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Analysis of the fulfilment of obligations under the EU – Georgia Association Agreement in the field of Occupational Safety***

(Legislative Compliance and Effectiveness of Implementation)

The purpose of this study is to analyze the fulfilment of the obligations assumed by the Association Agreement with the European Union in the field of occupational safety, the legal compliance of Georgian legislation with the directives of the Council of Europe and the conventions of the International Labor Organization, and the effectiveness of the enforcement of labour safety standards at different stages of the labour legislation reform implemented in 2015-2023.

The analysis of the achievements and challenges of the latest reform in the field of occupational safety is based on the analysis of annual reports of international organizations, labour inspection, as well as the results of written and oral surveys of stakeholders in the field of occupational safety, which highlight proposals for legislative improvement in the field of labour inspection and recommendations for improving the effectiveness of enforcement.

The results of the study were generalized in the form of the latest challenges and recommendations in the field of occupational safety, which determine the proposals for the expansion of labour legislation and the improvement of the effectiveness of enforcement.

Key words: *labour safety, labour inspection, informal employment, labour law reform, safe working environment, informal employment, international labour organization, heavy, harmful and hazardous work.*

I. Normative Reform of the Occupational Safety System

1. Stages of Reform and Main Achievements in 2015-2023

EU policies encourage and promote social dialogue at the European level. EU regulations in the field of social policy include minimum standards of labour legislation in the direction of occupational

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safety, equality, health, and prohibition of discrimination. The most important formative element of social policy is the policy of social security law.

According to Article 7 of “International Covenant on Economic, Social and Cultural Rights”¹, where Georgia is a party, the right of each individual to just and favourable conditions of work is recognized, which, among other legal aspects, implies safe and healthy working conditions. According to the official commentary sources of this article of the Covenant, the formation of an effective model of labour inspection is most important for meeting the stated requirement.²

The deregulation model chosen by the Labour Code of Georgia adopted in 2006 was based on the assumption that it would help attract investments and create new jobs. Based on the code, the existing laws on collective agreements, labour disputes, employment conditions, labour inspection, employment agency, and labour administration of Georgia were abolished.³ Along with the economic policy of deregulation of the labour market due to ideological views⁴, the mechanisms for the protection of workers' rights at different levels were abolished.⁵ Since the adoption of the Association Agreement, the state has initiated the gradual restoration of labour market institutions. Several progressive actions have been taken, and proactive measures aimed at implementing legislative reform and restoring labour inspection have been undertaken.⁶

Along with the obligations under international agreements, EU-Georgia Association Agreement⁷ became the catalyst in the process of forming an effective labour inspection system. Since then, the Georgian state has been gradually and consistently forming the occupational safety system harmonized with international standards. In 2018-2023, Georgia went through several stages of radical transformation in its journey towards forming an occupational safety regulatory framework and its enforcement mechanism.⁸

¹ International Covenant on Economic, Social and Cultural Rights, December 16, 1966, Art. 7 (b) <<https://matsne.gov.ge/document/view/1483577?publication=0>> [05.05.2024].

² UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), 7 April 2016, 44th session, E/C.12/GC/23, <<https://www.refworld.org/docid/5550a0b14.html>> [05.05.2024].

³ See the critical opinions on the abolition of labour inspection – Human Rights Education and Monitoring Center (EMC), „An Assessment of the Labour Inspection Mechanism and a Study of Labour Rights Conditions in Georgia”, 2017; Georgian Trade Union Confederation, „What consequences can the lack of labour inspection lead to? April 28, 2014.

⁴ *Diakonidze A.*, Labour and Employment Policy in Georgia – Facade Institutions, International Actors and Fighting of Ideas, 2018, Reference: Labour Inspection Service Assessment, Social Justice Center, 2021, 11. Also see: *Chanturidze G.*, Abolition of Labour Inspection in Georgia Consequences for Workers and the Economy, Friedrich-Ebert-Stiftung Georgia, 2018, 3, <<https://library.fes.de/pdf-files/bueros/georgien/14675.pdf>> [05.05.2024].

⁵ For the detailed information about the consequences of the lack of labour inspection see: Labour Inspection Service Assessment, Social Justice Center, 2021, 11-12, with further references. Also see: *Chanturidze G.*, Abolition of Labour Inspection in Georgia Consequences for Workers and the Economy, Friedrich-Ebert-Stiftung Georgia, 2018, 4-5, <<https://library.fes.de/pdf-files/bueros/georgien/14675.pdf>> [05.05.2024].

⁶ ILO, Georgia's Parliament adopts historic labour law reform package, 2020, <https://www.ilo.org/moscow/news/WCMS_758336/lang--en/index.htm> [05.05.2024].

⁷ Labour Inspection Service Assessment, Social Justice Center, 2021, 13.

⁸ See Annex #2 the letter of Georgian Trade Unions Confederation to Ms. Salome Kurasbediani – the Deputy Chair of the Environmental Protection and Natural Resources Committee.

By the Association Agreement, Georgia undertook the obligation of legal approximation of domestic labour regulations with the EU Acquis.⁹ As per Articles 229.2 and 229.3 Georgia is obliged to respect, promote and realise in its legislation and practice, as well as in its whole territory the internationally recognized core labour standards as embodied in the fundamental International Labour Organization (ILO) conventions. Georgia committed to actively incorporating into its legislation and diligently implementing the fundamental, priority, and other ILO conventions ratified by Georgia and the member states of the European Union.¹⁰

Following the signing of the Association Agreement, successive Association Agendas for the periods of 2014-2017, 2017-2020, and 2020-2023¹¹ were formulated which outlined plans for establishing the national inspection model.

The establishment of the labour inspection in Georgia was preceded by the adoption of the labour conditions monitoring program. On February 5, 2015, the Government of Georgia adopted an Ordinance “On the Approval of the Working Conditions Monitoring State Program,”¹² which aimed at preventing the violation of occupational safety norms and assisting employers in ensuring a safe and sound environment.¹³ The target group of the program was employers, who had agreed to participate in the program. The objectives of the program were raising awareness, informing employers and employees, and consulting on identified violations.

In 2015, the Department of Labour Conditions Inspection was established at the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia¹⁴. Its mandate allowed for monitoring labour safety upon the employers’ preliminary approval and giving unbinding recommendations.¹⁵

In 2016, the Working Conditions Monitoring State Program was renamed as Labour Conditions Monitoring State Program. Moreover, upon approval, along with inspecting occupational safety and

⁹ 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. Chapter 14. Employment, Social Policy, and Equal Opportunities <<https://matsne.gov.ge/ka/document/view/2496959>> [05.05.2024].

¹⁰ The list of priority conventions of ILO <<https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.html>> [05.05.2024].

¹¹ Association Agenda between the European Union and Georgia, 2014-2016, 2017-2020, 2020-2023.

¹² The Ordinance #38, dated 2015/5 February, of the Government of Georgian “On the Approval of the Working Conditions Monitoring State Program”, <<https://matsne.gov.ge/document/view/2719707?publication=0>> [05.05.2024].

¹³ The letter of Georgian Trade Unions Confederation to Ms. Salome Kurasbediani – the Deputy Chair of the Environmental Protection and Natural Resources Committee.

¹⁴ <<https://www.matsne.gov.ge/ka/document/view/2817403?publication=0>> [05.05.2024].

¹⁵ For further information, see: EMC, An Assessment of the Labour Inspection Mechanism, 2017, <<https://emcrights.files.wordpress.com/2017/01/research-labour-rights.pdf>> [05.05.2024]. Also see: Joint Staff Working Document, Association Implementation Report on Georgia, Brussels, 25.11.2016 SWD(2016) 423 final, 2016, <https://www.eeas.europa.eu/sites/default/files/1_en_jswd_georgia.pdf> [05.05.2024]; Chanturidze G., Abolition of Labour Inspection in Georgia Consequences for Workers and the Economy, Friedrich-Ebert-Stiftung Georgia, 2018, 3, <<https://library.fes.de/pdf-files/bueros/georgien/14675.pdf>> [05.05.2024].

healthcare norms, it became possible to inspect the implementation of requirements of labour legislation.¹⁶

Under the 2017-2020 Association Agenda between the European Union and Georgia, Georgia made a short-term commitment to ensure a legislative framework that would define the supervisory functions of the labour inspection system in the field of occupational health and safety and to remove the restrictions on the powers of inspectors in the existing legislation in accordance with the ILO standards. Association Agenda also defined the state's objective (medium-term commitment) to continue work on establishing an effective labour inspection system, which would be equipped with appropriate competence and capacity by ILO standards for a full inspection of working conditions and labour relations.¹⁷

Within the framework of the 12th round of the annual Human Rights Dialogue between Georgia and the European Union, in 2019, the European Union recommended the creation of a comprehensive labour inspection.¹⁸

“The Government of Georgia, through the agreements signed with the European Union and the United States of America, committed to strengthening the labour legislation, supervision and enforcement mechanisms... Georgia undertook the obligation to continue working to create a full-fledged labour inspection system equipped with the appropriate competence and capacity by 2020, which would be able to monitor all working conditions and inspection of labour relations per the ILO standards”¹⁹.

On March 21, 2018, with the adoption of the Law of Georgia “On Occupational Safety” the Labour Inspection Service was empowered with the authority to conduct unscheduled inspections and levy fines, however, the scope of application was limited to the economic activities determined by the

¹⁶ The letter of Georgian Trade Unions Confederation to Ms. Salome Kurasbediani – the Deputy Chair of the Environmental Protection and Natural Resources Committee, with reference to: Ordinance #19, of January 18, 2016 of the Government of Georgia “On the Approval of Labour Conditions Monitoring State Program 2016”, <<https://matsne.gov.ge/ka/document/view/3165494?publication=0>> [05.05.2024].

Ordinance #627, of December 29, 2016 of the Government of Georgia “On the Approval of Labour Conditions Monitoring State Program 2017”, <<https://matsne.gov.ge/ka/document/view/3525727?publicaAon=0>> [05.05.2024].

Ordinance #603, of December 29, 2017 of the Government of Georgia “On the Approval of Labour Conditions Monitoring State Program 2018”, <<https://matsne.gov.ge/ka/document/view/3977116?publicaAon=0>> [05.05.2024].

Ordinance #682, December 31, 2018 of the Government of Georgia “On the Approval of Labour Conditions Monitoring State Program 2019”, <<https://matsne.gov.ge/ka/document/view/4443902?publicaAon=0>> [05.05.2024].

Ordinance #668, December 31, 2, <<https://matsne.gov.ge/ka/document/view/4762946?publicaAon=0>> [05.05.2024].

¹⁷ Association Agenda between Georgia and European Union 2017-2020, pg. 22, <https://mfa.gov.ge/pfiles/files/EU-Georgia_association_agenda_-2017-2020.pdf> [05.05.2024].

¹⁸ Explanatory note on the Law of Georgia on Labour Inspection Service.

¹⁹ “No Year Without Death” – A Decade of Deregulation Puts Georgian Miners at Risk, Human Rights Watch, 2019, <<https://www.hrw.org/ka/report/2020/01/08/332898>> [05.05.2024].

government, which only covered heavy, harmful and hazardous works.²⁰ The list of such works was approved by the Ordinance of the Government of Georgia in 2018.²¹ The Labour Inspection Department was granted the authority to impose fines; however, unconditional access to workplaces remained a problem.²² The Labour Inspection Department did not have unlimited access to workplaces. For unscheduled inspections, approval from a court was required.²³ The pivotal measure in determining the effectiveness of the inspection system lies in empowering the supervisory body with the authority to conduct unplanned inspections and impose sanctions. Hence, the normative reality provided by the Law on Labour Inspection Service in terms of the limited mandate of the inspection was not in line with Article 3(a) of the ILO Convention #81.²⁴

On October 2, 2018, the Parliament of Georgia voted in favour of the draft organic law on “Occupational Safety”²⁵, which expanded the inspection’s mandate to cover all sectors of the economy, to meet the requirements of EU Acquis.²⁶

During the above-mentioned period, drafting and improving of normative acts regulating occupational safety matters was carried out with the participation of stakeholders, in the tripartite format of social partnership.

According to the explanation by the Georgian Trade Unions Confederation, in 2018-2020 the working group created in the tripartite format of social partnership drafted the following by-laws regulating the issues of occupational safety (which eventually entered into force):

- Ordinance “On the Approval of the Methods for Determining the Priority Directions of Economic Activities, and the Rules for Risk Assessment;”²⁷

²⁰ For the purposes of this organic law, the list of heavy, harmful and hazardous work involving an increased level of danger was determined by the Government of Georgia in consensus with the Social Partners.

²¹ Ordinance of the Government of Georgia No. 381 dated 27 July 2018 “On approval of the list of heavy, harmful and hazardous work involving an increased level of danger”, <<https://matsne.gov.ge/ka/document/view/4277583?publication=0>> [05.05.2024].

²² The letter of Georgian Trade Unions Confederation to Ms. Salome Kurasbediani – the Deputy Chair of the Environmental Protection and Natural Resources Committee.

²³ *Chanturidze G.*, Abolition of Labour Inspection in Georgia Consequences for Workers and the Economy, Friedrich-Ebert-Stiftung Georgia, 2018, 3, <<https://library.fes.de/pdf-files/bueros/georgien/14675.pdf>> [05.05.2024].

²⁴ Article 3(a) of the Convention on Labour Inspection, the mandate of labour inspection covers the issues of working hours, wages, safety, health and welfare, youth employment, and other related issues. See Labour Inspection Service Assessment, Social Justice Center, 2021, 17, further citing Human Rights Watch, ‘No Year Without Deaths- A decade of Deregulations Puts Georgian Miners at Risk’, January 8, 2019, <<https://bit.ly/3xy56Ie>> [05.05.2024]. Also see: *Chanturidze G.*, Abolition of Labour Inspection in Georgia Consequences for Workers and the Economy, Friedrich-Ebert-Stiftung Georgia, 2018, 3, <<https://library.fes.de/pdf-files/bueros/georgien/14675.pdf>> [05.05.2024].

²⁵ <<https://info.parliament.ge/file/1/BillPackageContent/15015>> [05.05.2024].

²⁶ Association Implementation Report on Georgia, European Commission, Brussels, 30.1.2019 SWD(2019) 16 final, 15, <https://www.eas.europa.eu/node/57453_en>. See also, 2021 Country Reports on Human Rights Practices: Georgia, U.S. Department of State, <<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/georgia/>> [05.05.2024].

²⁷ Ordinance №80, February 6, 2020, of the Government of Georgia “On the Approval of the Methods for Determining the Priority Directions of Economic Activities, and the Rules for Risk Assessment,” <<https://matsne.gov.ge/ka/document/view/4793337?publication=1>> [05.05.2024].

- Ordinance “On the Approval of the Rules and Conditions of Entry and Inspection of Objects Subject to Inspection;”²⁸
- Ordinance “On the Approval of the List of Heavy, Harmful and Hazardous Work Involving an Increased Level of Danger;”²⁹
- Order “On the Approval of List of Heavy, Harmful and Hazardous Work Involving an Increased Level of Danger for Persons under 18;”³⁰
- Order “On the Approval of the Rules on Risk Assessment at Workspace;”³¹
- Order “On the Approval of the Rules and Form of Registration of Workplace Accidents and Occupational Diseases, Investigation Procedures and the Rules of Reporting;”³²
- Order “On Determining the Proportional Annual Working Time for Night Work and the Approval of the Periodicity and Scope of Preliminary (before employment) and Subsequent Periodical Medical Examination for a Night Worker;”³³ etc.

On February 19, 2019 the Organic Law on Occupational Safety was adopted, which annulled the March 7, 2018 Law of Georgia on Occupational Safety.

At the beginning of 2019, the Parliament of Georgia, by carrying out major reforms of the Labour Code and developing the Law on Labour Inspection Service, provided a major boost to promoting the establishment of a better balance between the rights and interests of workers and employers.³⁴ From May 2019 to September 2020, the ILO provided extensive assistance in the drafting process of the reform package by providing comparative legislative information, drafting

²⁸ Ordinance #99, of 10 February, 2020, “On the Approval of the Rules and Conditions for Entry and Inspection of Entities Subject to Inspection”, <<https://matsne.gov.ge/ka/document/view/4796359?publication=3>> [05.05.2024].

²⁹ Ordinance of the Government of Georgia No. 381, dated 2018/27 July, “On the Approval of the List of Heavy, Harmful and Hazardous Works Involving an Increased Level of Danger”, <<https://matsne.gov.ge/ka/document/view/4277583?publication=0>> [05.05.2024].

³⁰ Order No. 01-126/6, November 30, 2020, of the Minister of the Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia “On the Approval of the List of Heavy, Harmful and Hazardous Works Involving an Increased Level of Danger for Persons under 18.” Available at: <<https://matsne.gov.ge/ka/document/view/5033680?publication=0>> [05.05.2024].

³¹ Order №01-15/6, January 30, 2020 of the Minister of Georgia of Internally displaced Persons from Occupied Territories, Labour, Health and Social Affairs on the “On the Approval of the Rules on Risk Assessment at Work Space”, <<https://matsne.gov.ge/ka/document/view/4776091?publication=1>> [05.05.2024].

³² Order №01-11/6, September 12, 2018 of the Minister of Georgia of Internally displaced Persons from Occupied Territories, Labour, Health and Social Affairs “On the Approval of the Rules and Form of Registration of Workplace Accidents and Occupational Diseases, Investigation Procedures and the Rules of Reporting, <<https://matsne.gov.ge/document/view/4307493?publication=4>> [05.05.2024].

³³ Order №01-79/6, September 7, 2021 of the Minister of Georgia of Internally displaced Persons from Occupied Territories, Labour, Health and Social Affairs “On Determining the Proportional Annual Working Time for Night Work and the Approval of the Periodicity and Scope of Conducting Preliminary (before employment) and Subsequent Periodical Medical Examination for a Night Worker,” <<https://matsne.gov.ge/document/view/5251745?publicaAon=0>> [05.05.2024].

³⁴ ILO, Georgia’s Parliament adopts historic labour law reform package, 2020, https://www.ilo.org/moscow/news/WCMS_758336/lang--en/index.htm [05.05.2024].

amendments, organizing consultations with the government, social partners, and other stakeholders, and participating in parliamentary hearings. The main goal of the reform was to enhance the alignment of Georgian labour legislation with relevant ILO conventions and EU directives within the scope of the EU-Georgia Association Agreement, according to which Georgia committed to harmonizing its legislation.³⁵

2019 Organic Law on “Occupational Safety” is the main legal source of regulation for workplace health and safety and is based on the EU framework directive.³⁶ With this organic law the state undertook to transform Labour Inspection Department, established in 2015, into a legal entity under public law, and to create a legal framework for its functioning. By the force of the organic law, starting from September 2019, limitations on workspace access for the labour inspectors were lifted.³⁷ Before the adoption of the organic law, the supervisory body was not entitled to unlimited access to workplaces in every area of economic activities.³⁸

The reform in occupational safety was preceded by studying international experience and research of the national context. In the process of consultations with the stakeholders³⁹ research-based recommendations from human rights organisations,⁴⁰ international partners, and social surveys were taken into consideration.

In 2018-2019 Government ordinances on the approval of the “Labour Conditions Monitoring State Program” were adopted.⁴¹ On August 1, 2018 the norms establishing liability for non-compliance

³⁵ ILO assistance for the reform process was provided within the framework of the Project “Improved Compliance with Labour Laws in Georgia”, funded by the United States Department of Labour and the Project “Inclusive Labour Markets for Job Creation”, funded by the Government of Denmark (Danida). See: ILO, Strong Labour Laws Make Decent Work a Reality, <<https://www.ilo.org/resource/strong-labour-laws-make-decent-work-reality>> [05.05.2024]. ILO, Georgia’s Parliament adopts historic labour law reform package, 2020, <https://www.ilo.org/moscow/news/WCMS_758336/lang--en/index.htm> [05.05.2024].

