the development on state supervision of labour legislation. According to Resolution of 2015 the State Programme aimed at the creation of safe and healthy working environment. The tasks of the Programme were as follows: a) prevention of violation of labour safety rules; b) raising awareness of the employers and employees, provision of information and advice to them about revealed violations; c) raising awareness of the employers and employees about human trafficking hazards with a view to prevention of forced labour; d) development/revision of relevant labour safety and health protection standards; e) determination of the needs of institutional reformation of the protection of labour safety. The Programme target groups were the employers who agreed to participate in the Programme and the employees of these employers. The decisions about the priority and timelines of monitoring was taken by working group composed of the representatives of social partners,³⁷ international and local organisations along with the representatives of the Ministries.

According to State Programme 2015, the working group would send a 5-days prior written notice to an employer, in whose working premises the monitoring was planned. After the monitoring non-public reports/opinions and recommendations were drafted and handed over only to the employer. These opinions were to reflect systemic violations for the state and business sector to analyse challenges of the enforcement of labour legislation was facing in the area of labour safety and health. Quite important were the steps taken in the field of combating trafficking.³⁸

It is noteworthy, that Pilot Programme 2015 said nothing about statutory labour rights. Furthermore, the question of non-public reports was also problematic from legal point of view. A question may arise about the legality of this stipulation and whether or not it contradicts the regulation of Chapter 3 of General Administrative Code.

Resolution N19 of the Government of Georgia of January 18, 2016 extended Monitoring Programme (hereinafter State Programme 2016) approved by Resolution of 2015. Resolution of 2016 approved the State Programme for the Inspection of Working Conditions. This Resolution contained minor changes, specifying that after the accomplishment of the Pilot Programme 2015 the state tried to develop this field, however there are almost no institutional, or result-oriented differences between these two Resolutions.

It should be mentioned, that the Pilot State Programme had a break. It was approved on January 18, what again speaks about the prudence on the part of the State. Unlike Resolution of 2015 the basic regulations contained in Regulation of 2016 concerned the following issues: the stipulation about giving 5-days prior notice to involved employers disappeared, the implementation of Labour Inspection Programme was delegated upon the respective entity of the Ministry of Labour, Health and Social Security, the Department for the Inspection of Labour Condition was allowed to purchase measurement devices from allocated budget.³⁹

By its Resolution N627 of December 29, 2016 the Government of Georgia approved State Programme 2017 for the Inspection of Working Conditions (hereinafter - State Programme 2017).⁴⁰ It should be mentioned, that this time the Inspection Programme had no break, what can be regarded as a positive step forward. Paragraph 3 of Article 2 of this Resolution is another positive step forward, which Paragraph introduced the concept of remonitoring, meaning repeated monitoring of the employer during the year to analyse, whether or not the em-

published on 09.02.2015.

³⁷ Organic Law of Georgia - Labour Code. Adopted by the Parliament of Georgia, adopted on 27.12.2010, published on 27.12.2010.

³⁸ State Programme for Monitoring Labour Conditions, adopted by the Government of Georgia, adopted on 05.02.2015, published on 09.02.2015.

³⁹ State Programme for Inspection of Working Conditions, adopted by the Government of Georgia, adopted on 18.01.2016, published on 21.02.2016.

⁴⁰ State Programme for Inspection of Working Conditions, adopted by the Government of Georgia, adopted on 29.12.2017, published on 30.12.2017.

ployers involved in the programme took account of the opinions and recommendations of the Inspection.⁴¹

The State Programme, approved by Resolution of 2017 also provided for material and technical equipment of the Department for the Inspection of Labour Conditions.

It is noteworthy, that along with progressive stipulations Paragraph 6 of Article 2 of the State Programme 2017 provided for the obligation to give 5-days prior notice to the employer, what should be regarded as detrimental for institutional development of the state supervision of labour legislation.

5.2 Challenges of state supervision of labour legislation for Georgian state

2015, 2016 and 2017 Programmes of State supervision of labour conditions can be analysed collectively and the following four institutional problems can be identified: a) Giving prior notice to employer about the inspection of labour conditions; 2) Absence of sanctions; 3) Goodwill of an employer to participate in the Programme; 4) Absence of state supervision of the enforcement of statutory labour rights.

