

INSTITUTIONAL (CAPACITY) ASSESSMENT OF THE LABOUR INSPECTION SERVICE OF GEORGIA



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INSTITUTIONAL (CAPACITY) ASSESSMENT OF THE LABOUR INSPECTION SERVICE¹ OF GEORGIA

Conducted within the Framework of the Council of Europe Project “Strengthening Protection of Social and Economic Rights in Georgia”

prepared by Marius Bartninkas²

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- 1 It should be noted that the institutional title “Labour Inspection Office” also occurs in translations of some official sources. For the purposes of this assessment, the term “Labour Inspection Service” was selected as it is generally used in official translations of legal acts.
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INTRODUCTION

This report was prepared in the framework of the project “Strengthening Protection of Social and Economic Rights in Georgia” (hereinafter referred to as “the Project”), as part of the Council of Europe “Action Plan for Georgia 2020-2023”, to support reforms in Georgia which will further bring the country’s legislation, institutions and practice into line with European standards in the areas of human rights, the rule of law and democracy, including, among other topics, the enhancement of the protection of economic, social and labour rights in accordance with the revised European Social Charter and its Additional Protocol.³

During the implementation of the Project, a “Report on the Needs Assessment in Respect of Social Rights in Georgia”⁴ was published in November 2021, emphasising, among other issues, the importance of executive actions to be performed to enhance the capacity of the Labour Inspection Service, including its institutional assessment (in consideration of existing challenges in the labour market and the implementation of regulatory norms) and the drafting of recommendations based on the assessment.

The main objective of this institutional assessment is to analyse the mandate and practices of the Labour Inspection Service in handling challenges that exist in the labour market of Georgia, related to labour rights, occupational safety and health, to identify key shortcomings, outline findings and make recommendations for actions to be taken to enhance and support institutional capacity. The report consists of the introduction, 5 thematic chapters (“Historical background”; “Institution, its vision, mission and goals”; “Mandate”; “Operational principles and procedural aspects”; “Staff and organisational structure”), conclusions, and recommendations.

The assessment was prepared in close cooperation with national consultant Eto Gvritshvili, and with significant technical and organisational contributions of Tamar Nozadze and Gvantsa Kereselidze. The representatives of the Labour Inspection Service, the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, the Georgian Trade Unions Confederation, the New Confederation of Independent Unions, the Georgian Employers’ Association, the Business Association of Georgia, the Social Justice Center, the Georgia Fair Labour Platform, the Georgian Progressive Forum, the Solidarity Center, the Public Defender’s Office (hereinafter referred to as “stakeholders”) contributed to the preparation of the report through online and/or face-to-face interviews as well as written observations.

3 “Action Plan for Georgia 2020-2023”, *Council of Europe*, CM(2019)158, page 10, <https://rm.coe.int/ap-georgia-2020-2023-en/168098f179>.

4 Monika Smusz-Kulesza, “Report on the Needs Assessment in Respect of Social Rights in Georgia”, *Council of Europe*, 2021, page 62, <https://rm.coe.int/needs-assessment-report-eng/1680a4af29>.

1. HISTORICAL BACKGROUND

High unemployment rates and the share of self-employed people in the labour market, the low level of occupational safety and health directly affecting the numbers of casualties and injuries, the manifestations of discrimination in employment relations, and the insufficient protection of employees' rights, were highlighted as the problematic areas of the recent period in the National Strategy 2019-2023 for the Labour and Employment Policy of Georgia, approved by the Government of Georgia in December 2019.⁵ There are two main underlying causes emphasised: firstly, insufficient legal protection of employees' rights, gaps in the implementation of international standards in the field of legal regulation; and, secondly, the lack of an effective system of the monitoring and supervision of compliance with legal regulation. Although the second cause is the cornerstone of this institutional assessment, the fact that the system of an adequate legal framework to ensure the rights of individuals along with sufficient institutional and procedural measures are vital for an effective supervisory mechanism to be taken into account.

While politicians are arguing that attracting investment is crucial in the fight against high unemployment and priority must be given to the creation of an attractive environment for employers rather than the implementation of European standards for the protection of employees' rights,⁶ there has been a move towards a policy of extreme deregulation in 2006, abolishing the internationally acknowledged standards for the protection of employees,⁷ achieving high ranks of the World Bank's Ease of Doing Business Index⁸ as well as the indicator of employment protection strictness of the Organisation for Economic Co-operation and Development⁹ at the cost of the protection of employees rights,¹⁰ the neglect of occupational safety, labour rights and social security.¹¹

At the same time, the labour inspectorate was abolished, naming corruption and the hindering of business among the main reasons.¹² This contributed to the collapse of labour safety standards and the emergence of systemic problems,¹³ led to negative consequences for workers, a significant increase in the number of occupational accidents as well as the number of work-related deaths

5 "On the Approval of the National Strategy 2019-2023 for the Labour and Employment Policy of Georgia", *Government of Georgia*, No. 662, 2019, <https://www.matsne.gov.ge/en/document/view/%204761408?publication=0>.