³⁶ Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work

³⁷ As per Article 16.5 of the Organic Law of Georgia on Occupational Safety: “The supervisory body is entitled to inspect any workspace subject to inspection without preliminary notice, at any hour of the day or night time, to carry out inspection of the workspace, examination or test which is necessary to ensure the effective enforcement and application of the occupational safety norms. The rules and conditions of workspace access and inspection are determined by the government’s ordinance.”

³⁸ Public Defender – Human Rights Report 2018, pg. 186, <<https://www.ombudsman.ge/res/docs/2019042620571319466.pdf>> [05.05.2024].

³⁹ Human Rights Education and Monitoring Center, “Labour Reform Under Threat”, July 3, 2020, <<https://shroma.ge/en/news-en/labor-reform-under-threat/>> [25.10.2023]. Also see: Human Rights Education and Monitoring Center, “The European Parliament calls on Georgia to support the labour law reform”, 17.09. 2020, <https://csogeorgia.org/index.php/en/newsPost/26012> [05.05.2024].

⁴⁰ Human Rights Education and Monitoring Center, EMC & GYLA: We Call on Parliament to Carry out Labour Reform, 22.06.2020; Human Rights Education and Monitoring Center, Labour Relations and Social Protection During the Pandemic – Report on Georgia, 11.12. 2020.

⁴¹ Ordinance #603, dated 2017/29 December, of the Government of Georgia “On the Approval of Labour Conditions Monitoring State Program 2018”, <<https://matsne.gov.ge/ka/document/view/3977116?publicaAon=0>> [05.05.2024].

with labour safety norms entered into force and the list of heavy, harmful, and hazardous work involving an increased level of danger.⁴²

In 2018, the “Accredited Program for the Training of Occupational Safety Specialists” was launched. Within its framework labour safety specialists were systematically trained.

On April 27, 2020, the draft law “On Labour Inspection Service” was initiated, which defined the core principles for the functioning of a legal entity under public law, the scope of competence, directions of activity, standards of its independence, transparency, and accountability, issues related to ensuring the effective application of labour norms. The purpose of the formation of the Labour Inspection Service as LEPL was to exercise effective supervision over the protection of labour rights and labour safety by employers.

The Law on Labour Inspection Service was based on the ILO Approach to Strategic Compliance Planning for Labour Inspectorates. The conceptual basis of the model in question is to focus on proactive, purpose- and needs-oriented, strategy development and implementation. An important component of strategic compliance is the engagement of employees and employers, their representatives, governmental and non-governmental organisations, the media, and all interested entities (who can influence compliance with the law). Hence, according to the strategic compliance model, not only the labour inspection but also all stakeholders participate in the implementation of the law so that compliance is ensured.⁴³

2. The Mandate of the Labour Inspection Service and Institutional Capacity Building since 2021

On September 29, 2020, the Parliament of Georgia adopted a reform package of fundamental amendments to the labour law, which encompassed crucial guarantees for the protection of occupational safety.⁴⁴ The reform has been recognised as unprecedented by international organisations.⁴⁵

The expansion of the mandate of the Labour Inspection and institutional strengthening can be recognised as the most extensive and fundamental innovation of the legislative changes implemented

Ordinance #682, dated 2018/31 December, of the Government of Georgia “On the Approval of Labour Conditions Monitoring State Program 2019”, <<https://matsne.gov.ge/ka/document/view/4443902?publicaAon=0>> [05.05.2024].

⁴² Articles 17.1, 17.2, and Articles 18-22 of the 2018 Law of Georgia on “Occupational Safety”; Ordinance of the Government of Georgia No. 381 dated 27 July 2018 “On approval of the list of heavy, harmful and hazardous work involving an increased level of danger”, <<https://matsne.gov.ge/ka/document/view/4277583?publication=0>> [05.05.2024].

⁴³ ILO Approach to Strategic Compliance Planning for Labour Inspectorates, 2017, <https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication/wcms_606471.pdf> [05.05.2024], Referenced in: Explanatory note on the Law of Georgia on Labour Inspection Service.

⁴⁴ Human Rights Education and Monitoring Center, “EMC: despite the positive changes, problems remain in labour law”, September 29, 2020. Compare: Labour Rights in Georgia, Research Report, 2021, 6-7, <https://georgia.peopleinneed.net/media/publications/1653/file/labour-rights-in-georgia_people-in-need.pdf>

⁴⁵ Georgia’s Parliament Adopts Historic Labour Law Reform Package, https://www.ilo.org/moscow/news/WCMS_758336/lang--en/index.htm [21.10.2023]; ILO, Strong Labour Laws Make Decent Work a Reality, <https://www.ilo.org/global/about-the-ilo/multimedia/video/institutional-videos/WCMS_815366/lang--en/index.htm> [05.05.2024].

in 2020.⁴⁶ The Labour Inspection Service started to operate in its full mandate on January 1, 2021.⁴⁷ By the requirements of the reformed Labour Code of Georgia and the organic law “On Occupational Safety”, the mandate of the independent Labour Inspection Service, also acquired the function of monitoring the full range of labour rights, in addition to occupational safety, which contributed to the bolstering of institutional capacities within labour inspection, facilitating its evolution into a highly effective mechanism.⁴⁸ According to Article 75.1 of the Labour Code of Georgia, the Labour Inspection is entitled to ensure effective enforcement of labour law norms. It should be noted that the mandate of the labour inspection was extended to both the private and public sectors, meaning that the labour inspection became authorized to supervise the enforcement of labour norms in the public service as well.⁴⁹

3. Cooperation in Tripartite (Board of Advisors) and Other Formats

The formation and subsequent improvement of the labour safety policy took place within the tripartite social dialogue.⁵⁰ Two organisations have been selected as representatives at the national level – the Georgian Trade Union Confederation and Georgian Employers’ Association.

In terms of providing recommendations on the strategy, functioning, and activities of the Labour Inspection Service, an important role was played by the advisory body, the Board of Advisors, established in 2021 by Article 9 of the Law of Georgia “On Labour Inspection Service.”⁵¹ As per Article 1(b) of the 1978 Labour Administration Convention,⁵² the coordinating and supervisory role of the central inspection body would facilitate the establishment and application of a consistent inspection policy and overall integrated strategy across the national territory. Such policies should have been formulated after consultation and cooperation with the social partners.⁵³ The rules for recruitment for the Labour Inspection Service were in line with structure and organisation principles

⁴⁶ Labour Inspection Service Assessment, Social Justice Center, 2021, 18-19.

⁴⁷ ILO, Strong Labour Laws Make Decent Work a Reality, <https://www.ilo.org/global/about-the-ilo/multimedia/video/institutional-videos/WCMS_815366/lang--en/index.htm> [05.05.2024].

⁴⁸ Given that the content of labour norms under the Labour Code is quite broad, the mandate of the Labour Inspection Service includes not only state overseeing labour rights and occupational safety issues, but also ensuring effective enforcement against forced labour and trafficking.

⁴⁹ For a comparative legal study of labor inspection mandates across the EU see: *Liu K.*, Protection of Health and Safety at the Workplace A Comparative Legal Study of the European Union and China, Springer Nature Singapore, 2020, 1-227.

⁵⁰ In November 2017, Georgia ratified a priority ILO convention #144 on Tripartite Consultation.

⁵¹ See 2023 Report of International Labour organization, <https://www.ilo.org/budapest/countries-covered/georgia/WCMS_888396/lang--en/index.htm> [05.05.2024]. On the importance of cooperation with social partners in the process of forming the labor inspection system, see: Labour Inspection, International Labour Office, International Labour Conference, 95th Session, Geneva, Switzerland, 2006, 54-59.

⁵² C150 – Labour Administration Convention, 1978 (No. 150).

⁵³ Guidelines on General Principles of Labour Inspection, International Labour Organization, Geneva, Ilo, 2022, Guideline 2.1.1; 2.1.4. 2.2.7. 2.2.8. <https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_dialogue/@lab_admin/documents/genericdocument/wcms_844153.pdf> [05.05.2024].

2.4., 2.2.7,⁵⁴ and 2.2.8⁵⁵ of ILO Guidelines on General Principles of Labour Inspection and the persons included representatives of the Parliament of Georgia, Georgian Employers' Association, Georgian Trade Union Confederation.⁵⁶ Hence, the Board of Advisors became one of the crucial instruments for tackling the challenges in occupational safety and improving the status quo in this area.⁵⁷

In terms of cooperation with governmental organisations, the Labour Inspection Service signed a memorandum of understanding with the LEPL National Agency of State Property of the Ministry of Economy and Sustainable Development. Within the framework of this cooperation, the parties, in case of detection of violations at the workplaces, would issue relevant recommendations to state enterprises.⁵⁸

In 2018, a joint monitoring group of the Labour Inspection Department and the Technical and Construction Supervision Agency of the Ministry of Economy was established to supervise labour conditions in organisations with dangerous, heavy, harmful, and hazardous work to human life and health.⁵⁹

In 2019, cooperation was formed with Tbilisi State Medical University, the Ministry of Economy and Sustainable Development of Georgia, Tbilisi City Hall, as well as the Georgian Bar Association, and the 112 Emergency Response Center of the Ministry of Internal Affairs of Georgia. In 2021, one of the evaluation reports on the labour inspection critically evaluated the absence of a memorandum of understanding between the Ministry of Internal Affairs and the Labour Inspection Service.⁶⁰ In this regard, the most important accomplishment of the reform was the improvement of the statistical registration system for workplace accidents. According to the Georgian Trade Unions Confederation, the achievements of the reform had a direct impact on employees and were reflected in

⁵⁴ Labour inspectorates should collaborate with workers' and employers' organisations in the design, adoption and review of inspection policies, strategies, or programmes and plans. This collaboration may take different forms such as through national tripartite consultative bodies, agreements on coordination and cooperation, joint committees, consultations, and the organisation of campaigns. <https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/genericdocument/wcms_844153.pdf> [05.05.2024].

⁵⁵ Collaboration with social partners is an essential element for the effectiveness of the labour inspection system. This collaboration must be operationalized at national, territorial and enterprise level. <https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/genericdocument/wcms_844153.pdf> [05.05.2024].

⁵⁶ See <<https://lio.moh.gov.ge/main.php?lang=1&id=202212250138351764128111>> [05.05.2024]; Article 9 of the Law of Georgia on Labour Inspection Service. On the expansion of the membership of the commission and corresponding extension of the Board of Advisors, see: "New Confederation of Trade Unions, 2021 – Arguments in Favour of Georgia's New Confederation of Trade Unions' Participation in Tripartite Commission of Social Partners," Referenced: *Tskitischvili D., Natsvlshvili V., Kajaia S., Shvelidze Z., Decent Work Agenda – Assessment of Needs and the Agenda, Tbilisi, 2022, 132; Tchubabria T., Mamaladze E., Labour Inspection in Georgia, Challenges and the Road Ahead, Open Society Foundation, Social Justice Centre, 2022, 3.*

⁵⁷ The letter of Georgian Trade Unions Confederation to Ms. Salome Kurasbediani – the Deputy Chair of the Environmental Protection and Natural Resources Committee.

⁵⁸ Labour Inspection Service Assessment, Social Justice Center, 2021, 25.

⁵⁹ Ibid.

⁶⁰ Labour Inspection Service Assessment – 2021, 28.

the statistics of injuries and deaths at workplaces, which were not produced by any state body until 2019, except for the Ministry of Internal Affairs, which only counted the cases where a criminal investigation had been launched. The main source of information was the data on workplace accidents provided by Georgian Trade Unions Confederation member organisations. Specifically, the number of workplace accidents in 2006 was 55, in 2008 -72, in 2009 – 97, in 2010 – 249, in 2011 – 74, in 2012 – 147, in 2013 – 72, in 2014 – 107, in 2015 – 123, in 2016 -142, in 2017 – 97.⁶¹ In addition, the statistics did not include the number of employees who fell ill at workplaces with professional diseases or died later due to professional diseases and industrial injuries.⁶² This data did not give a complete picture, since at that stage companies had no obligation to report accidents to the Labour Inspection Department. This shortcoming was corrected by forming coordinated cooperation with the Ministry of Internal Affairs.

According to the 2022 report of the Labour Inspection Service, within the scope of its mandate, LEPL Labour Inspection Service closely cooperates and uses the referral mechanism with agencies such as the Ministry of Internal Affairs of Georgia, the Agency for State Care and Assistance for the (Statutory) Victims of Human Trafficking and the Social Services Agency. The report covers the cooperation with the Ministry in specific areas, including the collection and processing of statistical data on workplace accidents.⁶³ Also, communication is ongoing with other agencies that are members of the Inter-agency Coordination Council implementing measures against human trafficking.⁶⁴

In the context of following the principle of cooperation between labour inspection and various stakeholders, the role of the Labour Inspection Service remains an independent state prerogative. It is only through an efficient public inspection system that the effectiveness of sanctions, capable of deterring violations, can be ensured.⁶⁵

Thus, as a result of the latest regulatory reform, new OSH rules have been introduced. The organic law “On Occupational Safety” and many other by-laws were adopted, based on which reform was carried out and a new body was created with a corresponding mandate, both in the field of occupational safety and employee rights. Additionally, significant steps were taken in terms of reflecting EU directives, obligatory under the EU-Georgia Association Agreement, in Georgian legislation. Important regulations were adopted, and the number of labour inspectors increased, which ensures control over the effective implementation of labour safety regulations.⁶⁶

⁶¹ Official Data of Georgian Trade Unions Confederation on the Injured and Dead at Workplaces, see: https://lio.moh.gov.ge/editor/upload/20230425042928-LCID%20Report%20_2015%20-%202017.pdf [05.05.2024].

⁶² The letter of Georgian Trade Unions Confederation to Ms. Salome Kurasbediani – the Deputy Chair of the Environmental Protection and Natural Resources Committee.

⁶³ Labour Inspection Service Report – 2022, 43.

⁶⁴ Ibid, 42.

⁶⁵ See ILO guideline 2.2.12. – Guidelines on General Principles of Labour Inspection, International Labour Organization, Geneva, Ilo, 2022, 13, <https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/genericdocument/wcms_844153.pdf> [05.05.2024].

⁶⁶ The letter of Georgian Employers’ Association to Ms. Salome Kurasbediani – the Deputy Chair of the Environmental Protection and Natural Resources Committee.

II. Implementation of Directives under Annex XXX in the Field of Occupational Safety

According to the 2023 report of the European Commission, “the analysis of Georgian legislation shows that the state has largely reflected the EU standards in most areas of labour law.”⁶⁷ According to the 2023 report of the ILO, since 2018 the shifts in the field of occupational safety after the labour reform have brought consistent progress in terms of legal approximation with EU Acquis. The application of international labour standards in judicial practices has increased, which was facilitated by capacity-building efforts targeted at judges, practicing lawyers, and government employees.⁶⁸

After the signing and entry into force of the Association Agreement, Georgia has taken significant steps to approximate its legislation to 26 EU directives on labour, health, and safety (with a 5–9-year implementation plan⁶⁹). From them, besides the framework directive, Georgia has achieved full legal approximation with the directive on the medical treatment on board vessels and partial approximation with the directive on temporary or mobile construction sites.

For this study, based on the information obtained from the occupational safety supervisory body and other stakeholders, as of October 30, 2023, in Georgian legislation: 6 directives were fully reflected, 2 directives – partially, the legislative package drafted in compliance with 3 directives is ready for scrutiny in the working/technical group of the tripartite commission, drafts the normative acts in line with 5 directives have been prepared, 10 directives require translation, processing, and examination.

Namely, as of 2023, the following directives have been reflected in Georgian legislation:

1. Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work;
2. Council Directive 90/270/EEC of 29 May 1990 on the minimum safety and health requirements for work with display screen equipment (fifth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC;

⁶⁷ Analytical Report following the Communication from the Commission to the European Parliament, the European Council and the Council Commission Opinion on Georgia’s application for membership of the European Union, European Commission Joint Staff Working Document, Brussels, 1.2.2023 SWD(2023) 31 final, Chapter 19, Social Policy and Employment, 31 <https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-02/SWD_2023_31_Georgia.pdf> [05.05.2024].

⁶⁸ International Labour organization – 2023, <<https://www.ilo.org/resource/about-ilo-georgia>> [05.05.2024]. See also: Training on International Labour Standards and Labour Code for City Court Judges in Georgia, <https://www.ilo.org/moscow/news/WCMS_850521/lang--en/index.htm> [05.05.2024]; ILO launches a Capacity Building Programme for Labour Inspection in Georgia, <https://www.ilo.org/moscow/news/WCMS_735852/lang--en/index.htm> [05.05.2024]; COVID-19 Impact on Labour Disputes and Case Law Developments in Georgia Discussed at Bench-Bar Meeting, https://www.ilo.org/moscow/news/WCMS_851395/lang--en/index.htm [05.05.2024].

⁶⁹ *Kardava E., Jgerenaia E.*, Labour Rights Protection as part of the European Integration Policy – Perspectives of Developments within the AA, The VLAP and the Social Charter, 2016, 7, <<https://library.fes.de/pdf-files/bueros/georgien/13152.pdf>> [05.05.2024]; *Chanturidze G.*, Abolition of Labour Inspection in Georgia Consequences for Workers and the Economy, Friedrich-Ebert-Stiftung Georgia, 2018, 3, <<https://library.fes.de/pdf-files/bueros/georgien/14675.pdf>> [05.05.2024].

3. Council Directive 89/656/EEC of 30 November 1989 on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace (third individual directive within the meaning of Article 16 (1) of Directive 89/391/EEC);

4. Council Directive 92/58/EEC of 24 June 1992 on the minimum requirements for the provision of safety and/or health signs at work (ninth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC);

5. Council Directive 90/269/EEC of 29 May 1990 on the minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers (fourth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC);

6. Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace (first individual directive within the meaning of Article 16 (1) of Directive 89/391/EEC);

7. Council Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels;

8. Council Directive 92/57/EEC of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile constructions sites (eighth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC);

OSH directives of Annex XXX of the Association agreement have been reflected in the following normative acts:

1. Organic Law of Georgian “On Occupational Safety;”

2. Ordinance #341 of July 1, 2022 of the Government of Georgia “On the Approval of Technical Regulation on Minimum Requirements for Safety and Health at Workplace;”

3. Ordinance #590 of December 23, 2022 of the Government of Georgia “On the Approval of Technical Regulation – Minimum Safety and Health Requirements for Using Personal Protective Equipment at Workplace;”

4. Ordinance #457 of September 16, 2022 of the Government of Georgia “On the Approval of Technical Regulation – on the Minimum Requirements for the Provision of Safety and/or Health Signs at Work;”

5. Ordinance #477 of October 27, 2017 of the Government of Georgia “On the Approval of the Technical Regulation on the Safety Requirements for the Work at a Height.”