The solution of the above institutional problems can be found in the Conventions of the International Labour Organization.

ILO General Conference, convened in Geneva by the Governing Body of the International Labour Office and assembled on June 19, 1947 at its thirtieth session, decided to approve proposals with regard to the organization of labour inspection in industry and commerce, which proposals constituted fourth item of session agenda. The Conference determined that these proposals should take the form of an international convention and adopted the Convention on July 11, 1947, which can be cited as the Labour Inspection Conventions, 1947 (hereinafter the Convention 81).

Under Article 1 of Part I of the ILO Convention 81 each Member of the International Labour Organisation for which this Convention is in force shall maintain a system of labour inspection in industrial workplaces.

According to 81: 1) The functions of the system of labour inspection shall be: a) to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors; b) to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions; c) to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions; 2) Any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers.

Interesting stipulation is contained in Article 4 of Part I of ILO Convention 81- So far as is compatible with the administrative practice of the Member, labour inspection shall be placed under the supervision and control of a central authority. Respectively under Article 6 labour inspectors shall be composed of public officials, assured of stability of employment.

The most important from institutional point of view stipulation is contained in Paragraph 1(a) of Article 12 of Convention 81, according to which labour inspectors shall be empowered to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection, also carry out any examination, test or enquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed.

Under Article 18 of Convention 81 adequate penalties for violations of the legal provisions enforceable by labour inspectors and for obstructing labour inspectors in the performance of their duties shall be provided for by national laws or regulations and effectively enforced. Article 27 further specifies, that legal provisions includes, in addition to laws and regulations, arbitration awards and collective agreements upon which the force of law is

⁴¹ Ibid.

conferred and which are enforceable by labour inspectors.

The basic provisions of Convention 81 are sufficient for national legislation to provide for such regulations that will jointly create the institutional model of state supervision of labour legislation.

Based on the considerations, offered in this paper, it can be said, that the draft of legislation, which will set up the legislative framework for labour inspection, should include the following draft laws: 1) The Organic Law of Georgia - Labour Code should incorporate a stipulation about the enforcement of labour legislation and the state body supervising the enforcement. Such a stipulation will create legal grounds for the supervision of labour safety (Article 35 of the Labour Code) and labour rights; 2) Paragraph 1 (b) of Article 2 of the Law of Georgia on Control of Entrepreneurial Activities should stipulate that control over entrepreneurial activity should include the activities undertaken for the prevention of forced labour and labour exploitation and for addressing these violation, also the activities aiming at the prevention of and addressing cases of violation of labour legislation and labour protection rules; 3) It is important to adopt a special law in labour safety area, which will transform standards, envisaged by Article 35 into rights and obligations;⁴² 4) It is necessary for the Code of Administrative Infringements of Georgia to provide for warnings and other sanctions (suspension of operation, pecuniary fine, etc.) for violation of labour rights and labour safety rules; respectively a special procedure should be incorporated into the Code of Administrative Procedure.

6. Conclusion

Based on the above discussion, critical, comparative law and historical analysis it can be said, that state supervision of labour legislation is the important part of the Georgia's European way. The foregoing is provided for by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, which in its turn is the key document for the development of the state. Based on the facts and deliberations, offered in this paper, it can be concluded that the obligation to enforce labour legislation and the organisation of the enforcement by the state is the important part of sustainable development. It can also be said, that sceptic's argument that Labour Inspection and in general, the enforcement of labour legislation is an obstructing factor for the attraction of foreign direct investments, is very weak; on the contrary, it is impossible to overlook the fact that much of the world's FDI flows to countries with strong employment rights and relatively rigid labour markets.⁴³

And finally, for the state to address the legislative challenges envisaged by the Association Agreement it is necessary to elaborate the draft of legislation, which should include the following draft laws:

1) The Organic Law of Georgia - Labour Code should incorporate a stipulation about the enforcement of labour legislation and the state body supervising the enforcement. Such a stipulation will create legal grounds for supervision of labour safety and labour rights; 2)) Paragraph 1 (b) of Article 2 of the Law of Georgia on Control of Entrepreneurial Activities should stipulate that control over entrepreneurial activity should include the activities undertaken for the prevention of forced labour and labour exploitation and for addressing these violation, also the activities aiming at the prevention of and addressing cases of violation of labour legislation and labour protection rules; 3) It is important to adopt a special law in labour safety area, which will transform standards, envisaged by Article 35 into rights and obligations;⁴⁴ 4) It is necessary for the Code of Administrative Infringe-

⁴² It should be mentioned, that the Government of Georgia submitted draft law on Labour Safety to the Parliament of Georgia on June 1, 2017.

⁴³ *Allard G., Garot, M.*, The Impact of the New Labor Law in China: new Hiring Strategies for Foreign Firms?, *Revista Direito*, Sao Paulo, 2010, 534, <<http://www.scielo.br/pdf/rdgv/v6n2/a09v6n2.pdf>>.

⁴⁴ It should be mentioned, that the Government of Georgia introduced the draft Law on Labour Safety to the Parliament of Georgia on June 1, 2017.

ments of Georgiato provide for warnings and other sanctions (suspension of operation, pecuniary fine, etc.) for violation of labour rights and labour safety rules; respectively a special procedure should be incorporated into the Code of Administrative Procedure.

Bibliography

31. Organic Law of Georgia - Labour Code 27/12/2010.
32. State Programme for Monitoring Labour Conditions adopted by the Government of Georgia, date of adoption 05.02.2015, date of publication 09.02.2015 (in Georgian).
33. State Programme for Inspecting our Conditions adopted by the Government of Georgia, date of adoption 29.12.2017, date of publication 30.12.2017 (in Georgian).
34. State Programme for Inspecting our Conditions adopted by the Government of Georgia, date of adoption 29.12.2017, date of publication 30.12.2017 (in Georgian).
35. Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, adopted on 27.06.14, published on 11.09.14, registration code 480610000.03.030.016275.
36. Rules of the Game, a brief introduction to international labour standards, International Labour Organisation, revised edition, 2009, 40.
37. Research - Evaluation of labour inspection mechanism and the situation with labour rights of employees in Georgia, Human Rights Training and Monitoring Centre, Tbilisi, 2017, 106-108 (in Georgian).
38. *Jgerenaia E., Kardava E.*, Protection of Labour Rights as a Part of European Integration Policy - Development Perspectives Within the Framework of the Association Agreement, Visa Liberation Action Plan and Social Charter, Friedrich Ebert Foundation, Fountain Georgia, Tbilisi, 2016, 8, 92-93,113 (in Georgian).
39. *Tsertsvadze G.*, Introduction to International Investment Law, Meridiani, Tbilisi, 2013, 44, 60, 171, 178, 182, 184, 195 (in Georgian).
40. Association Agenda between Georgia and EU, <www.3dcftas.eu/system/tdf/georgia-agenda_0.pdf?file=1&-type=node&id=65&force=>.
41. *Allard G., Garot M.*, The Impact of the New Labor Law in China: New Hiring Strategies for Foreign Firms?, RevistaDireito, Sao Paulo, 2010, 527, 529, 532, 534, <<http://www.scielo.br/pdf/rdgv/v6n2/a09v6n2.pdf>>.
42. Labour Inspection: What It Is and What It Does A Guide for Employers, International Labor Office, Geneva, 2010, 8, 14, 15, 16.
43. World Investment Report Trends and Determinants, Overview, United Nations, 1998, 21.
44. <http://ilo.org/labadmin/info/WCMS_122449/lang--en/index.htm>.
45. <<http://www.ilo.org/global/lang--en/index.htm>>.
46. <http://ilo.org/labadmin/info/WCMS_150912/lang--en/index.htm>.
47. <http://ilo.org/labadmin/info/WCMS_209359/lang--en/index.htm>.
48. <http://ilo.org/labadmin/info/WCMS_126019/lang--en/index.htm>.
49. <<http://www.investopedia.com/terms/f/fdi.asp>>.