6 "Tbilisi Mayor Rejects Criticism on Labour Rights", *Civil.ge*, 2011, <https://old.civil.ge/eng/article.php?id=23602>.

7 Christian Timm, "Economic Regulation and State Interventions. Georgia's Move from Neoliberalism to State Managed Capitalism", *Forschungspapiere Research Papers*, 3 (2013), page 8, https://www.pfh.de/sites/default/files/2021-10/economic_regulation_and_state_interventions_georgia_s_move_from_neoliberalism_to_state_managed_capitalism_timm_fp_2013_03_0.pdf.

8 "No Year without Deaths. A Decade of Deregulation Puts Georgian Miners at Risk", *Human Rights Watch*, 2019, page 7, https://www.hrw.org/sites/default/files/report_pdf/georgia0819_web.pdf.

9 Angelika Muller, "Employment protection legislation (EPL) of Georgia: A review based on ILO standards, OECD indicators and comparative labour law", *International Labour Office*, 1 (2012), page 2, https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_202301.pdf.

10 "Georgia's Parliament adopts historic labour law reform package", *International Labour Organization*, 2020, https://www.ilo.org/moscow/news/WCMS_758336/lang-en/index.htm.

11 "Report for 2018", *Labour Conditions Inspection Department of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia*, 2018, page 4, <https://www.moh.gov.ge/uploads/files/2019/Failebi/27.06.2019-13.pdf>.

12 Giorgi Tchanturidze, "Abolition of Labour Inspection in Georgia: Consequences for Workers and the Economy", *Friedrich Ebert Stiftung Tbilisi*, 2018, page 3, <http://library.fes.de/pdf-files/bueros/georgien/14675.pdf>.

13 "Report for 2018", *supra note*, 11, page 4.

and injuries.¹⁴

Such policy has also been related to Georgia's limited international obligations in the field of labour law, as the country has not ratified the core conventions of the International Labour Organization (hereinafter referred to as "the ILO") No. 81¹⁵ and No. 129,¹⁶ governing labour inspections. Although after joining the Council of Europe in 1999 Georgia ratified the European Social Charter (Revised) (hereinafter referred to as "the ESC")¹⁷ in 2005, many provisions remained unaccepted.¹⁸ The situation started to change after the Association Agreement with the European Union¹⁹ came into force in September 2014, under which Georgia committed to respect, promote and realise in law and practice and in the whole territory the internationally recognised core labour standards, as embodied in the fundamental ILO conventions, reaffirmed commitment to effectively implement the ratified ILO conventions and consider the ratification of the remaining conventions (Article 229). These commitments are also reflected in the Association Agendas between the European Union and Georgia 2014-2016²⁰ and 2017-2020²¹ as well as in the National Strategy 2019-2023 for the Labour and Employment Policy of Georgia,²² where the adoption of a legal framework defining supervision functions and the establishment of an effective labour inspection system were identified as key priorities, which allows ILO standards related to a labour inspection mechanism to be considered binding in an indirect manner.²³

Although the establishment of a Labour Conditions Inspection Department of the Ministry of Labour, Health and Social Affairs of Georgia (hereinafter referred to as "the Labour Conditions Inspection Department") was one of the first steps, the lack of institutional independence,²⁴ limited mandate²⁵ and the insufficiency of the statutory protection of employees' rights²⁶ have been still identified as the main obstacles to an effective system of monitoring and supervision. An assessment made by the Social Justice Center (previously known as the Human Rights Education and Monitoring Center) revealed gaps in the legal nature, mandate, authority of the institution, a limited institutional form, weakening independence, effectiveness and sustainability guarantees,

14 *Ibid*, pages 3-4.

15 "Labour Inspection Convention", *International Labour Organization*, No. 81, 1947, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C081.

16 "Labour Inspection (Agriculture) Convention", *International Labour Organization*, No. 129, 1969, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100_ILO_CODE:C129:NO.

17 "European Social Charter (Revised)", *Council of Europe*, ETS No. 163, 1996, <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=163>.