6. Ordinance #167 of May 1, 2023 of the Government of Georgia “On the Approval of the Technical Regulation on the Minimum Safety and Health Requirements for Handling Weights Manually;”

7. Order #5 of December 13, 2018 of the Head of the Maritime Transport Agency of the Ministry of Economy and Sustainable Development of Georgia “On the Approval of Minimum Safety and Health Standards on the Sea Vessels under the State Flag;”

The following 18 OSH directives of Annex XXX of the Association Agreement remains to be reflected for the years 2021-2023:

1. Directive 2002/44/EC of the European Parliament and of the Council of 25 June 2002 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from

physical agents (vibration) (sixteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC);

2. Directive 2009/148/EC of the European Parliament and of the Council of 30 November 2009 on the protection of workers from the risks related to exposure to asbestos at work (Codified version) (Text with EEA relevance);

3. Directive 1999/92/EC of the European Parliament and of the Council of 16 December 1999 on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres (15th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC);

4. Directive 2006/25/EC of the European Parliament and of the Council of 5 April 2006 on the minimum health and safety requirements regarding the exposure of workers to risks arising from physical agents (artificial optical radiation) (19th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC);

5. Council Directive 93/103/EC of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels (thirteenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC);

6. Directive 2009/104/EC of the European Parliament and of the Council of 16 September 2009 concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (Codification of the directive 89/655/EEC, which was amended by directives 95/63/EC and 2001/45/EC) (Text with EEA relevance);

7. Council Directive 92/91/EEC of 3 November 1992 concerning the minimum requirements for improving the safety and health protection of workers in the mineral- extracting industries through drilling (eleventh individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC);

8. Council Directive 92/104/EEC of 3 December 1992 on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries (twelfth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC);

9. Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (Sixth individual Directive within the meaning of Article 16(1) of Council Directive 89/391/EEC) (codified version) (Text with EEA relevance);

10. Directive 2000/54/EC of the European Parliament and of the Council of 18 September 2000 on the protection of workers from risks related to exposure to biological agents at work (seventh individual directive within the meaning of Article 16(1) of Directive 89/391/EEC);

11. Council Directive 98/24/EC of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work (fourteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC);

12. Directive 2003/10/EC of the European Parliament and of the Council of 6 February 2003 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise) (Seventeenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC);

13. Directive 2004/40/EC of the European Parliament and of the Council of 29 April 2004 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) (18th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC);

14. Commission Directive 91/322/EEC of 29 May 1991 on establishing indicative limit values by implementing Council Directive 80/1107/EEC on the protection of workers from the risks related to exposure to chemical, physical and biological agents at work;

15. Commission Directive 2000/39/EC of 8 June 2000 establishing a first list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC on the protection of the health and safety of workers from the risks related to chemical agents at work (Text with EEA relevance);

16. Commission Directive 2006/15/EC of 7 February 2006 establishing a second list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC and amending Directives 91/322/EEC and 2000/39/EC (Text with EEA relevance);

17. Commission Directive 2009/161/EU of 17 December 2009 establishing a third list of indicative occupational exposure limit values in implementation of Council Directive 98/24/EC and amending Commission Directive 2000/39/EC (Text with EEA relevance);

18. Council Directive 2010/32/EU of 10 May 2010 implementing the Framework Agreement on prevention from sharp injuries in the hospital and healthcare sector concluded by HOSPEEM and EPSU (Text with EEA relevance).

As explained by the Georgian Trade Unions Confederation based on the “Association Agreement” and the Organic Law of Georgia “On Occupational Safety”, the Government of Georgia undertook to adopt by-laws – technical regulations that will regulate occupational safety issues in various sectors of economic activity in Georgia. The by-laws of Georgia or “technical regulations,” which have entered into force since 2013, cover only a certain segment of economic activity.” Hence, due to the absence of regulations, the supervisory body cannot inspect economic sectors that have not been covered by technical regulations yet.

The necessity of enhancing the legislative framework regulating occupational safety through the adoption of by-laws is unanimously recognized by all stakeholders in the field and all subjects involved in this study.

As explained by the Labour Inspection Office, the drafting process of by-laws was carried out within the “Twinning” program, where the Parliamentary committee members were also engaged. The term of validity of the project expired at a certain stage in 2023. As a result, the process of adoption of technical regulations was halted to a certain extent, however, the preparation and processing of draft regulations was still underway. By the end of the year, the EU confirmed to support the extension of the project. The second stage of the “Twinning” program should be possible to be launched from the beginning of 2024, allowing to resume the process of adopting technical regulations.

According to the Labour Inspection Service, from the required documents under the Association Agreement, only the ones imposing large economic costs for enterprises have remained. Thus, the harmonisation process should be managed through a realistic understanding of the national context

and measurement of available financial resources. For instance, one of the technical regulations, that needs to be adopted, requires passport and retooling for the machinery at enterprises. In Georgia, the main industrial facilities are outdated. When adopting the aforementioned technical regulation, a solution that aligns with practical realities shall be sought. Simply adopting this regulation and blindly enforcing its obligations could result in the closure of numerous companies or an abrupt increase in their operational costs.

The representative of the Georgian Trade Unions Confederation emphasized the need for general norms of temperature control in open space. Labour Inspection Service provided that on January 15, 2014, the Government of Georgia adopted ordinance #69 on the approval of the Technical Regulation on the Hygienic Requirements for the Microclimate in Workspace. This regulation does not cover the temperature control norms for outdoor work. For instance, roads are built during summertime as the population leaves larger cities. Hence, to meet occupational safety standards, the need to control the temperature for outdoor work gets on the agenda. The Inspection controls the process by requiring the employers to schedule work shifts and limit the work during certain periods of the day, where the temperature is high. Certainly, the Inspection cannot constantly supervise whether the shift schedules are being followed, hence, the normative regulation of the mentioned issue can be an effective means. The existence of a legal requirement may enhance compliance with outdoor labour safety norms.

III. The Importance of Ratifying Occupational Safety Conventions of the International Labour organization

Georgia has ratified 18 ILO conventions (among them, 17 are in force).⁷⁰ In the field of occupational safety, ILO has adopted Occupational Safety and Health Convention of 1981 (No. 155)⁷¹, Promotional Framework for Occupational Safety and Health Convention of 2006 (No. 187)⁷², Labour Inspection Convention of 1947 (No. 81)⁷³, Labour Inspection (Agriculture) Convention of 1969 (No. 129)⁷⁴, Occupational Health Services Convention of 1985 (No. 161)⁷⁵, Safety and Health in Mines Convention of 1995 (No. 176)⁷⁶, Domestic Workers Convention of 2011 (No. 189)⁷⁷, Social Security (Minimum Standards) Convention of 1952 (No. 102)⁷⁸.

⁷⁰ Including them 3 Conventions on Freedom of Association, Collective Bargaining and Industrial Relations, 2 on Forced Labour, 2 on Reduction of Child Labour and Rights of Children/Youth, 2 on Equal Opportunities and Equal Treatment, 1 on Tripartite Consultations, 3 on Employment Policy and Promotion, 1 in the field of human resources development, 1 working time, 1 social policy, 1 on protection of seafarers.

⁷¹ C155 – Occupational Safety and Health Convention, 1981 (No. 155).

⁷² C187 – Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).

⁷³ C081 – Labour Inspection Convention, 1947 (No. 81).

⁷⁴ C129 – Labour Inspection (Agriculture) Convention, 1969 (No. 129).

⁷⁵ C161 – Occupational Health Services Convention, 1985 (No. 161).

⁷⁶ C176 – Safety and Health in Mines Convention, 1995 (No. 176).

⁷⁷ C189 – Domestic Workers Convention, 2011 (No. 189).

⁷⁸ C102 – Social Security (Minimum Standards) Convention, 1952 (No. 102).

The Association Agreement emphasizes the importance of ratifying ILO priority conventions. According to the recommendation of the Public Defender of Georgia in 2018, taking timely steps in this regard remains an absolute necessity, as the issue of their ratification has been emphasized since September 1, 2014, with the Association Agreement⁷⁹ with the European Union⁸⁰. According to ILO Committee of Experts, the Labour Inspection Convention (No. 87) which envisages the inspection of labour rights and occupational safety rules, belongs to the list of priority conventions⁸¹. It is also noteworthy to start the procedures required for ratifying the Labour Inspection (Agriculture) Convention (No. 129) and Occupational Safety and Health Convention (No. 155). **According to the Georgian Trade Unions Confederation, as a result of active advocacy on the international level by the world and local trade unions, labour safety is recognised as a fundamental right,⁸² which means that the ILO member states, including Georgia, are obliged to implement the mentioned conventions (No. 155, No. 187) regardless of ratification. The ratification of these conventions is an important step in terms of fulfilling the Association Agreement and improving the country's international image.**

Georgian Trade Unions Confederation explains that the issue of ratifying separate conventions in the field of labour safety at the initiative of the same organisation is a part of the action plan of the Tripartite Commission of Social Partnership of Georgia. Georgian Trade Unions Confederation, the Public Defender of Georgia, and non-governmental organisations underline the importance and recommend the ratification of the following conventions: Labour Inspection Convention of 1947 (No. 81), Occupational Safety and Health Convention of 1981 (No. 155), Employment Injury Benefits Convention of 1964 (No. 121), Labour Inspection (Agriculture) Convention of 1969 (No. 129), Promotional Framework for Occupational Safety and Health Convention of 2006 (No. 187).

An inquiry has been made into the stance of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health, and Social Affairs of Georgia. According to the official information provided by the Ministry, the Tripartite Commission of Social Partnership serves as a decision-making and consulting body in the realm of labour and other associated relations. Discussing the issues of ratifying ILO conventions is one of the functions of the Commission. Its members have drafted an action plan for 2023-2024, which aims to discuss the possibilities for ratifying a number of ILO conventions.

The Ministry stated that for this purpose, the plan includes the following conventions in the field of occupational safety: 1. Occupational Safety and Health Convention (No. 155); 2. Promotional Framework for Occupational Safety and Health Convention (No. 187); 3.

⁷⁹ 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. Article 229.4.

⁸⁰ Public Defender – Human Rights Report 2018, pg. 187, <<https://www.ombudsman.ge/res/docs/2019042620571319466.pdf>> [05.05.2024].

⁸¹ The list of ILO priority conventions, <<https://www.ilo.org/international-labour-standards/conventions-protocols-and-recommendations>> [05.05.2024].

⁸² The right to occupational safety comes from the constitutional origin of health protection and is loaded with the content of a fundamental right. *Świątkowski A. M.*, Labour Law, Council of Europe, Fifth Edition, Wolters Kluwer, 2023, ebook, note 467.

Safety and Health in Mines Convention (No. 176); 4. Labour Inspection (Agriculture) Convention (No. 129).

According to the Ministry, based on the principles of social dialogue and taking into account the existing practice, the Tripartite Commission will discuss the possibilities of ratifying the above-mentioned conventions, and the decision on each convention is based upon the assessment of the regulatory impact assessment and relevant conclusions.

According to the information provided to the Parliament of Georgia, by the Ministry and the Georgian Trade Unions Confederation, in 2022, the Tripartite Commission made a decision to ratify the Labour Inspection Convention (No. 81) and Forced Labour Convention (No. 29). Preparatory work is currently underway; however, the conventions have not yet been ratified.

Even though Georgia has not ratified ILO Conventions in the field of labour safety, a number of international standards stipulated by the ILO Conventions has been reflected in Georgian legislation. For instance, introducing unscheduled inspections in 2019 has brought the institutional functions of the Labour Inspection Service to the international standards. Specifically, Labour Inspection Convention (No. 81)⁸³, Labour Inspection (Agriculture) Convention (No. 129)⁸⁴, and the protocols to the Labour Inspection Convention of 1947⁸⁵.

The expansion of the Inspection mandate was the reflection of Article 3 (a) of the Labour Inspection Convention (No. 81), as per which, the mandate of an inspection should cover the issues of working hours, wages, safety, health and welfare, youth and child employment and other related issues. The legislative expansion of the Labour Inspection mandate with the 2020 reform, according to the report of the International Labour Organization, the introduction of adequate enforcement mechanisms in order to establish an effective model of labour inspection, served the actual implementation of the requirements of ILO Convention No. 81 and the fulfilment of other international obligations undertaken by Georgia.⁸⁶

Indeed, Georgian legislation in terms of occupational safety is closely in line with standards outlined in the conventions; however, the recommendation to ratify these conventions cannot be recognized as fulfilled. This substantial alignment of Georgia's labour safety legislation with the provisions of the conventions No. 81 and No. 129, should further facilitate the ratification.⁸⁷

IV. Expanded Mandate of Labour Inspection Service and Conceptual Innovations of the Legislative Reform

Based on the legislative acts passed in the field of labour inspection in 2019-2021, the most important functional innovations and principles of occupational safety supervision were

⁸³ CO81, 1947, Art. 12.1, Art. 18. See also: Supervisory powers: Inspection actions, in particular inspection visits. Reference: Guidelines on General Principles of Labour Inspection, International Labour organization, Geneva, Ilo, 2022, Guideline 5.2.1. <https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/genericdocument/wcms_844153.pdf> [05.05.2024].

⁸⁴ C129, 1969, Art. 16.1, Art. 24.

⁸⁵ P081, 1995, Preamble, Art.1.

⁸⁶ International Labour Organization, Progress Assessment of the Labour Inspection System in the Republic of Georgia Chapter II. International Labour Standards, 2016, 3.

⁸⁷ Public Defender – Human Rights Report 2018, pg. 27, <<https://www.ombudsman.ge/res/docs/2019042620571319466.pdf>> [05.05.2024].

implemented, which played a pivotal role in shaping an efficient institutional model for labour inspection.

As per the ILO Labour Inspection convention No. 81, one of the most important prerequisites for the actualisation of the right to “decent work” is the existence of an effective labour inspection⁸⁸. In response to the mentioned international obligation, through the latest legislative reform, the Inspection Service was granted the authority to monitor any workplace or workspace, upon a complaint, as well as on its initiative, without prior notice.⁸⁹ Based on the list of priority sectors adopted by the Government, the Chief Labour Inspector approves the list of specific organisations working in priority sectors, which are subject to scheduled inspection⁹⁰.

The Labour Inspection Service has been given extensive powers to ensure safety at work. In particular, in accordance with Article 16.4 of the Law of Georgia “On Occupational Safety”, the supervisory body controls the implementation and application of occupational safety norms, investigates accidents and professional diseases at the workplace and registers them as per the procedures stipulated in Georgian legislation.

Court order is only required in cases where there is a reasonable suspicion of forced labour and labour exploitation.⁹¹ In these instances as well, the Inspection Service is entitled to enter, without prior notice, any building/space at any time of the day.

The Inspection is authorised to request the inviolability of the workplace for the period necessary for inspection, to search, request and examine any material, document, or information related to a possible violation. As well as, take a sample of any object, material or ambient air, make measurements, records, photograph, videotape, and make extracts.

Where the legislation provides alternative administrative penalties, the Labour Inspection Service shall enjoy discretionary power⁹² in deciding when and which administrative penalty must be

⁸⁸ Chanturidze G., Abolition of Labour Inspection in Georgia Consequences for Workers and the Economy, Friedrich-Ebert-Stiftung Georgia, 2018, 3, <<https://library.fes.de/pdf-files/bueros/georgien/14675.pdf>> [05.05.2024].

⁸⁹ Labour Inspection convention No. 81, 1947, Art. 12; Guidelines on General Principles of Labour Inspection, International Labour organization, Geneva, ILO, 2022, Guideline 5.2.1.1.(a) <https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/genericdocument/wcms_844153.pdf> [05.05.2024].

Common Principles of Labour Inspection in Relation to Health and Safety in the workplace, Adopted at the 69th SLIC Plenary in Luxembourg, 13 November 2015, 8, <<https://ec.europa.eu/social/BlobServlet?docId=15615&langId=en>> [23.10.2023].

Comp.: On the possible expansion of Labour Inspection Service rights in the Labour Code, the Business Association of Georgia once again explains the position of business, <<https://bag.ge/ge/advocacy/ongoing-topics?n=1462>> [21.10/2023].

⁹⁰ Ordinance #99, dated 2020/10 February, ” On the Approval of the Rules and Conditions for Entry and Inspection of Entities Subject to Inspection”. Available at: <https://matsne.gov.ge/ka/document/view/4796359?publication=3>

⁹¹ Unlike the limited mandate under the 2018 law “On Occupational Safety”, where unscheduled inspection had to be approved by courts.

⁹² The approach of particular legal orders to the discretionary powers of inspectors can be found in the work: Labour Inspection, International Labour Office, International Labour Conference, 95th Session, Geneva, Switzerland, 2006, 94; Supporting Compliance of Occupational Safety and Health Requirements –

applied⁹³. The law introduces the principle of proportionality where administrative penalties are used, necessitating the application of a proportional level of liability taking account of the severity of the violation. **The obligation to apply adequate penalties is stipulated in Article 18⁹⁴ of Convention No. 81 and Article 24 of Convention No. 129⁹⁵**. Therefore, the normative principles and policies of adequate sanctioning in the national Georgian inspection model align with the standards endorsed by the ILO conventions⁹⁶.

To encourage the detection of violations of labour safety norms, the Inspection Service adheres to the principle of confidentiality⁹⁷. Confidentiality guarantees ensure that any complaint received by the Labour Inspection Service and/or an interview conducted by a labour inspector is fully confidential.⁹⁸ The labour inspector, along with all employees of the Labour Inspection Service⁹⁹, is obligated not to disclose the identity of the source of the complaint or the interviewed person. When carrying out the inspection, the Labour Inspection Service does not indicate that the process was initiated in response to the receipt of a complaint. Disclosure of information about the source of the complaint or the interviewed person is permitted solely with the consent of the said person or under circumstances stipulated by law. In case of violation of these obligations, a labour inspector may be dismissed from their position or be subject to other disciplinary measures.¹⁰⁰ The obligation of confidentiality is valid for life, even after the termination of the official authority¹⁰¹

A labour inspector is entitled to question any individual in the workplace or workspace, to summon the employer, employee or any other person to the Labour Inspection Service under

European Labour Inspections Systems of Sanctions and Standardised Measures, European Agency for Safety and Health at Work, 2023, 1-5, <https://osha.europa.eu/sites/default/files/Supporting-Compliance-Workplace-Safety-Requirements_EN.pdf> [05.05.2024].

⁹³ The Law of Georgia of September 29, 2020 “On Labour Inspection Service”, Article 20.4.

⁹⁴ “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.”

⁹⁵ Adequate penalties for violations of the legal provisions enforceable by labour inspectors in agriculture and for obstructing labour inspectors in the performance of their duties shall be provided for by national laws or regulations and effectively enforced.

⁹⁶ See Guidelines on General Principles of Labour Inspection, International Labour Organization, Geneva, Ilo, 2022, Guideline 6.3.1. (2) <https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/genericdocument/wcms_844153.pdf> [05.05.2024].

⁹⁷ The Law of Georgia “On Labour Inspection Service”, Article 4.3(d)

⁹⁸ In some countries, the institution of taking an oath by the inspector before taking office has been strengthened, which also provides for the recognition of the obligation to protect confidentiality.

ob. Labour Inspection, International Labour Office, International Labour Conference, 95th Session, Geneva, Switzerland, 2006, 72-75.

⁹⁹ Guidelines on General Principles of Labour Inspection, International Labour Organization, Geneva, Ilo, 2022, Guideline, Occupational Ethics, 4.5.4. <https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/genericdocument/wcms_844153.pdf> [05.05.2024].

¹⁰⁰ The Law of Georgia “On Labour Inspection Service”, Article 18.2 and Article 19; See identical ethical obligations: Guidelines on General Principles of Labour Inspection, International Labour organization, Geneva, Ilo, 2022, Guideline 4.5.2. <https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/genericdocument/wcms_844153.pdf> [05.05.2024].

¹⁰¹ Labour Inspection, International Labour Office, International Labour Conference, 95th Session, Geneva, Switzerland, 2006, 74.

confidentiality and to converse with them. A labour inspector shall not be authorised to request the said person to provide information which would expose them.¹⁰²

Hence, Georgian legislation is in line with Articles 15 (b) (c) of the ILO Convention No. 81 in terms of protection of confidentiality.

The following administrative penalties can be applied for violation of labour norms (including the requirements provided for by the organic laws “Labour Code” and “On Occupational Safety”, as well as, the labour contract and other acts): warning, fine, suspension of the work process.

The legislation provides for the compulsory enforcement measures where an imposed fine or default charges are not paid within the established time limit.

V. Effectiveness of the Labour Inspection System and Recent Challenges in 2021-2023

1. Trends in decreasing accidents and policies for raising awareness.

After the expansion of the Labour Inspection Service mandate, according to labour rights organisations, occupational safety and health standards were in line with international norms in all major industries. Occupational safety experts were actively involved in responding to complaints, as well as in the process of assessing labour safety conditions. During 2021, the Inspectorate was responsible for overseeing the compliance of labour conditions with the COVID-19 safety norms. During the pandemic, the majority of inspections were devoted to the enforcement of the COVID-19 regulations¹⁰³. In the interviews conducted for the purposes of this research, the head of the Progressive Forum positively commented on the monitoring of occupational safety standards during the pandemic.

According to the GTUC data, 33 workers died and 252 were injured in work-related accidents in 2021, and 39 died and 249 were injured in 2020. The mining and construction sectors remained particularly dangerous¹⁰⁴. According to the explanation received from the Labour Inspection Service of Georgia during the preparation of this report, the institutional strengthening of the labour inspection system contributed to the effective enforcement of the legislation, resulting in the decreased number of fatal accidents, which is a crucial achievement in the area of occupational safety and health (OSH). If we compare the recorded and processed data in the reporting period of 2022 to the initial period of the reform, i.e. the period of the adoption of the Law of Georgia “On Occupational Safety” – in 2018, the number of fatal cases as a result of accidents in the workplace was reduced by 41%, by approximately

¹⁰² The Law of Georgia “On Labour Inspection Service”, Article 16.2(h), (i).

¹⁰³ 2022 Country Reports on Human Rights Practices: Georgia, U.S. Department of State, 2022, 55 <https://www.state.gov/wp-content/uploads/2023/03/415610_GEORGIA-2022-HUMAN-RIGHTS-REPORT.pdf> [25.10.2023]; 2021 Country Reports on Human Rights Practices: Georgia, U.S. Department of State, 2021, 84, <<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/georgia/>> [05.05.2024].

¹⁰⁴ 2021 Country Reports on Human Rights practices: Georgia, U.S. Department of State, 2021, 84, <<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/georgia/>> [05.05.2024].

22% compared to 2019, and by 5% compared to 2021. Decreasing trend in the fatal cases is maintained in the 2023 data.

In the nine months of 2023, the numbers of recorded reports made by the employers as per order №01-11/6 of the Minister of Georgia of Internally displaced Persons from Occupied Territories, Labour, Health and Social Affairs reached 264 fatal and non-fatal injuries. Among them: 186 accidents of medium severity; 51 accidents of high severity; 27 fatal accidents.

It shall be noted, that alongside the provided data, the outcomes of the inquiry conducted by the Occupational Safety Supervision Department are currently undergoing manual processing. Consequently, the compiled data will be comprehensively presented in the 2023 Activity Report of the Labour Inspection Service.

As explained by the Inspectorate, according to the goals and methodology of the Organic Law of Georgia “On Occupational Safety”, the Labour Inspection Service has refined and developed the system of recording workplace accidents.¹⁰⁵ In addition, due to the memorandum of cooperation with 112, as well as the sanctions imposed on companies in 2020-2021 due to their non-compliance with reporting requirements on accidents, the increase in the number of inspections, along with awareness raising, the rise in reporting of the said matter is evident.

According to the Labour Inspection Service, the decrease in the number of accidents was the result of the introduction of the fundamental principles of occupational safety norms and appropriate safety standards for sectors involving higher risk, the creation of supervisory body, increased number of inspections, awareness raising and in general, complex approaches which are implemented gradually over the years through proactive or reactive measures.

Business association within the scope of the interview given for the purposes of this study echoes the main achievements of the labour safety reform: “In some industries, awareness and sense of responsibility in the part of labour safety has been raised, taking records of accidents has improved, which allows for the implementation of appropriate analysis, conclusions and preventive measures; In some sectors, the number of accidents has decreased substantially, which is partly due to the labour reform.”

The Public Defender of Georgia stated that despite the decrease in the number of accidents, there is still a need to continue active work, taking account of the challenges in terms of awareness about labour safety. In the direction of effective protection and enforcement of occupational safety norms, challenges are, on the one hand, in the low awareness of employers and employees about the norms and the obligation to follow them, and, on the other hand, in indifferent attitude towards the fulfilment of obligations imposed by legislation. The frequency of violations detected by the Labour Inspection Service (*for example, in 2022, 8,728 references were issued for violations of labour safety norms, and 3,369 references for violations of the Labour Code norms*) indicates that employers

¹⁰⁵ Comparative legal analysis of foreign laws on registration of accidents and occupational diseases, see: ILO Standards on Occupational Safety and Health, Promoting a Safe and Healthy Working Environment, International Labour Office, Committee of Experts on the Application of Conventions and Recommendations, Geneva, Switzerland, 2009, 82-84, <https://www.google.ge/books/edition/ILO_Standards_on_Occupational_Safety_and/-rqnMH_n8MC?hl=ka&gbpv=1> [05.05.2024].

systematically ignore the norms of labour legislation. Therefore, it is important to intensively carry out inspections, timely monitor, and continue appropriate activities in the direction of awareness raising.

The Labour Inspection Service believes that the increase in the number of detected violations is due to the increased number of labour inspectors and inspections carried out for the purpose of supervising the implementation of labour safety norms. Despite the increase in detected violations, non-use of individual protective measures by employers is gradually decreasing. In this regard, 10% of the detected violations in 2019 were related to the non-use of personal protective equipment, in 2020 – 9%, in 2021 – 7.7%, in 2022 – 7%.

It should be noted here that the interviews with the Labour Inspection Service and the Business Association, highlighted the need to establish the quality standard for personal protective equipment or collective protective equipment, introduce legal mechanisms of certification for their introduction to the market or on-site production.

During the interviews with the nongovernmental organization Progressive Forum, the issue of overdue adoption of the minimum insurance package was highlighted. According to the Labour Inspection Service, for the effective implementation of the social guarantee of mandatory insurance, with the help of the ILO, a minimum package of mandatory health insurance was developed for those employees in heavy, harmful and hazardous jobs. Although the approval of the mentioned package is delayed, it is planned to be adopted at the beginning of 2024.

The decreasing trends in the number of employees who died of workplace accidents, which has been maintained since 2018, after the adoption of the Law of Georgia “On Occupational Safety”, speaks of the effectiveness of the targeted policies and the activities planned in strategic documents.

The Labour Inspectorate considers it appropriate to implement the following measures to minimize accidents:

- Facilitating the gradual removal of outdated machinery and equipment;
- Improvement of technologies, activation of engineering control¹⁰⁶ and training of employees as per technological advancements require;
- Informing the workforce as much as possible about fundamental labour rights;
- Enhancing youth awareness by organizing various awareness-raising and educational initiatives;
- Ensuring quality products (collective or personal protection equipment) on the local market;
- Providing the incentives for the organisations that protect occupational safety and general labour norms.

GTUC states that the effective implementation of occupational safety norms is hindered by the low awareness of employers on labour standards, often, the lack of willingness to comply with them, and the avoidance of relevant financial costs.¹⁰⁷

¹⁰⁶ Kim Y., Park J., Park M., *Creating a Culture of Prevention in Occupational Safety and Health Practice, Safety and Health at Work*, 7, 2016, 95.

¹⁰⁷ The letter of Georgian Trade Unions Confederation to Ms. Salome Kurasbediani – the Deputy Chair of the Environmental Protection and Natural Resources Committee.

According to the official position of the Labour Inspection Service, along with the reform, awareness-raising of employers and employees has an important role. Proactive (scheduled inspections, information campaigns, etc.) and reactive (unscheduled inspections, such as complaint inspection, inspection due to a workplace accident, or other unscheduled inspections) activities, have contributed to the evolution of the culture of protecting occupational safety norms. Raising the culture and awareness of labor safety is an expression of the preventive function of the labour inspection system.¹⁰⁸ Labour Inspection (Agriculture) Recommendation No. 133¹⁰⁹ is devoted to the importance of education and awareness-raising and provides for the obligation of states to conduct an awareness-raising and wide-ranging educational campaign.¹¹⁰

The supervisory body explained that in 9 months from 2018 to 2023, more than 330 information meetings were held with employers and employees, representatives of business associations, and other stakeholders regarding the obligations stipulated by the law. Along with the legislative changes, 49 informative/educational videos¹¹¹ were created and disseminated via the website, television, and social networks. Thematic brochures and posters were prepared and distributed within the framework of inspections and information campaigns on legislative news. It is noteworthy that the Service consults interested persons in written or verbal communication, through the hotline, social network or official correspondence. Additionally, interested persons have an opportunity to receive face-to-face consultation service at the central office in Tbilisi, and regional offices in Batumi or Kutaisi.

Despite the effective policy aimed at awareness-raising, according to the Inspection Service, due to the occupational safety deregulation in 2006, the awareness is still low. Thus, this lack of awareness caused by cultural changes in the field remains the main challenge. According to the Business Association, a significant difficulty is the underqualification of the workforce, which includes the improper understanding of the importance of observing labour safety norms.

For the purposes of this study, the Business Association explained that, in any case, awareness-raising measures are insufficient. It is particularly problematic that in practically all cases the employer is responsible for the violation of labour safety norms when the employees do not adequately understand their critical and decisive role in protecting occupational safety conditions. In the written explanation, the Public Defender emphasised that the annual reports of the labour inspection highlight that awareness regarding labour rights, including safety norms, is still quite low among both – employers and employees. This is evidenced by the high rate of violations detected through inspections.

¹⁰⁸ About the preventive function of the labor inspection, see: Labour Inspection, :International Labour Office, International Labour Conference, 95th Session, Geneva, Switzerland, 2006, 29-47.

¹⁰⁹ R133 – Labour Inspection (Agriculture) Recommendation, 1969 (No. 133), <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R133> [05.05.2024].

¹¹⁰ Labour Inspection, International Labour Office, International Labour Conference, 95th Session, Geneva, Switzerland, 2006, 30.

¹¹¹ See Labour Inspection Service YouTube channel: <<https://www.youtube.com/@LabourInspection>> [01.05.2024] and the website of the service: <<https://lio.moh.gov.ge/news2.php?lang=1&uid=202301080022207242784372&page=1>> [05.05.2024].

Representatives of the non-governmental sector unanimously emphasize the importance of joint campaigns and information meetings aimed at raising awareness, supported by the state's commitment to enhancing the culture of labour safety.

Despite the high rate of detected violations, in the Labour Inspectorate's opinion, one of the most important achievements of the reform, after the Organic Law of Georgia "On Labour Safety" was extended to all areas of economic activity, **is the increased rate of correction of violations based on the instructions given upon the initial inspection.** Since September 1, 2019, this indicator has maintained growing trend (in 2020 – 8%, in 2021 – 28%, in 2022 – 52%, and in 2023 it will be equal to 57%¹¹²).

According to the Labour Inspection Service, awareness can be raised through proactive/reactive inspections, media campaigns, social media channels, direct meetings, hotline. In this process, the Service uses and it is crucial to use printed or electronic materials prepared specifically for this purpose.

Moreover, the Inspection Service deems it essential to increase the social responsibility of business and their motivation. For this purpose, it is crucial to gradually plan positive approaches to promote the observance of norms (e.g. to identify, through supervision, the protected business operator of the year), to cover as many strategic advertising spaces of all regions as possible, especially in the locations where a significant number of business entities is represented (the service in the mentioned direction requires the allocation of appropriate spaces intended for social purposes).

In addition, the Service believes it is essential to plan an awareness-raising campaign for developing the skills of the labour force, which, especially in the case of daily labourer, will include activities such as organising information meetings, online training platforms, as well as providing printed materials. The labor safety system cannot be effective in the conditions of inappropriate labor safety culture in workplaces.¹¹³ In 1993, the ACSNI Human Factors Study Group defined safety culture as "the product of individual and group values, attitudes, perceptions, competencies and patterns of behavior that can determine the commitment to, and the style and proficiency of an organization's health and safety management system".¹¹⁴ Organizational culture also plays an important role in the security risk assessment process.¹¹⁵ Many organizations internationally that have introduced new occupational safety management strategies have failed to demonstrate improved effectiveness because these strategies did not consider the impact of organizational culture on the enforcement of occupational safety standards.¹¹⁶

¹¹² See Activity Reports of the Labour Inspection Service <<https://lio.moh.gov.ge/index.php?lang=1>> [05.05.2024].

¹¹³ *Hale A.R., Hovden J.*, Management and culture: the third age of safety, in: *Feyer A-M., Williamson A. (eds.)*, Occupational injury: risk, prevention and intervention. London (UK): Taylor & Francis, 1998, 129-66; See also: *Samanta S., Gochhayat J.*, Critique on occupational safety and health in construction sector: An Indian perspective, *Materials Today: Proceedings*, Volume 80, Part 3, 2023, 3016-3021, <<https://www.sciencedirect.com/science/article/abs/pii/S2214785321049701?via%3Dihub>> [05.05.2024].

¹¹⁴ Health and Safety Commission (HSC), ACSNI Study Group on Human Factors. 3rd Report: Organizing for Safety. London (UK): HSC, 1993.

¹¹⁵ *Kogi K.*, Work Improvement and Occupational Safety and Health Management Systems: Common Features and Research Needs, *Industrial Health* 2002, 40, 128.

¹¹⁶ *Kim Y., Park J., Park M.*, Creating a Culture of Prevention in Occupational Safety and Health Practice, *Safety and Health at Work*, 7, 2016, 90.

In the educational component, the Inspection Service also considers creating a platform for close cooperation with the Ministry of Education and Science of Georgia in the direction of higher or professional education, which will contribute to the sustainable strengthening of the occupational safety culture in the long term.

2. Effective Implementation of Technical Regulations in a Workspace and Consolidated Policy of the Social Partners

During the interviews, the stakeholders declared a unified position that effective implementation of technical regulations in occupational safety should be facilitated by a consolidated information campaign and measures aimed at adequate technical instruction. This implies that all social partners take responsibility for implementing a consistent and planned policy to enhance awareness in the field of occupational safety.

The Labour Inspection States that, in collaboration with the Business Ombudsman, Revenue Service and social partners, the active information campaign should be continued, including information meetings, sharing digital video materials and information leaflets to ensure the availability and accessibility of information on new occupational safety rules.

3. Strengthen Human Resources by Increasing the Number of Labour Inspectors and Occupational Safety Specialists

During the research process, the necessity to increase the number of occupational safety specialists became evident, as well as, a direct correlation between the Inspection's institutional capacity and the quantitative aspects of human resources, and the effectiveness of the labour supervision function, especially in terms of an expanded supervisory mandate (including, on the labour migration).

Many stakeholders engaged in the study, including the Labour Inspection, deem it necessary to increase the number of occupational safety specialists and equip the inspection system with additional human resources. According to a representative of the Georgian Young Lawyers' Association, the emergence of a new profession of occupational safety specialist has created a new employment opportunity in the labour market. However, the lack of qualified specialists results in a situation where multiple employers may hire the same specialist. This creates the risk of improper performance of responsibilities, by the same occupational safety specialist at different premises, even when they are qualified and experienced. The lack of qualified occupational safety specialists is eventually reflected in the quality of monitoring of labour safety standards in companies. The full involvement of occupational safety specialists in companies should become part of the professional responsibility of the employer but also the professional responsibility of the said specialists. GYLA stated that it is also important to set some accountability of occupational safety specialists with the labour inspection to supervise the dynamics of the performance of occupational safety standards.

The research made evident the importance of increasing the number of labour inspectors for the efficiency of the inspection system. Specifically, the European Commission in its 2022 report stated

that the staffing of the Labour Inspection Service with additional human resources and the expansion of the mandate creates the opportunity to enhance occupational safety and protection of labour rights in the country¹¹⁷. According to the US Department of State 2021 report, the authority of the Labour Inspection Office has been extended to all sectors of the economy since 2021, which includes the competence of unplanned inspection and imposition of sanctions. The government has effectively enforced the law with a policy of adequate sanctions, considering the severity of violations; however, the insufficient number of inspectors in 2021 has hindered the full-fledged enforcement of the law.¹¹⁸ By August 2022, the Labour Inspection Office had a total of 96 inspectors and 21 in the regions. Throughout the year, inspectors have been trained on various important topics, including, monitoring forced labour and labour exploitation, effective communication, and labour and technical safety in mining industries. However, as per the Trade Unions, there is a need for more trained labour inspectors.¹¹⁹

According to the international principle of professionalism in the field of labour inspection, properly trained specialists should uphold the values of professionalism, ethical integrity, consistency, justice and transparency. This requires a comprehensive training that goes beyond technical aspects, and encompasses formal guidelines¹²⁰ to cultivate overall inspection skills.

Quantitative growth dynamics of labour inspectors in 2018-2023 and target benchmarks.

According to the Labour Inspection, the number of labour inspectors has been increasing gradually since 2018. The number of labour inspectors set by the state in 2018 was 40 units, and by 2023 there are 123 staff units, which also includes the Head of the Division, who, along with governance, also performs the supervisory function. In addition to Tbilisi, there are two regional offices in Batumi and Kutaisi, which cover Imereti and Adjara regions. Since the national center is the Tbilisi Inspection Service, the monitoring process from Tbilisi is also active in the regions.

As explained by the Inspection, if we take account of the ILO standard while determining the number of inspectors (1 inspector per 20,000 employees in transitional economies¹²¹) and the 2023 (II quarter) employee quantitative data¹²² of National Statistics Office of Georgia, the number of

¹¹⁷ Council of European Union, Brussels, Association Implementation Report on Georgia , 2022, 10.8.2022 SWD(2022) 215 final, 17, <https://www.ecoi.net/en/file/local/2078335/ST_11784_2022_INIT_en.pdf%3B+filename%2A%3DUTF-8%27%27ST_11784_2022_INIT_en.pdf> [05.05.2024].

¹¹⁸ 2020 Country Reports on Human Rights Practices: Georgia, U.S. Department of State, 2021, 77, <<https://www.state.gov/wp-content/uploads/2021/10/GEORGIA-2020-HUMAN-RIGHTS-REPORT.pdf>> [05.05.2024]; 2021 Country Reports on Human Rights Practices: Georgia, U.S. Department of State, 2021, 84, <<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/georgia/>> [05.05.2024].

¹¹⁹ 2022 Country Reports on Human Rights Practices: Georgia, U.S. Department of State, 2022, 57, https://www.state.gov/wp-content/uploads/2023/03/415610_GEORGIA-2022-HUMAN-RIGHTS-REPORT.pdf [05.05.2024].

¹²⁰ ILO Curriculum on Building Modern and Effective Labour Inspection Systems, Policy and Planning of Labour Inspection, Module 3, ILO, p.9, principle 11 < https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/genericdocument/wcms_856560.pdf> [05.05.2024].

¹²¹ <[https://www.ilo.org/static/english/intserv/working-papers/wp041/index.html#:~:text=The%20ILO's%20policy%20and%20technical,countries%20\(ILO%2C%202006\)](https://www.ilo.org/static/english/intserv/working-papers/wp041/index.html#:~:text=The%20ILO's%20policy%20and%20technical,countries%20(ILO%2C%202006)>)> [05.05.2024].