18 Including, among others, those regulating the right to safe and healthy working conditions with enforcement by measures of supervision (Article 3), the elimination of risks in inherently dangerous or unhealthy occupations (Article 2(4)), the right to a decent standard of living (Article 4(1)), the right to paid leave (Article 2(3)), the right to vocational guidance (Article 9) and others; detailed information available at: <https://www.coe.int/en/web/european-social-charter/georgia>.

19 "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", *Official Journal of the European Union*, L 261/4, 2014, [https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:22014A0830\(02\)](https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:22014A0830(02)).

20 "Association Agenda between the European Union and Georgia 2014-2016", https://eeas.europa.eu/archives/delegations/georgia/documents/eap_aa/associationagenda_2014_en.pdf.

21 "Association Agenda between the European Union and Georgia 2017-2020", <http://old.infocenter.gov.ge/1569-association-agenda-between-eu-and-georgia-2017-2020.html>.

22 "On the Approval of the National Strategy 2019-2023 for the Labour and Employment Policy of Georgia", *supra note*, 5.

23 Eto Gvritishvili, "Fragmented Labour Inspection – Labour Rights Left without Oversight", *Human Rights Education and Monitoring Center*, 2020, page 6, <https://socialjustice.org.ge/en/products/shromis-fragmentuli-inspektireba-zedam-khedvelobis-gareshe-darchenili-shromiti-uflebebi>.

24 "No Year without Deaths. A Decade of Deregulation Puts Georgian Miners at Risk", *supra note*, 8, page 3; "National Baseline Study on Business and Human Rights", *Public Defender (Ombudsman) of Georgia*, 2017, page 184, <https://globalnaps.org/wp-content/uploads/2018/04/georgia-national-baseline-assessment-english.pdf>; "Annual Report of Labour Conditions Inspection Department 2019", *Labour Conditions Inspection Department of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia*, 2019, page 31, https://www.moh.gov.ge/uploads/files/2019/Failebi/LCID_Eng_a4_2.pdf.

25 "Abolition of Labour Inspection in Georgia: Consequences for Workers and the Economy", *supra note*, 12, page 3.

26 "Fragmented Labour Inspection – Labour Rights Left without Oversight", *supra note*, 23, page 4.

the insufficiency of mechanisms for the inclusion of social partners, which raised questions over the transparency and trust²⁷ of the newly established Labour Conditions Inspection Department. In its 2020 report, the Labour Conditions Inspection Department acknowledged that it had not played an efficient and active role that would have been conferred by the direct mandate of control and sanctioning.²⁸

Three major statutory amendments addressing these issues were recently adopted: a) the Organic Law of Georgia on Occupational Health and Safety (entered into force in September 2019),²⁹ extending the institutional mandate and empowerment in the performance of delegated functions in the field of occupational safety and health; b) amendments to the Labour Code of Georgia (entered into force in September 2020),³⁰ not only directed at eliminating inconsistencies with international legal standards in the field of the protection of labour rights but also conferring the functions of a supervisory authority with an implementation mechanism on the labour inspectorate; c) the Law of Georgia on the Labour Inspection Service (entered into force in January 2021),³¹ on the basis of which the Labour Inspection Service was established, and the goals of activities, mandate, procedural aspects and institutional structure were specified.

One of the purposes of this institutional assessment is to discuss the above-mentioned legal instruments in detail and analyse their impact on the activities of the Labour Inspection Service, conditions to contribute effectively to the implementation of employee's rights in practice and to propose directions for further improvements.

27 "An Assessment of the Labour Inspection Mechanism and a Study of Labour Rights Conditions in Georgia", *Human Rights Education and Monitoring Center*, 2017, page 155, https://socialjustice.org.ge/uploads/products/pdf/An_Assessment_of_the_Labour_Inspection_Mechanism_and_a_Study_of_Labour_Rights_Conditions_in_Georgia.pdf.

28 "Activity Report of the Labour Conditions Inspection Department", *Labour Conditions Inspection Department of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia*, 2020, page 3, https://www.moh.gov.ge/uploads/files/2019/Failebi/LCID_Report_2020_ENG.pdf.

29 "Organic Law of Georgia on Occupational Health and Safety", No. 4283-III, 2019, <https://www.moh.gov.ge/uploads/files/2019/Failebi/08.06.2019.pdf>.

30 "Labour Code of Georgia", No. 4113-III, 2020, <https://matsne.gov.ge/en/document/view/1155567?publication=21>.

31 "Law of Georgia on the Labour Inspection Service", No. 7178-III, 2020, <https://matsne.gov.ge/en/document/download/5003057/0/en/pdf>.