¹²² <<https://www.geostat.ge/ka/modules/categories/683/dasakmeba-umushevropa>> [05.05.2024].

inspectors – 66 meets the requirement. However, this approach is not in line with the international standards and fundamental principles that Article 10 of the ILO Convention No. 81 states clearly in terms of the component of the basic indicators determining the number of labour inspectors, which is the main means of calculating the number of target benchmarks (E.g.: the essence of the duties to be performed; Size, type of activity, current situation, number of employees and classification by jobs, number and complexity of legal norms, material-technical means, working conditions in which labour inspector is carrying out their duties). Although the current number of labour inspectors exceeds the recommended ILO standard, the issue of cultural differences and relatively low awareness in the regions should be considered.

According to the labour supervisory body, the number of persons employed in the second quarter of 2023 is 1,327,400. Accordingly, there are 12,406 employees¹²³ per one labour inspector. As of October 2023, there are 248,170 active business entities, leading to a ratio of up to 2,319 business operators per inspector for supervision. It must be noted that ratio has been calculated not on an individual basis for each of the 123 inspectors but rather for groups of inspectors, considering that each visit involves at least two inspectors and may vary from one visit to another.

In response to this issue, Business Association stated that it is not advisable to divert (even partially) the Inspection's limited resources towards the areas of the economy, where there is an insignificant or no threat to employees' health or life (e.g., office work).

According to the study, it can be concluded, that for the realization of universal occupational safety rights, the lack of human resources should not be a reason for risks even in the low-risk sector.

The Labour Inspection Service explained that strengthening its role and increasing the number in the state depends on the following factors:

- The share of the number of employees and the expanded mandate due to current legal norms and/or active entities on a sectoral level;
- The enhancement of labour legislation, taking account of the Association Agreement and international standards;
- To facilitate the transition from informal to formal sectors, encouraging promotional measures, including strengthening social protection mechanisms and their relevant implementation;
- Increasing general employment in the country;
- Expansion of the labour inspectors' mandate in line with increased international obligations, which requires relevant financial support from the state budget.

The Labour Inspection expects that the increase in the number of labour inspectors will lead to a rise in the number of entities to be inspected based on risk levels. This will automatically prioritise and increase the number of proactive measures. As a result, with the increase in the share of proactive activities, the number of unplanned inspections is expected to decrease. Consequently, more companies are likely to voluntarily comply with safety norms.

¹²³ <<https://www.geostat.ge/ka/modules/categories/683/dasakmeba-umushevropa>> [05.05.2024].

Considering that the mandate of the labour inspection has been extended to the field of migration, the issues of control of the minimum salary of doctors and nurses, the Labour Inspection Service deems it appropriate to increase the number of inspectors by 25 in 2024, and in the following years, the target benchmark can be set up to 200 inspectors.

This directly depends on the larger budget funding, for which the Inspection has introduced its needs to the relevant bodies. The current national context suggests that the increased number of inspectors directly relates to the enhancement of supervision of occupational safety.

4. Expanded Inspection Mandate to the Field of Labour Migration and Related Institutional Needs

In the 2020-2021 reports of the US Department of State, an opinion is expressed regarding the lack of regulation of labour conditions for migrant workers:

“While the government did not keep specific data on migrant labourers in the country, the Public Service Development Agency issued up to 5,000 residence permits annually to migrant workers¹²⁴.”

In response to this challenge, in 2023, amendments were made in the Law of Georgia “On Labour Migration” and the Law of Georgia “On Labour Inspection Service”, which aim to regulate the role of the Labour Inspection in enforcing the norms regulating labour migration. This ensures the transparency of processes arranged by private or business entities arranging employment relations outside of Georgia, as well as, the employment of foreigners who do not have a permanent residence permit in Georgia by local employers.

According to the amendments, the norms of the Law of Georgia “On Labour Migration” were added in the definition of “Labour Norms”¹²⁵; the Labour Inspection Service, in carrying out its activities, will be guided by the Law of Georgia “On Labour Migration” along with the legislative acts of Georgia defined by the law of Georgia “Labour Inspection Service”¹²⁶; In order to carry out the inspection, the labour inspector is authorized to issue an individual legal act for an administrative offense within the scope of the Law of Georgia “On Labour Migration”, draw up a report of administrative offense, apply the measures of administrative liability and issue relevant instructions¹²⁷; administrative responsibility for violation of labour norms is also defined by the Law of Georgia “On

¹²⁴ 2021 Country Reports on Human Rights Practices: Georgia, U.S. Department of State, 2021, 85, <<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/georgia/>> [05.05.2024]; 2020 Country Reports on Human Rights Practices: Georgia, U.S. Department of State, 2021, 78, <<https://www.state.gov/wp-content/uploads/2021/10/GEORGIA-2020-HUMAN-RIGHTS-REPORT.pdf>> [05.05.2024]; This indicator was 2,749 quantitative units in 2022. See: 2022 Country Reports on Human Rights Practices: Georgia, U.S. Department of State, 2022, 56, <https://www.state.gov/wp-content/uploads/2023/03/415610_GEORGIA-2022-HUMAN-RIGHTS-REPORT.pdf> [05.05.2024].

¹²⁵ Amendments to Article 3(a) (Definitions) the Law of Georgia “On Labour Inspection Service”.

¹²⁶ Amendments to Article 4.1 (Principles of the activities of the Labour Inspection Service) the Law of Georgia “On Labour Inspection Service”.

¹²⁷ Amendments to Article 16.2(m) (Procedure for carrying out inspections) the Law of Georgia “On Labour Inspection Service”.

Labour Migration"¹²⁸. The Labour Inspection Service enjoys the discretionary authority to determine when and which administrative fines should be applied within the scope of the Organic Law of Georgia “Labour Code”, the Organic Law of Georgia “On Occupational Safety” and the Law of Georgia “On Labour Migration”, and in case of imposing a fine – its amount. The administrative fine should be proportionate to the violation¹²⁹.

The amendments to the Law of Georgia “On Labour Migration” significantly expand the mandate of the Labour Inspection Service to the direction of prevention of illegal migration, forced labour, labour exploitation, and trafficking.¹³⁰ This further increases the service's ability to proactively plan specific measures to protect the labour migrants’ rights. For this purpose, the service is actively participating in creating an electronic platform, which will give the Service the opportunity to identify those business entities that are closely involved in regular migration for either intermediate purposes or directly in the direction of employment of labour migrants.

Moreover, extending inspection to the migration area puts more emphasis on the need of increasing human resources of the Labour Inspection Service.

5. Classification of Accredited Programs and importance of Profile Specialisation in the Wake of the Wider Implementation of Directives

In the research process, stakeholders emphasized the lack of certified labour inspection specialists and incomplete profile qualifications, especially in the heavy and hazardous industries. Considering this, representatives of the non-governmental sector and employers suggested implementing additional specialization in the accredited programs of the Labour Inspection, taking into account the sectoral, profile specifics (for example, the construction sector, extractive industry). According to non-governmental organisations, the Progressive Forum and the Georgian Young Lawyers Association, the general profile accreditation course, which includes all sectoral directions, may be sufficient for a labour safety specialist only in low-risk enterprises. The same organisations state that since technical regulations and labour safety norms can be updated periodically, it should be advisable to have the obligation to periodically renew certification, train labour safety specialists and raise their qualifications to ensure regular detailed inspection of specific activities.

¹²⁸ In the Law of Georgia “On Labour Inspection Service”, Article 20.1(c) was added after Article 20.1(b) (Administrative liability for the violation of labour norms).

¹²⁹ Amendments to the Law of Georgia “On Labour Inspection Service”, Article 20.4.

¹³⁰ About the mandate of the labor inspection in the field of international migration, see: Labour Inspection, International Labour Office, International Labour Conference, 95th Session, Geneva, Switzerland, 2006, 54; Migration, Globalization and Decent Work: What Role for Labour Inspection? A Panel Contribution, International Association of Labour Inspection, 11th Congress 13-14 June 2005 Geneva, International Labour Organization, <<https://www.globalmigrationpolicy.org/articles/globalization/Migration,%20Globalization,%20Decent%20Work%20-What%20Role%20for%20Labour%20Inspection,%20TARAN%20-IALI%20Geneva%20Jun06-1.pdf>> [05.05.2024]; Labour inspection and monitoring of recruitment of migrant workers, Labour Migration branch Labour Administration, Labour Inspection and Occupational Safety and Health branch, ILO, Final Draft 2022, <<https://www.fairrecruitment.org/sites/default/files/2022-04/Brief%20-%20Labour%20inspection%20and%20monitoring%20of%20recruitment%20of%20migrant%20workers.pdf>> [05.05.2024].

The Head of the Progressive Forum deems it important to include occupational safety as a mandatory subject in engineering-technical university education curricula, which will increase the understanding and use of labour safety standards in the specialists' work process. In the long term, all risk-bearing professions can be subject to certification, which will lead to the enhancement of the labour safety system, as representatives of adjacent professions (e.g.: engineers, builders), who lead the relevant facilities, will ensure that occupational safety standards are met in the process of professional activity. As of today, it is impossible to carry this out in the short run and preparation of the national context, as well as the educational system is essential. As per current legislation, personnel training and technical instruction in a company is entrusted to labour safety specialists, which cannot be an effective and viable solution in the long run.

Labour Inspection Service explained that the general accreditation program establishing minimum requirements was approved in 2018. In 2021, when the number of labour specialists increased, the accreditation program also changed, and the mandatory requirements for the accreditation program increased. The entities responsible for providing training and assessment to labour inspectors underwent a division. As of today, exams are organised at premises of different universities, while accredited organisations are in charge of assessment. This reform of the accreditation system has ensured quality enhancement, which is evident throughout the training programs, as well as during the occupational safety monitoring process.

Today, there are several qualification modules in the field of occupational safety: a full specialist course, which grants the qualification to carry out monitoring in all areas, an accredited program for low- and medium-risk facilities, and a special accredited program.¹³¹ The current accreditation program is divided with sectoral classifier – risk areas. Certainly, specialization in the profile direction would have been ideal, however, taking into account that technical regulations have not yet been adopted in all fields (for example, in the field of metallurgy), and due to this lack of special technical domestic norms at this stage, it is not feasible to develop adequate qualification programs. Thus, the reform can be visualized in three phases. The first two stages of the reform were implemented in 2018 and 2021. In the upcoming stages, in line with legislative evolvments, it is possible to create additional profile specialization establishing an ideal institutional model. Today, full accreditation programs are more attractive for the majority who want to get accredited, as it allows the mobility of labour safety specialists and simultaneous activity in different sectors. At this stage, work with a wide profile is of greater interest to occupational safety specialists.

During the interview, GYLA suggested technical education to be defined as a qualification prerequisite for the admission of candidates to the labour inspectors' accreditation programs.

Labour Inspection Service explained that when the Labour Inspection Department was established in 2015, the ILO experts actively delivered training courses for local specialists, where the Georgian side raised the issue of the appropriateness of the mandatory requirement of technical knowledge. The ILO experts themselves did not hold technical education and did not support setting a

¹³¹ Amendments (of 14.09.2021) to the order No. 01-25/5, of October 13, 2018, of the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia “On the Approval of the the Volume, Procedures and Terms for Carrying Out Accredited Programs for Labour Inspection Specialists”.

narrow qualification prerequisite either. In the subsequent phase, the appropriateness of the mentioned matter was evaluated, considering national practices. **Experience has shown that the introduction of technical education requirements turned out to be quite restrictive and led to the shortcoming of seeing labour safety issues through a narrow prism.** The effectiveness of specialists' work increased greatly when representatives of various professions were given the opportunity to use their diverse knowledge in occupational safety monitoring. Thus, the stance of Labour Inspection Service is that it is crucial to develop professional risk assessment skills in the field of labour safety. Understanding of the requirements of the technical regulation is achievable in the conditions of possessing professional competencies. The admissibility of any professional background in the field of occupational safety specialist training makes the monitoring system more effective.

6. The Scope of Inspection in Semi-formal and Informal sectors

The informal economy accounts for a large proportion of workers, especially in developing countries. However, occupational safety and health legislation often does not apply to such workplaces or, if it does, is not effectively implemented and enforced.¹³²

Among the difficulties of 2020-2021, extending labour safety standards to the informal sector should be highlighted. According to the 2020 US Department of State report, more than 35 per cent of non-agricultural workers were employed in the informal sector. And the guarantees provided by the labour law did not apply to those who perform work outside the “organised labour conditions”. NGOs reported that workers in the informal sector were vulnerable to exploitation. These workers were the most affected by the restrictions of the COVID-19 pandemic as well¹³³.

According to the National Statistics Office data, in the non-agricultural sector, the share of informally employed people in the labour force was 28.8 per cent, although the GTUC states that this number is 45 per cent. 2021 publication of the Social Justice Center informs that the only social safety net was targeted social assistance, which was not in direct correlation with a person's employment status.¹³⁴

The 2022 US Department of State report stated that “there were frequent cases involving drivers in the tourism sector driving for more than 15 consecutive hours. The law does not adequately ensure the safety of those involved in informal and nonstandard work, and the Labour Inspectorate does not possess the mandate or resources to adequately cover informal and nonstandard employment sectors¹³⁵.”

¹³² *Rantanen J.*, Occupational health services for the informal sector Africa Newsletter on Occupational Health and Safety, No. 2 [Internet], 2009 [cited 2015 Sep 17], <<https://www.scirp.org/reference/referencespapers?referenceid=1817647>> [05.05.2024].

¹³³ 2020 Country Reports on Human Rights Practices: Georgia, U.S. Department of State, 2021, 78, <<https://www.state.gov/wp-content/uploads/2021/10/GEORGIA-2020-HUMAN-RIGHTS-REPORT.pdf>> [25.10.2023]; 2021 Country Reports on Human Rights Practices: Georgia, U.S. Department of State, 2021, 85, <<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/georgia/>> [05.05.2024].

¹³⁴ 2022 Country Reports on Human Rights Practices: Georgia, U.S. Department of State, 2022, 57, https://www.state.gov/wp-content/uploads/2023/03/415610_GEORGIA-2022-HUMAN-RIGHTS-REPORT.pdf [05.05.2024].

¹³⁵ 2022 Country Reports on Human Rights Practices: Georgia, U.S. Department of State, 2022, 57, <https://www.state.gov/wp-content/uploads/2023/03/415610_GEORGIA-2022-HUMAN-RIGHTS-REPORT.pdf> [05.05.2024].

In this regard, after expanding the labour inspection mandate to labour rights, the Inspection is entitled, while inspecting substantive legal rights, to identify the cases where there is no employment contract or where the employment relationship is disguised by a different type of contract. Upon identifying such violation of rights and qualifying the relationship as an employment, the labour inspectorate is entitled to apply occupational safety standards to the actual employee and initiate liability procedures for violations of labour safety norms. The difficulty of monitoring the informal sector is largely related to the quantitative challenges in human resources – inspectors, which is disproportionate to the percentage share of informal employment in the labour market. **The difficulties in overseeing the informal sector cannot solely be attributed to limitations in the labour inspection mandate. The inspectorate is authorized to broaden the scope of labour safety control beyond employment, and cover the area of work performance, where the employers are obligated to ensure adherence to safety regulations not only for their employees but also for third parties.**

When discussing the informal sector, its two forms should be distinguished: the fully informal sector, which carries out economic activities without registration, and the mixed informal sector, where the formal sector uses informal employment.¹³⁶ As explained by Business Association, the impossibility of extending the norms of labour safety to the fully informal sector (as opposed to mixed) causes a sense of injustice in organised, registered businesses as it results in unequal legal regime. Considering the small size or infrequency of the subject's activity, they are less likely/difficult to be detected by the regulator, which allows them to ignore labour safety norms.

As the Inspectorate stated, to be covered with occupational safety norms, it is required for the economic activity to be recorded in the registry of economic activities. This was a historic goal of legislators during the drafting process. The inspection mandate does not cover unregistered entities. Where an organisation is not registered in line with requirements of Georgian legislation, this falls within the scope of competence of the Revenue Service and the full control of the informal employment shall not be considered within the Inspection's mandate.

According to Progressive Forum, the share of informal employment in total employment is almost half of the labour market, which leaves informal business outside the labour safety mandate and tax system. One possible solution could involve implementing social guarantees and tax systems that incentivize unorganised businesses to formalize.

The mandate of Labour Inspection Service covers informal employment, where it is concentrated within formal employment. For instance, if an entity is being inspected in labour rights direction, during which a case of informal employment is detected (performance of work without an employment contract), then the highest limit of sanction will be applied by the inspection.

While it's accurate that the labour inspection mandate doesn't extend to informal employment within the unregistered entities (such as family farms), certain legal safeguards have been established

¹³⁶ For more information about forms of informal employment, see: *Sivakami N., Acharya S.S., Panneer S., Health, Safety and Well-Being of Workers in the Informal Sector in India Lessons for Emerging Economies*, Springer Nature Singapore, 2019, 1-274.

to counterbalance this limitation, particularly in the realm of forced labour control. To prevent the Labour Inspectorate's mandate from being perceived as oppressive, the Inspectorate was authorized to conduct, with the court's permission, unscheduled inspections of any building or premises, day or night, upon reasonable doubt of forced labour or labour exploitation. In this regard the ordinance of March 7, 1996 of the Government of Georgia “On Approval of the Rules for State Supervision to Prevent and Respond to Forced Labour and Labour Exploitation”. ILO study highlights that **the share of informal employment in the total employment in the labour market of EU member states is significant¹³⁷. Worldwide, the share of informal employment in total employment is 61.2%¹³⁸. Taking into account the practices of EU member states, the inspection system is effectively constrained from entering family farms.**

The Labour Inspection Service, within its competence, records the violations identified through the supervision of the implementation of the norms of the Labour Code. Hence, in 2021, for the violations of Article 12.2 (1) and 12.3 on the employment contract, warning as an administrative liability was applied to 52 entities; In 2022, administrative liability was applied to 62 entities, among them, 14 were fined and 48 were given a warning; In 2023, administrative liability was applied to 43 entities, among them, 9 were fined and 34 were given a warning. As per the current legislation, there is a distinction made between the qualifying and distinctive features of services and employment contracts. The necessity for further legislative enhancement in this regard lacks clarity. Georgian Judicial Law shall resolve the issue of minimal protection standards and recognition of non-standard form of employment – gig-work (specifically, couriers) as an employment relationship, upon completion of the litigation in the third instance of the court.

Informal employment is an equally large-scale problem internationally, along with the Labour Inspection Service many international actors are involved in its management.¹³⁹

7. Correlation of Breaches of Occupational Safety Norms and Labour Rights and the Dual Mandate of the Labour Inspection Service

During the interview, a representative of the non-governmental sector stated that the Georgian legislation narrowly considers issues of occupational safety only in the workspace and does not relate it to labour rights, which is not in line with international labour standards. The Progressive Forum and the Labour Inspection, suggest that excessive working hours can be directly correlated to the risk of an accident and hence, the impact on occupational safety norms. The Progressive Forum notes that the

¹³⁷ Overview of the informal economy in the European Union, <https://www.ilo.org/budapest/WCMS_751319/lang--en/index.htm> [05.05.2024].

¹³⁸ Women and men in the informal economy: A statistical picture. Third edition, International Labour Organization, 2018, <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_626831.pdf> [05.05.2024].

¹³⁹ On the advantages of the targeted policy of formalization of the informal sector, the accompanying socio-economic and state importance, see: *Williams C.C.*, A Modern Guide to the Informal Economy, Edward Elgar Publishing Limited, 2023, 165-166.

mining industry in Chiatura stands out, especially due to the intricate challenges in labour rights and occupational safety, caused by the work schedule (10-day shaft regimen). This warrants specific attention and oversight by the state. The case of Chiatura is even more noteworthy, as since 2017, the state has appointed a special manager, due to challenges in labour rights, as well as environmental issues. The topic has a social dimension. State control of occupational safety standards becomes challenging due to short-term subcontractors who lack the motivation to adhere to labour regulations. Remuneration is based on the hourly rate, which motivates the employees to overwork, as a result, the probability of accidents increases. The Labour Inspection Service uses mechanisms such as a recommendation or suspension of activities to avoid the risk of an accident at hazardous workplaces. In such cases, the Inspection covers labour rights and occupational safety norms. The labour inspection often carries out joint monitoring of both safety standards and labour rights, so as to see the occupational safety issues in the light of labour rights. It is impossible to assess the violations of labour rights without overlooking at their consequences, hence, the analysis of the occupational safety situation. The oversight responsibilities for occupational safety (The Organic Law of Georgia “On Occupational safety”) and labour rights (The Organic Law of Georgia “Labour Code”) are concurrently interpreted within the institutional framework of the Labour Inspection Service. The pertinent departments of the Inspection Service maintain coordination.

The impact of labour rights on occupational safety is evident not only in high-risk enterprises but also in the low-risk sector. For instance, **in retail, the actual amount of work of supermarket consultants often involves the functions and responsibilities of different positions (cleaner, cashier, product placer, etc.). When these terms are agreed upon in the contract, and there are no violations of working time or other labour rights, the Labour Inspection is not entitled to assess the fairness of the terms of employment,** unless the employer does not have a set work schedule and does not have assigned personnel to each position. A legislative initiative concerning this issue could have promoted the protection of labour rights and hence, occupational safety. However, in the context of the existing normative reality, the performance of various duties during the work day cannot be grounds for the Labour Inspection to apply the relevant legal definition and a sanctioning measure.

According to the Labour Inspection Service, in 2018-2021, a widespread practice in the retail sector was the so-called “collective responsibility” regime of supermarket employees. This implied the obligation to compensate for product loss or for expired product, irrespective of any employee’s fault. This ugly practice was eliminated through public notice of the Inspection to supermarket networks, **leading to a significant decrease in similar occurrences. As of today, the main problem in retail is a low pay and combining several roles agreed upon in the contract with the employer. In the retail sector, labour conditions of employees are supervised periodically (once in every 2-3 months).** The number of reports/complaints made by employees has significantly fallen compared to 2021.

Hence, as the Labour Inspection Service states, if during the inspection of occupational safety rules, labour rights violations are detected, or vice versa, the scope of monitoring will expand on the

ground of the responsible inspector's initiative and **will cover the consequential violations within the scope of an unscheduled inspection, which is guaranteed by the Inspection mandate. The monitoring of labour rights is not conducted without giving consideration to their impact on occupational safety norms.**

Use of occupational safety protection measures by fixed-term employees. According to the report from the US Department of state, fixed-term workers hesitated to raise concerns to their employers about conditions jeopardizing their health and safety, as they believed it could serve as grounds to decline contract renewal. This situation was particularly acute in a specific industrial city where the local population depended on the a single business entity¹⁴⁰. These challenges were overcome to a certain extent by strengthening the legal guarantees of open-ended contract and implementing awareness raising measures about occupational safety. Covid-19 aggravated the situation, putting employees in precarious position due to their social insecurity and inability to demand adequate working conditions¹⁴¹.

US Department of State report states that in July 2022 with the involvement of GTUC and other parties, passed regulations defined by Association Agreement with the EU to ensure safe working conditions at workplace. The regulations apply to workplaces, including internships, and covers issues of adequate desk space for each employee, temperature in closed working spaces, rest, changing and shower rooms.¹⁴²

8. Criteria for Selecting Business Entities for Scheduled Inspections

The rules for planned inspection initiated by the inspection service is defined according to the list of priority sectors approved by the Government of Georgia, and the list of specific organisations working in priority sectors subject to scheduled inspection is drawn up by the Chief Labour Inspector¹⁴³. Labour inspection system evaluation reports state that the legislation does not specify what are the criteria for drawing up the list of sectors and entities subject to scheduled inspection, and whether or not, if at all, it is influenced by publicly available information about the existent violations. As for the unscheduled inspection, it can be carried out at the initiative of the inspectorate or other entities. According to the assessment of the Social Justice Center, on the one hand, the authority of the Labour Inspection Service to proactively conduct inspections on its own initiative should be regarded

¹⁴⁰ 2021 Country Reports on Human Rights Practices: Georgia, U.S. Department of State, 2021, 84, <<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/georgia/>> [05.05.2024].

¹⁴¹ 2021 Country Reports on Human Rights Practices: Georgia, U.S. Department of State, 2021, 84, <<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/georgia/>> [05.05.2024].

¹⁴² 2022 Country Reports on Human Rights Practices: Georgia, U.S. Department of State, 2022, 55-56, <https://www.state.gov/wp-content/uploads/2023/03/415610_GEORGIA-2022-HUMAN-RIGHTS-REPORT.pdf> [05.05.2024].

¹⁴³ Ordinance #99, of 10 February, 2020, "On the Approval of the Rules and Conditions for Entry and Inspection of Entities Subject to Inspection". Available at: <<https://matsne.gov.ge/ka/document/view/4796359?publication=3>>

positively, however, at the same time, the associated risks can be dispelled by offering a high legal standard of justification for unscheduled inspections¹⁴⁴.

Criteria to be considered when selecting an object to be inspected. During the interview Labour Inspection Service stated that the selection criteria of an entity to be evaluated is established by the legislation. Namely, ordinance №80, of February 6, 2020 of the Government of Georgia “On the Approval of the Methods for Determining the Priority Directions of Economic Activities, and the Rules for Risk Assessment.” International labour standards recognize the objective criteria to be considered while selecting entities to be inspected, which are given in detail in Resolution 80. As per international labour standards the following factors should be taken into account in the selection process of enterprises:

a) **Size of enterprise.** Larger enterprises potentially affect more working lives and therefore may be given priority over smaller enterprises. However, other factors also need to be considered, as explained below.

b) **Likely compliance.** Even if an enterprise has no adverse compliance record, if there is a serious risk or hazard on site, this may increase the likelihood of non-compliance and thus the probability of inspection. So construction sites (if within the inspection mandate) will tend to be visited more frequently than, say, small garages.

c) **History of compliance.** Individual enterprises with records of poor compliance are given higher ratings, and are therefore likely to be inspected more often, especially if the employers are also uncooperative. The different combinations of ability and willingness to comply with conditions should also be taken in account in differentiating between target groups.

d) **Management of working conditions.** Enterprises with poor management of safety and health and other workplace issues are likely to be inspected more often than those with good management systems.

e) **Specific risks.** Enterprises subject to significant risks (asbestos, noise, falls from heights, etc.) or using dangerous technologies (forklifts, boilers, etc.) could be targeted for inspection visits.

f) **New enterprises.** Many inspectors will prioritize new enterprises, discussing factory layouts, ventilation, lighting, etc. with them, so as to ensure optimal working conditions from the outset.

g) **Time elapsed** since the last routine inspection is also an important factor.

h) **National or local programmes.** Enterprises that fall within the ambit of national or local programmes are automatically included in inspection plans. This may also mean that inspectors focus on particular issues during their routine inspections.¹⁴⁵

The setting precise and comprehensive criteria for the selection of the enterprises to be inspected was considered a limiting factor of the mandate of the labour inspection. The opinion that

¹⁴⁴ Labour Inspection Service Assessment, Social Justice Center, 2021, 20-21.

¹⁴⁵ ILO Curriculum on Building Modern and Effective Labour Inspection Systems, Policy and Planning of Labour Inspection, Module 3, ILO, 12 <https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/genericdocument/wcms_856563.pdf> [05.05.2024].

the labour inspectorate should be given freedom within its institutional discretion in the process of proactive selection of entities was highly supported.

9. The Scale of Unscheduled Inspection

US Department of State report states that in 2022 labour inspectors conducted unscheduled visits to workplaces and monitored OSH and labour rights violations¹⁴⁶. Georgian legislation sets legal grounds for conducting unscheduled inspection visits¹⁴⁷. According to the International Labour Organization recommendations, in order to ensure the effective enforcement of OSH norms, it is advisable to further expand the discretion of the labour inspectorate, to conduct inspections without prior warning on its own initiative and to ensure that workplaces are visited with the sufficient frequency to expand the scale of enforcement of relevant norms.¹⁴⁸ Clearly, the increase in the frequency of unscheduled inspections should be carried out while increasing the human resources of the Labour Inspectorate and the number of inspectors. According to the annual report of the European Commission, additional staffing of the Labour Inspection Service and expanding its mandate creates an opportunity to strengthen supervision of labour safety and labour rights.¹⁴⁹

When discussing the increase in the scale of unscheduled inspection, **the international principle of risk focus and proportionality** should be taken into account:

Enforcement needs to be risk-based and proportionate: the frequency of inspections and the resources employed should be proportional to the level of risk and enforcement actions should be aimed at reducing the actual risk posed by infractions.¹⁵⁰

In the research process, the data showing the ratio of unscheduled and scheduled inspections were obtained from the Labour Inspection. See the table below.

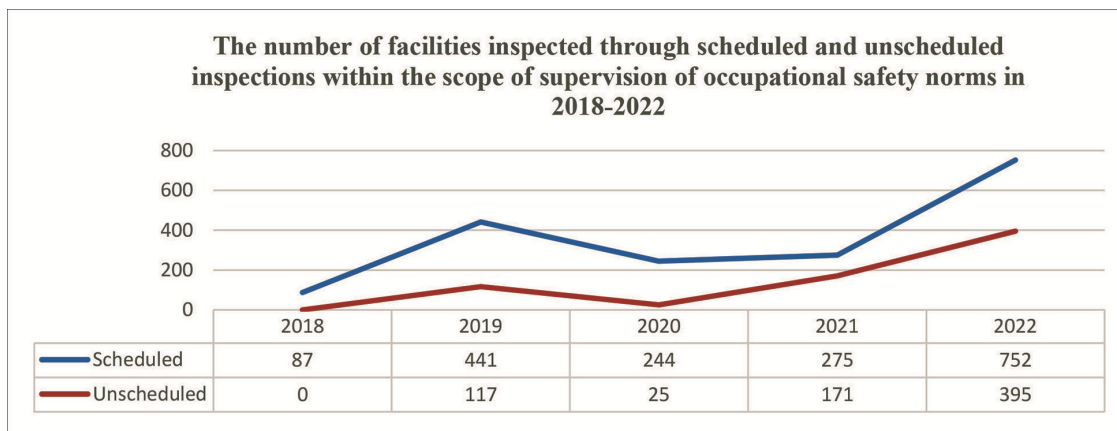
¹⁴⁶ 2022 Country Reports on Human Rights Practices: Georgia, U.S. Department of State, 2022, 57, https://www.state.gov/wp-content/uploads/2023/03/415610_GEORGIA-2022-HUMAN-RIGHTS-REPORT.pdf [05.05.2024].

¹⁴⁷ Ordinance #99, of 10 February, 2020, “On the Approval of the Rules and Conditions for Entry and Inspection of Entities Subject to Inspection”. Article 11.2: Unscheduled inspection of an entity is carried out on the ground of the decision of Chief Labour Inspector: a) In response to the complaints, applications, hotline reports, etc., made by government institutions, local government bodies, organisations, citizens; b) To inquire into the workplace accident or on the ground of a reasonable doubt of such accident; c) In case of accidents, which did not lead injuries; d) In cases of detecting circumstances, which indicate to professional diseases of employees, <<https://matsne.gov.ge/ka/document/view/4796359?publication=3>> [05.05.2024].

¹⁴⁸ 2023 Report of International Labour organization. About the ILO in Georgia <https://www.ilo.org/budapest/countries-covered/georgia/WCMS_888396/lang--en/index.htm> [05.05.2024].

¹⁴⁹ Council of European Union, Brussels, Association Implementation Report on Georgia, 2022, 10.8.2022 SWD(2022) 215 final, 17, <<https://www.ecoi.net/en/file/local/2078335/ST_11784_2022_INIT_en.pdf%3B+filename%2A%3DUTF-8%27%27ST_11784_2022_INIT_en.pdf> [05.05.2024].

¹⁵⁰ ILO Curriculum on Building Modern and Effective Labour Inspection Systems, Policy and Planning of Labour Inspection, Module 3, ILO, p.9, principle 3, <https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/genericdocument/wcms_856563.pdf> [05.05.2024].



As the Labour Inspection Service explained, the increase in unscheduled inspections depends on the number of accidents and complaints. As the decision on unscheduled inspection is made by the Chief Labour Inspector as per the ordinance “On the Approval of the Rules and Conditions for Entry and Inspection of Entities Subject to Inspection”, and the inspection can be conducted without notice, at any time of the day or night, in any workplace or workspace, at this stage there is no necessity of legislative support in this regard.

10. The Appropriateness of the Standard of “Reasonable Doubt” and the Scope of the Inspection’s Discretion in Response to Reports on Occupational Safety Violations

Article 11.2 (a) of the ordinance #99, of 10 February, 2020, “On the Approval of the Rules and Conditions for Entry and Inspection of Entities Subject to Inspection” stipulates that the unscheduled inspection of an entity is carried out on the ground of complaints, applications, hotline reports, etc., made by government institutions, local government bodies, organisations, citizens (within the bounds of reason, upon reasonable doubt). This approach has been critically assessed in Social Justice Center report: “Where an interested person reports a violation of labour rights to the labour inspectorate, it is unclear what standard constitutes 'reasonable doubt'.” In other words, it is unclear, how the rationale behind the doubt can be assessed and which methods should be applied to verify the accuracy of the information provided to the inspection, if not the visit to the premises in question. Introduction of a general standard of “reasonable doubt” in the legislation creates the risk of inconsistent and arbitrary interpretation, which may become the basis for an unjustified refusal by the labour inspectorate to inspect a particular employer; Therefore, the mentioned legislative norm requires additional definition¹⁵¹.

When discussing the admissibility of the standard of reasonable doubt, Article 12.1 (b) of Labour Inspection Convention No. 81 should be taken into account, where standard of “reasonable doubt” is determined as the criterion for deciding on unscheduled inspection¹⁵². The abovementioned

¹⁵¹ Labour Inspection Service Assessment, Social Justice Center, 2021, 21-22.

¹⁵² “...to enter by day any premises which they may have reasonable cause to believe to be liable to inspection”.

critical opinion implies that the notification of the person concerned can itself be considered as a prerequisite for reasonable doubt, which may have a certain degree of credibility. However, on the other hand, the content of the notification itself must meet a certain degree of reasonableness, taking into account the additional circumstances investigated, so that the mechanism of the notification does not become a mechanism of unreasonable, abusive use of the Labour Inspection's resources. This standard can be considered as a protective shield to prevent the ungrounded claims.

The analysis of the reasonable doubt test involves the exclusion of subjective assessment and putting it within reasonable frames of objective limitation. This can be done in the following way: For assessment, the labour inspectorate must investigate the relevant circumstances with the complainant prior to the inspection, and if it is found that the scale of the action, about which the notification was made, should its existence be confirmed, will be considered a violation of occupational safety rules, the grounds for launching an inspection shall be deemed reasonable.

The existence of a reasonableness test somewhat shifts the burden of credibility and relevance of the author of a notification. Primarily, the existence of a rebuttable presumption of prima facie¹⁵³ infringement by the complainant should be checked. In order to raise a prima facie rebuttable presumption, the notifier must provide relevant information and available facts that form sufficient grounds for raising suspicions of violations. To conduct the inspection, the Labour Inspectorate must suspect the presence of a presumption and likelihood of a violation, which will be confirmed or disproved through an unscheduled inspection.

It is important to note that **in the absence of a legal prerequisites for reasonableness of an unscheduled inspection, and considering the confidentiality guarantees for the notifier, there exists a hypothetical probability or a relevant perception that the labour inspectorate may exercise its mandate arbitrarily, lacking reasonable suspicion.** Hence, the reasonable doubt clause in the legislation creates guarantees of validity of conducting unscheduled inspections and the legitimate use of the authority.

Claim can be raised to the Public Defender's Office where the Inspection refuses to launch investigation on the ground of a notification¹⁵⁴. The Ombudsman is authorized to request from the Inspection an unscheduled inspection of the employer on the basis of the alleged violation of labour safety rules¹⁵⁵.

The same topic was discussed during the interview with the Labour Inspection Service. As explained by the Chief Labour Inspector, where the notification is made by an employee, only two

¹⁵³ Based on the first impression; accepted as correct until proved otherwise.

¹⁵⁴ As per Article 13 of the law of Georgia of May 16, 1996 "On the Public Defender of Georgia": The Public Defender shall examine the complaints and applications of citizens of Georgia and those of aliens and stateless persons, as well as of non-governmental organisations, dealing with the violation of human rights and freedoms provided for by the Constitution and legislation of Georgia, by international treaties and agreements to which Georgia is a party, caused by actions or decisions of public authorities, national or local, public or private organisations, institutions, enterprises, public officials and legal persons.

Also, Article 14.1: The Public Defender shall examine an application or complaint on the violations of human rights and freedoms, where the claimant: a) Questions the decision of a public institution.

¹⁵⁵ Article 3 (n) of the Law of Georgia "On Labour Inspection Service", the definition of persons entitled to raise claims.

facts are inquired into in order to launch investigation. First, the status of an employee making the notification, and the identity of a business entity where the alleged violation took place. As per Article 13.1 (c) of the law “On Labour Inspection Service” the ground for launching an inspection can be a confidential notification by any identifiable person. However, it is important to ensure that the mechanism is not abused by companies to the detriment of competitors.

11. Proactive Sanctioning Policy

11.1. The System of Sanctioning and the Methodology of Application

An effective and proactive sanctioning policy is the most important feature for the efficiency of the labour inspection system. Strengthening of proactive (preventive) sanctioning policy¹⁵⁶ involves employing liability measures not to establish a punitive system but to incentivize voluntary adherence to labour safety regulations.¹⁵⁷ “Sanctions have an important preventive function to the extent that the risk of being fined encourages employers to comply with their legal obligations¹⁵⁸.” Sanctioning policy should stand on the principle of proportionality and consistency.¹⁵⁹ The principle of selectivity should be considered. Promoting compliance with occupational safety norms and enforcement of the rules to some extent should be entrusted to market forces, the private sector and civil society. Inspection and enforcement cannot be applied always in every case, as the regulatory aims can be equally achieved through other reasonable proactive means¹⁶⁰.

On the issue of labour inspection sanctioning policy, a number of stakeholders deem it inadvisable to use a warning as the dominant form of administrative measure. According to the International Labour Organization, the sanctions policy of the Labour Inspection Service was remarkably mild in the first year of its functioning. Fines accounted for only about 2% of

¹⁵⁶ ILO Curriculum on Building Modern and Effective Labour Inspection Systems, Policy and Planning of Labour Inspection, Module 3, ILO, 9, principle 3, <https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/genericdocument/wcms_856563.pdf> [05.05.2024].

¹⁵⁷ From Sanctions and Remedies to Prevention Mechanisms: The Effective Application of Labour Law Before and Beyond Courts in Italy, in: *Jorens Y.*, *The Lighthouse Function of Social Law*, Proceedings of the ISLSSL XIV European Regional Congress Ghent 2023, Springer, 2023, 599-610.

¹⁵⁸ ILO Curriculum on Building Modern and Effective Labour Inspection Systems, Policy and Planning of Labour Inspection, Module 3, ILO, 8, <https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/genericdocument/wcms_856563.pdf> [05.05.2024].