2. INSTITUTION, ITS VISION, MISSION AND GOALS

2.1. SIGNIFICANCE OF CLEAR, RESULTS-ORIENTED INSTITUTIONAL GOALS

The effectiveness of an institution depends to a large extent on what are its essence and goals and how they are perceived both in society and within the institution. Policies and directions for the legal regulation of labour relations are formed in the legislative procedure. The task of the government is to create a system that can effectively ensure the implementation of such a policy (legal regulation), at the centre of which is an enabled, competent, innovative and reliable labour inspectorate.

The International Association of Labour Inspection provided the following definition of the common purpose of the modern labour inspectorate: to ensure social peace and social justice by preventing unfair work practices, work-related accidents or occupational illnesses, and by working in collaboration with employer and worker organisations.³² Labour inspection is a public function of labour administration that ensures the application of labour legislation in the workplace. Its main role is to convince social partners of the need to observe the law in the workplace and their mutual interest in this regard, through preventive, educational and, where necessary, enforcement measures.³³

According to Article 5(1) of the Law of Georgia on the Labour Inspection Service,³⁴ the goal of the institution is to ensure the effective application of labour norms. The future vision and strategy of the Labour Inspection Service is a mandatory part of the annual report of a Chief Labour Inspector (Article 10(2) of the Law of Georgia on the Labour Inspection Service). In the last annual report, the protection of labour rights, and a decent, safe and non-discriminatory working environment are highlighted as the foundations on which the institution is built.³⁵ Such identification of essential goals and directions of operation shall be deemed to be in line with the standards laid down by the ILO, according to which the main purposes of labour inspection include the need to ensure that relevant labour legislation is respected in workplaces with a view to achieving decent employment and working conditions, employers and workers receive information and guidance about how to comply with legal requirements, enterprises adopt adequate measures to ensure that work practices and environment do not put employees into safety and health risks, and feedback information and lessons learnt from the practice are used as a means of developing legislation to improve legal coverage taking into account new social, physical and psychological work-related risks.³⁶

During the interviews with representatives of stakeholders, not only the above-mentioned statutory goals were cited but also the importance for the Labour Inspection Service to become a key player in creating a harmonious relationship between employers and employees has been

32 "International Common Principles for Labour Inspection", *International Association of Labour Inspection*, <https://www.iali-aiit.org/ws/media-library/1d36a80fe8874b34abd4f34589b3261d/international-common-principles.pdf>.

33 "Labour Inspection: What it Is and What it Does", *International Labour Organization*, page 8, https://www.ilo.org/wcms-sp5/groups/public/--ed_dialogue/--lab_admin/documents/instructionalmaterial/wcms_141403.pdf.

34 "Law of Georgia on the Labour Inspection Service", *supra note*, 31.

35 "2021 Report", *Labour Inspection Service*, 2021, page 2, https://www.moh.gov.ge/uploads/files/2022/saministros_angarishi/shroma_angarishi_2021_eng.pdf.

36 "Labour Inspection: What it Is and What it Does", *supra note*, 33, page 14.

identified as the desired direction. On the other hand, some representatives of stakeholders, after being asked to elaborate on the organisation's mission or goals, highlighted specific functions (areas of the institutional mandate) or even procedural aspects. It is important to emphasise that focusing on tools and mechanisms to achieve results, without clearly and precisely identifying the mission and main directions, could increase the risk of a formalistic, process-oriented, self-directed, bureaucratic approach, hindering the development of an effective organisational culture.

2.2. INSTITUTIONAL INDEPENDENCE

Although being from 2015 within the framework of the central government, in compliance with ILO standards,³⁷ as mentioned above, the lack of institutional independence was emphasised as one of the main shortcomings of the mechanism by which the Labour Conditions Inspection Department operated within the Ministry of Labour, Health and Social Affairs of Georgia (later – the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia) (hereinafter referred to as “the Ministry”). This led to the institution's ambition for a separate legal entity under public law (hereinafter referred to as “a LEPL”) to be created with development strategies and regional offices,³⁸ which was achieved after the adoption by the Parliament of the Law of Georgia on the Labour Inspection Service that came into force on 1 January 2021.