¹⁵⁹ For example, in the Czech Republic, priority is given to the sanction of warning and reference, failure of which leads to financial sanctions. *ob. Falkner G., Treib O., E.*, *Compliance in the Enlarged European Union Living Rights Or Dead Letters?* Ashgate, 2008, 54. Throughout the EU, the need to maintain a balance between warnings and fines, the need for inspectors to perform both a supervisory and an educational role in the inspection process, is emphasized. *ob. Supporting Compliance of Occupational Safety and Health Requirements – European Labour Inspections Systems of Sanctions and Standardised Measures*, European Agency for Safety and Health at Work, 2023, 5, <https://osha.europa.eu/sites/default/files/Supporting-Compliance-Workplace-Safety-Requirements_EN.pdf> [05.05.2024].

¹⁶⁰ ILO Curriculum on Building Modern and Effective Labour Inspection Systems, Policy and Planning of Labour Inspection, Module 3, ILO, principle 4, <https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/genericdocument/wcms_856563.pdf> [05.05.2024].

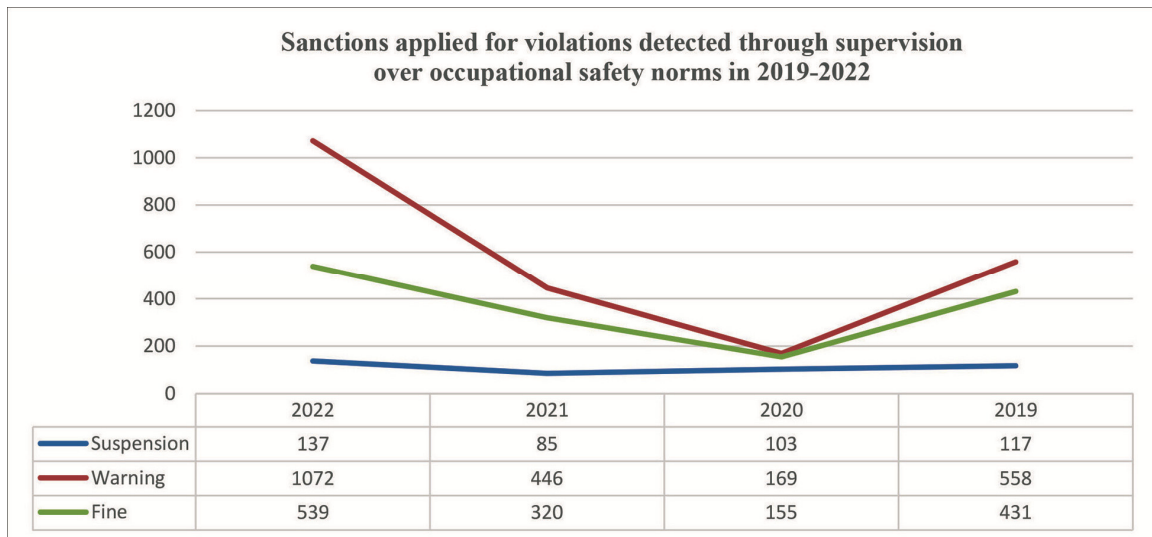
administrative sanctions issued in 2021. In 2022, the approach changed and fines were applied to approximately one-third of administrative offenses¹⁶¹.” The Public Defender informed that the policy of pressing criminal charges in cases of workplace accidents was not strict either¹⁶².

The labour inspectorate's sanctioning policy has been gradually tightened to ensure a reasonable period of time for raising awareness and adapting working conditions to new labour safety requirements. Taking account of the period passed since the occupational safety reform, and along with the awareness-raising campaign, as well as the increase in the number and qualifications of occupational safety specialists, the approach to sanctioning has been tightened to ensure the cease of the breach of norms, with the adherence to the principle of proportionality.

Based on the effective control of the implementation of the recommendations, the rate of fulfilment of the instructions issued after the initial inspection, according to the Labour Inspection Service, equals 57% as of 9 months of 2023. The rate of implementation of the given recommendations is the determining criterion of the effectiveness of the sanctioning mechanism.

For the purposes of this report, the quantitative/percentage ratio of sanctions (warnings, fines, suspension of work processes) applied to violations of labour safety norms from 2018 to 2023 (for each individual year) has been examined.

The results are presented in the table below.



During the interviews with the stakeholders, it was examined, how the dominant form of administrative measure – warning – suffices its preventive purpose, taking into account the results of secondary verification/elimination of violation.

¹⁶¹ 2023 International Labour organization Report <https://www.ilo.org/budapest/countries-covered/georgia/WCMS_888396/lang--en/index.htm> [05.05.2024].

¹⁶² To see the statistics, see Public Defender Human Rights Report – 2018, pg. 188-189 <<https://www.ombudsman.ge/res/docs/2019042620571319466.pdf>> [05.05.2024].

According to the Labour Inspection, the current approach to sanctioning – mainly applying warning as a form of sanction in case of detected violations – is the internationally accepted and recognized practice of modern labour inspection. It should be noted that under the current legislation, non-compliance with the instructions issued during the initial inspection **is a ground for fines or suspension of the work process in the repeated inspection; however, there are a number of clauses, which provide for fines as primary sanction in specific cases, and where the critical non-compliance is detected – suspension of the work process.** For instance, for all companies that do not have an occupational safety specialist as required by law, the Labour Inspection Service will apply a fine as an administrative sanction, which can be deemed appropriate considering the above-mentioned factors.

In addition, it shall be taken into account that across the world a labour inspection is an agency focused on prevention and not on sanctioning, therefore the warning mechanism is in line with international standards, the preventive purpose of the warning and the effect is clearly visible in the positive statistics of fulfilling recommendations and performance indicators.¹⁶³

Administrative liability for breaching labour norms is outlined in the following legislations: the Organic Law of Georgia “On Occupational Safety,” the Organic Law of Georgia “Labour Code,” and the Law of Georgia “On Labour Migration. ”

The following administrative penalties may be applied for the violation of labour norms: a) a warning; b) a fine; c) a suspension of the work process.

The Labour Inspection Service enjoys a discretionary power in deciding, within the scope of the Organic Law of Georgia the “Labour Code”, the Organic Law of Georgia “On Occupational Safety”, and the Law of Georgia “On Labour Migration” when and which administrative penalty must be applied, and, in the case of a fine, the amount of the fine to be imposed. The administrative penalty shall be commensurate with the violation.

According to the supervisory body, a reasonable time for remedying the identified violation is determined through consultations with the employers’ or the employees’ association (if any) and/or the employees’ representative. This requires an individual approach. Hence, setting uniform criteria for determining reasonable time is not advisable. The decision should be made case-by-case.

11.2. Reforming the Procedures for Appeal

In contrast to the pre-reform period¹⁶⁴, a uniform practice has been established, according to which the applied sanction is first appealed administratively in the Inspection and then there is an opportunity to appeal to the court. There is an exemption to this general rule, where it is admissible to appeal to the court directly. This is the case when the Chief Labour Inspector issues an individual administrative act regarding the fine. The Chief Labour Inspector issues the above-mentioned act imposing a sanction of double the amount when a person does not pay the fine within the 30-day

¹⁶³ The rate of fulfilment of instructions issued after the initial inspection within the scope of supervision, has increased significantly, since the Organic Law of Georgia “On Labour Safety” was expanded to all sorts of economic activity. Since September 1, 2019, the growth trend has been maintained: 8% in 2020, 28% in 2021, 52% in 2022, and 57% in 9 months of 2023. Annual reports of the Labour Inspection Service. See: <<https://lio.moh.gov.ge/index.php?lang=1>> [05.05.2024].

¹⁶⁴ Labour Inspection Service Assessment, Social Justice Center, 2021, 24.

period determined by law. In order to review the submitted appeals, the Complaints Review Commission was established at the Labour Inspection Service; The decision of the commission is appealed to the court.

The statistics of the existing court disputes showcase the fairness of the Labour Inspection's policy of sanctioning. **Starting from 2020 to the reporting period of the third quarter of 2023, 107 cases were registered in the courts in the field of occupational safety, of which the court did not consider / 2 cases were decided in favour of the plaintiffs.**

11.3. Assessing the Rationale behind Strict Sanctioning

This study has inquired into the stakeholders' stance on the advisability of stricter sanctioning. Business Association does not believe tightening the sanction is the only and best way to prevent violations; First of all, they deem it necessary to analyse in detail already implemented activities of the labour inspection, to systematize the inspection results in a way that it would allow us to determine with high probability what was the reason/motive for committing each offense, in which part of the management of the company in general and the labour safety system in particular are problems evident more frequently, which lead to violation; how do the companies respond to warnings and at what extent are the repeated inspection results satisfactory. A number of other components can be taken into account. Analysing them will lead to the decision on the revision of sanctions which will be objectively reasoned and not dependent on the subjective feeling of the stakeholders or on fragmented information.

The same organisation explains, that fines imposed in number of cases reach large amounts. Data on incidents and sanctions is regularly processed and analysed. The results are used to identify rooms for improvement and develop targeted interventions. The Association welcomes the approach to pay particular attention to high-risk sectors such as construction, mining, where occupational safety incidents are more frequent. The organisation believes that the current sanctioning system is notably strict, particularly in light of its imposition of additional penalties for non-compliance with instructions. The primary objective of sanctions should be ensuring adherence to labour safety regulations, prioritizing the well-being of employees. Consequently, achieving a balance between punitive measures and providing opportunities for rectifying non-compliance through corrective actions and enhanced safety practices becomes crucial. Encouraging the development of a culture of adherence to occupational safety rules can enhance the efficacy of current sanctions. The presence of a workplace safety culture fosters a proactive mindset in identifying and mitigating hazards, resulting in a decrease in workplace accidents, injuries, and illnesses. It improves employee productivity and the overall efficiency of the organisation.

According to the Association's written response, company management must actively participate in safety programs, allocating sufficient resources to support safety initiatives. And the state should come up with solutions to stimulate those businesses that spend substantial resources for safety equipment. By setting a positive example, managers can influence employees to prioritize safety in their daily work. In order for company managers to fully understand all existing threats, it is important to train the company's directorate (management) on labour safety issues and, accordingly,

introduce them to best practices and examples. This will lead to decision-makers who are more aware and hence, more effectively respond to threats. “The active participation of managers, supervisors and workers is considered crucial, especially in the phase of risk assessment implementation. Researches carried out on an international scale clearly prove that the awareness of the importance of active cooperation in the process of risk assessment is increasing in organisations.”¹⁶⁵

The Association recommends that it is crucial to concurrently establish a system of employee engagement, participation, and motivation in companies alongside the implementation of the safety system. This responsibility falls on the management, as they come to realize, through training and observation, the significance of each healthy employee to the company, the associated costs with violations and the impact on both the affected employee and the company's reputation. Improving the company's labour safety culture requires a complex approach that includes: determination of everyone's responsibility (from management to ordinary employees), education and training¹⁶⁶, impact assessment of all possible risks on a person, in short and long run. Complex security includes the analysis of 3 components: the correlation and interdependence of human, organisational and technological aspects. A systematic approach to all these processes creates an opportunity to form an occupational safety at workplaces.

The urgency of consolidated policy in forming occupational safety culture is unanimously agreed upon by all stakeholders in the field.

11.4. The Possible Expansion of Municipal Inspection Mandate and Coordination with the Labour Inspection Service

During interview with the head of the Progressive Forum, Mr. Dimitri Tskitishvili, emphasis was placed on the necessity to expand the mandate of the Municipal Inspection process to regions in the construction sector oversight. Currently, there is a notable concentration of this process in Tbilisi. Additionally, the discussion highlighted the disparities in sanctions (imposed by Municipal Inspection) between the Tbilisi area and the regions. According to Mr. Tskitishvili, a significant facilitating factor in enhancing the labour safety system in the regions is the collaborative and integrated efforts of the government, Labour Inspection, and Municipal Inspection. Such cohesive group has a history of successful experiences in previous years in Georgia, and it played a pivotal role in a major transformation in the safety rules in the construction sector.

The representatives of the Labour Inspection explained that occupational safety is exclusively an issue belonging to its mandate. The Municipal Inspection of the City Hall controls the issue of compliance of construction with the project. If the mandate of the Municipal Inspection of the City Hall is expanded to the regions, the Labour Inspection Service expresses readiness to continue coordinated cooperation with them. If occupational safety issues are detected during the inspection carried out within the mandate of the Municipal Inspection, the Labour Inspection is also involved in a

¹⁶⁵ Kogi K., Work Improvement and Occupational Safety and Health Management Systems: Common Features and Research Needs, *Industrial Health* 2002, 40, 126.

¹⁶⁶ Hughes Ph., Ferrett E., *Introduction to Health and Safety at Work*, Routledge, 2011, 186.

coordinated manner. In terms of sanctions, the constitutional principle shall be observed – that two institutions do not apply a double penalty for the same violation at the same time.

11.5. The Issue of Proactive Disclosure of Identifying Information about Sanctioned Companies

In the course of this research and during the stakeholder interviews, the issue of disclosure of the identifying information about the sanctioned companies was discussed.

Concerning the matter, key stakeholders in occupational safety emphasized the potential necessity for the proactive disclosure of identifying information about companies. This move could enhance the deterrent effect on those violating labour safety norms. GYLA emphasized the public interest in being informed about the occupational safety violations by companies, so as to enhance trust in inspectors' work and overall transparency of the supervisory body. The Business Association, on the other hand stated that such disclosure might lead to campaigned attacks on some companies. In such cases it often becomes impossible to defend oneself through legislative means. The Business Association considers the use of this mechanism as an additional "punishment". The organisation states, that there is no question that the company must be held responsible for the violation of the law, even by using the most severe measures; however, no other action that exacerbates the company's situation, adds further challenges, and creates additional problems should be employed within the boundaries of a legal response.

During the interviews of one of the non-governmental organisations, it was mentioned that challenges arise when seeking information from the labour safety supervisory body, concerning the identification of inspected entities or identified violations.

According to the Employers' Association, the publication of identifying information of organisations that violate occupational safety norms carries a number of risks, mainly reputational or legal: 1. Harm to the company image: Revealing the identification details of entities breaching labour safety regulations has the potential to significantly damage their company's image and reputation. This adverse publicity may result in diminished trust from consumers, investors, and other stakeholders, and could additionally lead to prolonged legal conflicts. 2. Public reaction. The disclosure of such data can cause public outrage and strongly negative feedback against the organisation. This can lead to protests and negative media coverage, further damaging their reputation. 3. Loss of business opportunities. Organisations with a poor safety record (their data is published) may find it difficult to attract new customers or business partners. 4. Employee retention and recruitment challenges: Revealing identification information about the company can impact an organisation's capacity to retain current staff members and attract new professionals. Prospective employees may hesitate to join an organisation with a track record of safety breaches.

Representatives of the Committee on Occupational Safety of the Employers' Association believe that the opposite approach, where, companies that fully comply with safety rules and successfully implement systems are made public will be welcome. In this context, it is essential to establish clear and unambiguous criteria and mechanisms. Using these criteria, information on the safest companies will be made public. Provision of any kind of privilege for the companies included in this list, e.g., on

the direction of public procurement, will further incentivize the companies. This, again, will contribute to the establishment of a culture of occupational safety in the workplaces.

According to the official position of the Employers' Association, in the circumstances when one of the main challenges is, on the one hand, enhancing the qualifications of labour safety specialists and, on the other hand, raising the awareness of employees, taking additional measures against employers will further complicate the process of implementing regulations and promote vicious practices to avoid liability measures in any form. The so-called Blacklisting may in its essence serve good purposes, however, given its negative consequences, it will be an additional sanction/penalty for employers. In addition, when discussing the lack of awareness of labour safety specialists and employees, this problem is even deeper in general public, which is why company's presence on the blacklist might be perceived in a completely different light and cause the company's image to be undeservedly damaged. The imposition of such "sanction" is also inadmissible given the fact that it does not have foreseeable outcomes, it is difficult to determine in advance what negative consequences it will bring to the company, what extent the material or non-material damage caused by it will reach, etc. In the case of sanctions stipulated by the law, it is predictable for the company in advance what measure of responsibility will follow its specific action, which is why the existence of such a "sanction" at the legislative level, the consequences of which are not clear and predictable for the subject, will always be against the law and will contradict the fundamental principles of the law. In the case of legal sanctions, a company can predict in advance what measure of responsibility will follow its specific action, which is why the existence of such "sanction" with unpredictable consequences, will always be against the law and will contradict its fundamental principles.

The Labour Inspection Office states that there is no need to disclose the identifying information of a company on the official website. This holds true especially when the information, barring commercial and other confidential details, is readily accessible to interested persons and competent agencies upon official request.¹⁶⁷ For the purposes of preparation of this research, the Labour Inspection Office provided the information that was shared by this institution with non-governmental organizations and other interested persons based on their request regarding the results of the inspection of a particular company. The agency explained, that upon request, information is provided, however with observations of certain time frames (e.g., quarterly data) and keeping the the principle of confidentiality of commercial and personal information in mind. Thus, the providing information about inspected or violating entities to the non-governmental sector is ensured within a reasonable time frames, even though it cannot be carried out immediately, as the data depersonalisation requires the mobilization of additional human resources.

¹⁶⁷ Regarding the importance of the obligation to protect confidentiality when recording and providing statistical information, see: Article 15 of the Labour Inspection Convention, 1947 (No. 81) <https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312226> [05.05.2024]; Article 20 of the Labour Inspection (Agriculture) Convention, 1969 (No. 129), <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C129> [05.05.2024]; Collection and Use of Labour Inspection Statistics, A Short Guide, International Labour Organization, 2016, 5, <https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/ documents/publication/wcms_537155.pdf> [05.05.2024].

The Labour Inspectorate explained, that the disclosure of the identification data can have an enormous negative effect on a company's reputation and commercial activities. **This makes the disclosure an independent and additional sanction. In addition, the decision of the Labour Inspectorate to sanction the company can be appealed in court. The ongoing irreversible process of reputational discrediting of the business entity may persist until the final resolution of the matter in the judicial system. This could render the rehabilitation of the already damaged business reputation unattainable.**

The Inspection stated that it only publishes the data of companies in particular cases, where entities did not fulfil the recommendations of the inspection or have a record of a dire violation, which justifies the use of reputational pressure to force them to ensure compliance with safety norms.¹⁶⁸ For instance, along with applying sanctions and suspension of activity, the labour inspectorate disclosed information about an entity on the ground of a dire violation, where the employer physically abused an employee. In all other instances, the Agency does not deem the disclosure of the identification information advisable. This is due to the guarantees of confidentiality in international and national legal documents.

11.6. Developing an Occupational Safety Rating System for Companies and Taking the Appropriate Indicator into Account in the Process of Public Procurement

According to the recommendation of the head of the non-governmental organisation "Progressive Forum", in the process of public procurement, where the main purchaser is the state, it is important to include the occupational safety component as a mandatory condition. In the application, the financial cost allocated for the protection of occupational safety must be determined with a fixed interest rate (especially in the construction sector, infrastructural construction projects, taking account of the relevant risks) and should not be subject to revision-reduction based on negotiations. With this change, companies that adhere to labour safety norms will have a competitive advantage in the procurement process. Bona fide companies should enjoy certain advantages and incentives in obtaining public funding. If the stated standard is set through public procurement, it will become an example, spread and be used in the private sector, which also widely carries out activities within public tenders. The state itself has the greatest role in the effective enforcement of labour safety standards, to establish a high state and guideline standard in occupational safety, to give the privilege of using state resources to those organisations that have a positive history of compliance with

¹⁶⁸ For example, in Spain and Portugal, together with sanctions, it is allowed to publish information about violations of labor safety norms by the organization only in case of particularly serious violations. In Portugal, restrictions on participation in tenders for those entities found to be non-compliant with labor safety norms have been reinforced as an additional liability, along with sanctions. ILO Standards on Occupational Safety and Health, Promoting a Safe and Healthy Working Environment, International Labour Office, Committee of Experts on the Application of Conventions and Recommendations, Geneva, Switzerland, 2009, 34, <https://www.google.ge/books/edition/ILO_Standards_on_Occupational_Safety_and/-rqvnMH_n8MC?hl=ka&gbpv=1> [05.05.2024].

occupational safety norms. This is an approved practice in developed countries that is encouraged by the state policy of labor safety.¹⁶⁹

It is also important to develop a ranking of companies in the field of compliance with occupational safety norms. The companies with a high rate of compliance will give an advantage in the process of public procurements. This measure can be laid down with the amendments to the law “On Public Procurements.”

Mr. Tskitishvili discussed the example of Malaysia, where infrastructural projects are widely implemented, the development and update of the ranking list of companies has been subjected to a self-regulation mechanism and is carried out not by the state, but by the relevant association.

The Inspection believes that such incentivizing mechanism will motivate the companies to adhere to occupational safety norms. If relevant amendments are passed in the procurement legislation, the Labour Inspectorate will engage in the implementation of the said innovation in a coordinated manner.

Thus, both the Progressive Forum and the supervisory agency of labour safety for the legislative purposes propose to give priority to the observance of labour safety norms in state tenders.

According to the Employers' Association, the formation of a ranking can truly become an incentivising mechanism for strengthening the occupational safety system. Correct and valid criteria shall be developed as the forming principle of ranking and it should be ensured that the overall process of ranking is transparent and objective.

11.7. Merging Electronic Databases for the Classified Record and Analysis of the Statistical Data

According to the Labour Inspectorate, as of 2023, several electronic programs are in use, which are in the development and improvement phase, including the electronic inspection system (LIOS.MOH.GOV.GE, launched with the support of International Labour Organization), electronic system for the determined minimum hourly wage for doctors and nurses (MINWAGE.MOH.GOV.GE), accredited labour safety specialist program (OSHTESTING.MOH.GOV.GE) and electronic labour migration system (LABOURMIGRATION.MOH.GOV.GE). The work on merging these electronic systems and managing them through the principle of one window is ongoing.

12. The Control Mechanism for Professional Diseases

During the interviews, the problem of the lack of means for examination and identification of occupational diseases in the domestic space was highlighted. The non-governmental organisation “Progressive Forum” and the GTUC point out that only registering accidents resulting from industrial trauma and the absence of statistics on occupational diseases¹⁷⁰ (production of which is an employer’s obligation) are shortcomings. According to the Progressive Forum representative, regulations in the area of professional diseases are not functional.

¹⁶⁹ *Hughes Ph., Ferrett E.*, Introduction to Health and Safety at Work, Routledge, 2011, 81.

¹⁷⁰ The letter of Georgian Trade Unions Confederation to Ms. Salome Kurasbediani – the Deputy Chair of the Environmental Protection and Natural Resources Committee.

The Inspection Service explained that the issue of lack of research organisations is solvable. The institutional and expert knowledge of N. Makhviladze State Institute of Labour, Medicine and Ecology shall be fully used for the purposes of establishing new research centres and training of human resource. Establishing new centres, which will be founded on the knowledge of well-experienced staffers of Makhviladze Institute and will develop this legacy is crucial. According to the Head of the Labour Inspection Office, in the drafting process of technical regulations, the Labour Inspection Office and the Makhviladze Institute cooperate to some extent, however, for more coordinated work, it would be better to create a certain institutional and organised cooperation platform or a subordinate unit, in order to allow the Labour Inspection to properly use and develop the research potential of this institute. The representative of Progressive Forum suggested that the resources of the said research institute should be used in the implementation of professional disease prevention methodology.

In order to identify an occupational disease, it is necessary to conduct several studies in order to determine the correlation between production activity and what diseases it can cause. At the initial stage of starting a job, an objective and proper diagnosis of health condition is necessary, in order to be able to monitor and evaluate the continuous process of development of the professional disease. Submitting a document showing the state of health for starting the service should not be a formal requirement. It is essential so that the control of occupational diseases can be carried out objectively.

Even though the order №01-11/6, of September 12, 2018, of the Minister of Georgia of Internally Displaced Persons from Occupied Territories, Labour, Health and Social Affairs “On the Approval of the Rules and Form of Registration of Workplace Accidents and Occupational Diseases, Investigation Procedures and the Rules of Reporting” is in place, the frequency/periodicity of the health check-ups, which shall be ensured by employers, is not determined.

13. Additional factors hindering the effectiveness of the protection and enforcement of occupational safety rights

In addition to the issues highlighted in the research, other additional factors significantly affect the process of effective work performance.

The Employers' Association singles out three factors which are worthy of attention:

“**Lack of resources** – is an important factor that hinders the effective implementation of occupational safety norms. Companies may find it difficult to allocate sufficient financial, human and technological resources to ensure compliance with safety regulations. E.g., insufficient level of qualification of staffers to manage safety, or outdated equipment and infrastructure. In the process of entrepreneurial activity, companies in most cases set the budget on an annual basis, therefore, taking into account economic risks and other environmental factors, the allocation of an additional budget for new needs, including innovations to be implemented for labour safety (be it equipment, safety systems, etc.) is a rather problematic issue and in some cases, it is even impossible.

Lack of employee participation. Employees play a crucial role in ensuring the safety of themselves and others. Consequently, their lack of involvement can hinder the effective implementation of occupational safety norms, when employees are not properly informed or involved

– and this is often caused not by the company's refusal to involve them in the process, but by the lack of interest/motivation on the part of the employees themselves to participate in the process. It should be noted here that the object of inspection is mainly the employers and the issue of their compliance with the regulations. Due to this, the employees consider themselves less accountable. The Organic Law of Georgia “On Occupational Safety” provides for the obligations of the employee, to which they must adhere, so as to ensure occupational safety standards. However, in this regard too, the employer is inspected, and in the case of non-fulfilment of their obligations by the employee, the employer is held fully responsible. In this case, the main problem is the absence of risk/expectation of responsibility for the consequences of non-fulfilment of obligations on the part of the employees.¹⁷¹

Economic factors, in some cases, can be a barrier to the implementation of labour safety norms.¹⁷² A large number of companies that work in a competitive environment with small profit margins and do not fully understand the essence of the occupational safety system perceive investments for the purpose of safety as an additional financial burden. Such companies are already trying to reduce costs as much as possible, and in the direction of labour safety, use the so-called “ostrich approach” – when they think about OSH standards only in the short term. They ignore problems and risks. Cases/incidents are treated as simple failures. They act only when the inspection service appears on the spot. Especially for medium-sized and small enterprises, the costs increase even more –the same occupational safety is equally required for companies employing 5 or 10 people and organisations with 200 or more employees. Small and medium-sized businesses in particular have limited financial resources, and their adherence to occupational safety norms is unfortunately formal in many cases. It would have been much more effective if the law had a liberal approach towards them, which also implies individually determining the deadline for fulfilling the instructions and taking into account the interests of the company in this process, so that the instructions are truly implemented to ensure labour safety and not, hypocritically, to avoid responsibility.”

Prolonged litigation and delay in receiving compensation. According to the assessment GTUC, the biggest challenge is the delay in legal disputes on violation of labour safety standards. However, practice shows that in cases of violations of safety standards in the labour relationship, the injured person or a member of a victim's family [in case of the victim's death], is often forced to accept a relatively low amount of compensation offered by the employer to compensate for the damage

¹⁷¹ Violation of labor safety rules by employees is considered a gross violation in Spain and Brazil. In Morocco, such misconduct will result in immediate dismissal without compensation. Sanctions are established in the USA and Thailand. See: ILO Standards on Occupational Safety and Health, Promoting a Safe and Healthy Working Environment, International Labour Office, Committee of Experts on the Application of Conventions and Recommendations, Geneva, Switzerland, 2009, 66, <https://www.google.ge/books/edition/ILO_Standards_on_Occupational_Safety_and/-rqvnMH_n8MC?hl=ka&gbpv=1> [05.05.2024].

¹⁷² On the importance of financial factors in the process of introducing labor safety norms in the conditions of a growing competitive market, see: Sousa V., *Almeida N.M., Dias L.A.*, Risk-based management of occupational safety and health in the construction industry – Part 1: Background knowledge, Department of Civil Engineering, Architecture and GeoResources, Universidade de Lisboa – IST, Av. Rovisco Pais, Lisbon, Safety Science 66 (2014) 75–86, Portugal 1049-001.

experienced, and not to continue the legal dispute for establishing responsibility and for full compensation of damages. There are several reasons. The first is that in many cases, criminal prosecution is pressed against a lower-level employee, who in fact [and not according to legal documents] would not be in charge of complying with labour safety standards due to various circumstances, and therefore, the interest of the victim or his family member in bringing the criminal case to a court is low. Second, the victim often needs financial support at the initial stage of treatment, and the lengthy processes take away this opportunity. Third, other factors that appear in long-term labour relations – employment of another family member in the organisation, etc.

Given the reality of overcrowding of the courts, it is important to timely determine the minimum package of mandatory insurance for heavy, harmful and dangerous work for the timely receipt of compensation by employees and the effective implementation of social security. As noted in the study, the minimum insurance package has been developed and it is important to accelerate its adoption in 2024.

Lack of trust for confidentiality and reliability of the inspection system. The representative of the Legal Assistance Center of GYLA mentioned that between June and August 2023, the organisation offered approximately 500 consultations on labour law matters. Out of these, only 38 services were related to labour inspection issues. According to the GYLA representative, this might suggest a low awareness in society on one hand and, on the other hand, it indicates a lack of confidence in reporting to the Inspection due to the fear of confidentiality breaches and potential subsequent dismissal. GYLA informs the citizens, who approach them regarding labour inspection matters, that public institutions, including the Labour Inspection Office, bear a specific responsibility for safeguarding entrusted confidential information. The law outlines the liability of any inspectorate employee for violating confidentiality. However, for employees who would like to make a report, the fact that the identity of the person making a notification may not remain confidential due to human relations and communication creates a barrier to submitting a report. The representative of the NGO states that citizens apply to the labour inspectorate mainly when they have already been dismissed or there is already a dismissal dispute. Often, employees may use the reporting mechanism to the labour inspectorate as a means of intimidating the employer and preventing further violations in labour relations. Thus, it is important to raise employees' awareness and bolster confidence in safely accessing mechanisms for the protection of occupational safety rights. The role and significance of the Labour Inspection Service in safeguarding occupational safety rights need to be more widely recognized and apparent to the public. This will reinforce the credibility of the supervisory agency.

VI. Final Recommendations for Legislative Enhancement and Improvement of Field Policy

Based on the research conducted during the preparation of this report, as a result of the analysis of the achievements and challenges of the normative reform, as well as the comparison of the institutional experiences of the interested domestic and international organizations, it is possible to

formulate summary recommendations for the improvement of the labour safety legislation, strengthening the effectiveness of enforcement and advancing sectoral policy:

1. Simultaneously with the renewal of the “Twining” program with the support of the European Union, it is important to continue the work and gradually implement 18 directives that must be adopted by 2021-2023 in the field of labour safety and health protection in accordance with the Annex XXX of the Association Agreement. As of October 30, 2023, 6 directives have been fully reflected in the legislation of Georgia, 2 directives have been reflected partially, and the draft, prepared in accordance with 38 directives, is ready for discussion within the technical working group of the Tripartite Commission, drafts of normative acts have been prepared in accordance with 5 directives, and 10 directives need to be translated, processed and examined.

2. Taking into account the expanded mandate of the labour inspection in the area such as the prevention of illegal migration, forced labour, labour exploitation, and trafficking, as well as effective implementation of domestic legislation in accordance with the Association Agenda, the institutional strengthening of the labour supervision agency should be promoted by increasing the human resources of inspectors. The target indicators of the quantitative increase of inspectors should be established by balancing the financial resources of the budget and the objective needs of the inspection system.

3. In the format of cooperation with municipalities (based on their work specificity), as well as with the Ministry of Regional Development and Infrastructure of Georgia and the Ministry of Economy and Sustainable Development, the issue of the feasibility of development and the possibility of enforcement of the norms establishing the temperature control during the work performance in open space must be studied. It is also important to maintain the practice of labour inspection to use mechanisms for monitoring shift schedules and working hours at high temperatures.

4. Despite the implementation of the international standards recognized by the Association Agreement in the domestic legislation, the issue of ratification of the conventions itself is also important. Within the framework of the action plan developed by the tripartite social partnership commission, the feasibility of ratifying the following priority and fundamental conventions was discussed: No. 81 (“Convention concerning Labour Inspection in Industry and Commerce”), No. 155 (“Convention concerning Occupational Safety and Health Convention and the Working Environment”) and No. 187 (“Promotional Framework for Occupational Safety and Health Convention”). It is important to consider ratification of conventions 121-2 (“On assistance due to injury to the employee's health while performing work duties”), No. 129 (“On labour inspection in agriculture”) and No 176 (“On safety and hygiene of labour in mines”), through the assessment of the impact of regulation and the preparation of relevant conclusions.

5. For the effective implementation of the social guarantee of mandatory insurance and in response to the requirements of the labour safety legislation, the minimum package of mandatory health insurance, already developed with the help of the International Labour Organization, for those employed in heavy, harmful and hazardous jobs should be adopted.

6. In order to further improve the increasing dynamics of accident reduction, it is advisable to strengthen the general targeted state policy in the field of awareness-raising,¹⁷³ to systematically

¹⁷³ Kim Y., Park J., Park M., *Creating a Culture of Prevention in Occupational Safety and Health Practice, Safety and Health at Work*, 7, 2016, 95; A. M., *Labour Law*, Council of Europe, Fifth Edition, Wolters Kluwer, 2023, ebook, note 482.

inform the workforce about fundamental labour rights; The consolidated awareness-raising campaign shall be expanded by organizing educational/informational activities, to cover the strategic advertising spaces of possibly all regions, especially in those locations where a significant number of business entities are represented;

7. It is important to raise the awareness of the employees and strengthen their confidence in the labour inspection in terms of safe access to protection mechanisms (confidential notification) for violations of labour safety. For this, it is necessary to strengthen the public perception of the role and importance of labour inspection in the field of protection of the right to labour safety.

8. It is reasonable to establish a platform for close cooperation with the Ministry of Education and Science of Georgia in the general educational, higher or professional direction within the educational component, in order to promote the sustainable strengthening of the labour safety culture in the long term.¹⁷⁴

9. After the adoption of technical regulations and the legislative expansion envisaged by the Association Agenda, it is important to gradually implement additional specialization in the labour inspector accreditation programs, taking into account the sectoral, profile specifics (construction sector, mining industry, etc.). At this stage, taking into account the imperfect existence of special technical norms and sectoral legislation (e.g. metallurgy legislation) in the domestic area, it is not possible to develop specialized qualification programs, which is why the existing model of classification of risk areas of accreditation programs by sector is acceptable.

10. Due to the gradual improvement and updating of the technical regulations and labour safety norms, it is reasonable for those labour safety specialists who have been awarded the qualification of labour safety specialist on the basis of a training program completed in the framework of professional and/or higher education in an authorized educational institution, to establish the obligation of periodic certification renewal (periodic certification) or alternatively, the requirement of periodic retraining and upgrading of qualifications taking into account the innovations in the sector.

11. In order to identify the fully (and not mixed) informal sector, attract it to the formal sector and spread labour safety standards to it, it is advisable to continue the coordinated institutional cooperation between the Revenue Service and the Labour Inspection. The state should continue to introduce such social guarantees and tax regimes, which will increase the motivation to put an unorganised business in the framework of the tax system and labour safety protection and to formalize employment.

12. It is important to sustainably maintain the methodology of supervision by the labour inspection in relation to labour safety and labour rights under the two-layer mandate of the supervisory agency. The effect of the violation of labour rights must be seen in terms of impact on labour safety,

¹⁷⁴ Internationally, the component of teaching labor safety standards is provided at almost all educational levels, in professional training programs, and is an expression of state labor safety policy. For examples of EU member states and the United Kingdom, see: ILO Standards on Occupational Safety and Health, Promoting a Safe and Healthy Working Environment, International Labour Office, Committee of Experts on the Application of Conventions and Recommendations, Geneva, Switzerland, 2009, 37, <https://www.google.ge/books/edition/ILO_Standards_on_Occupational_Safety_and/-rqvnMH_n8MC?hl=ka&gbpv=1> [05.05.2024].

which may give rise to the need to transform scheduled inspections into unscheduled inspections.

13. Taking into account the criteria defined by legislation for the selection of objects to be evaluated in a scheduled manner, the labour inspection shall maintain its discretion in the process of proactive selection of objects to be evaluated. Increase in the scale of unplanned inspection depends on both the number of accidents and notifications, as well as the increase in human resources of labour inspectors.

14. In the absence of a legal prerequisite of reasonable doubt for an unplanned inspection and taking into account the obligation to protect the confidentiality of the author of the notification, there may be a hypothetical probability or a relevant perception that the labour inspection will use its mandate without reasonable doubt, on its initiative. Thus, contrary to the expressed critical opinion, the maintenance of the legal provision of reasonable doubt creates guarantees for the validity of the conduct of unplanned inspections and the lawful exercise of power by the inspection service. In addition, it is important to determine whether the employee has an employment relationship with the company at the time of notification because any identifiable subject can initiate a notification towards the labour inspection on the violation of labour safety norms.

15. It is important to maintain the existing proactive (preventive) sanctions policy as the most important feature determining the effectiveness of the labour inspection system, which provides for the use of liability measures not to form a punitive system, but to encourage voluntary compliance with labour safety rules.

16. The policy of scheduled supervision of the implementation of the given recommendations, which, in accordance with the existing practice, implies the analysis of the growth rate of the correction of the violation after the initial inspection, must be preserved in the conditions of preventive sanctions policy.

17. The data of organizations that maintain a high rating of compliance with labour safety norms may be published. In order to encourage voluntary compliance with labour safety norms, it is possible to form a ranking system of companies based on impartial, valid and transparent criteria.

18. In the effective enforcement of labour safety standards, in addition to the labour inspection, the state itself has an important role in establishing a high state and regulatory standard in the field of protection of the labour safety norms and encouraging the private sector to adhere to the state standard. It is important for the state to stimulate those companies that spend substantial resources on safety equipment and consider labour safety as a daily priority of their care. From this point of view, it may be advisable to form a rating system of companies and consider a high rate of compliance with labour safety norms as a competitive advantage in the process of selecting companies during the state tender. The privilege of using state resources through the mechanism will be given to those organizations that have a positive history of compliance with labour safety norms.

19. In the state procurement process, it is important to start discussions on reasonability of considering the labour safety component as a mandatory tender condition, which, among other things, implies the determination of the mandatory and fixed rate of the financial spending allocated for labour safety protection (especially in high-risk industries) without the possibility of revision-reduction. With this amendment, companies that ensure compliance with labour safety norms will

maintain a competitive advantage in the tender process. In order to put the mentioned mechanism into effect, it is necessary to make amendments to the legislation on state procurement.

20. It is important to start developing a methodology for investigative diagnostics, registration and prevention of occupational diseases, to form an effective, long-term and gradual policy for the control of occupational diseases. Therefore, the coordinated and institutional cooperation between the Labour Inspection and the N.Makhviladze S/R Institute of labour Medicine and Ecology, in order to effectively use the research potential of the institute in the field of diagnosis of occupational diseases and training of human resources.

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