Transformation into a LEPL creates legal preconditions for the independence of decision-making, legal capacity, which implies the right of the subject to acquire rights and obligations on its own behalf, the right to have property and its own budget, and an ability to establish regional representations.³⁹ The establishment of an independent legal entity empowers its head (Chief Labour Inspector) to make decisions within his/her powers on issues falling within the competence of the institution, led by a responsibility to ensure quality and transparency. Independence presupposes accountability for actions and performance to a controlling institution (the Ministry), as well as to society as a whole, first of all in the form of annual reports.⁴⁰ During the interviews, the representatives of the Labour Inspection Service as well as the stakeholders emphasised the extreme significance of the reform in terms of increasing operational efficiency, both actual (less bureaucracy in decision-making) and perceived. Apart from a generalised opinion of some stakeholders that ministerial control does not allow to consider the Labour Inspection Service as fully independent, no specific shortcomings of the institutional form were identified.

It is important to mention that the supervision of the legality and efficiency and the institution's financial and economic activities by the minister, and his/her right to revoke decisions of the Chief Labour Inspector,⁴¹ creates legal preconditions for interfering in the activities of the institution, limiting independence not only in the field of technical, financial and organisational issues but also in the exercise of the institution's direct functions. On the other hand, the lack of accountability can negate the benefits of independence and create space for abuse, which is a balance that has to be found. During the interviews, the representatives of the Labour Inspection Service and

37 “An Assessment of the Labour Inspection Mechanism and a Study of Labour Rights Conditions in Georgia”, *supra note*, 27, page 153.

38 “Activity Report of the Labour Conditions Inspection Department”, *supra note*, 28, page 53.

39 “An Assessment of the Labour Inspection Mechanism and a Study of Labour Rights Conditions in Georgia”, *supra note*, 27, page 144.

40 “Law of Georgia on the Labour Inspection Service”, *supra note*, 31, Art. 10.

41 “Statute of the Legal Entity under Public Law – Labour Inspection Service”, *Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia*, Order No. 01-119/6, 2020, Art. 8, <https://matsne.gov.ge/ka/document/view/5038127?publication=5>.

the Ministry noted that effective cooperation in pursuit of institutional goals is ensured, control is not used in practice in the exercise of the institution's direct functions, and decisions in the field of organisational activities are usually made after prior consultations with the officials of the Ministry. Though such consultations cannot be seen as an exceptionally negative factor in a newly established, developing organisation, especially if politically engaged influences incompatible with the objectives of the institution⁴² are avoided, the mechanism of social cooperation, including the mandate of the Board of Advisors, discussed below, would lead to the development of a greater independence and transparency-oriented organisational culture.

2.3. TERRITORIAL COVERAGE

Though two territorial units – Imereti and Ajara Regional Divisions – were established as a result of the institutional reform,⁴³ the statistics of the Labour Inspection Service still reveal the concentration of activities in Tbilisi.⁴⁴ In 2020, the opening of two regional offices was declared the first stage of the structural organisational reform.⁴⁵ However, later, despite criticisms regarding insufficient territorial coverage, the absence of offices in regions with concentration of various heavy, harmful and hazardous employment places, challenges in terms of providing maximum information to employees on the protection of occupational safety and labour rights, and the need for further regional development, were no longer emphasised, noting that greater centralisation helps to tackle corruption.⁴⁶

During the interviews, the representatives of the Labour Inspection Service and the Ministry emphasised the sufficiency of regional coverage, noting that the need for further structural development will be re-evaluated in the future. On the other hand, representatives of other stakeholders criticised such an approach, highlighting that the scope of activities varies considerably between regions and that the refusal to set up additional units is due to financial reasons. Stakeholders also emphasised that the proximity of territorial units to the workplace would facilitate collaboration among labour market actors, contribute to the dissemination of information, and allow a more accurate assessment of regional specificities. It should be noted that systematic and targeted decisions regarding regional development must be made according to a whole set of criteria (not limited to finance) that would allow for the evaluation of contribution to institutional efficiency (including, among others, the number of workplaces, number of employers assigned to different risk groups, violation statistics, the awareness of and compliance with legal requirements, attitudes towards social cooperation and the activities of the Labour Inspection Service), which should not be sacrificed on grounds such as the threat of corruption that could

42 Such an influence cannot be seen as unrealistic, given the fact that there are no procedures set for the implementation of the right of the minister to suspend or revoke illegal decisions of the Chief Labour Inspector (Article 8(2) of the Statute of the Legal Entity under Public Law – Labour Inspection Service, *ibid*), no criteria are provided on what grounds and who would decide regarding the illegality of decisions. On the other hand, one cannot fail to mention that this is not an exclusive measure designed specifically for the Labour Inspection Service, since, according to Article 11 of the Law of Georgia on Legal Entities under Public Law, state control of this nature and scope is applicable to all LEPLs (“Law of Georgia on Legal Entities under Public Law”, No. 2052, 1999, Art. 11, <https://matsne.gov.ge/ru/document/download/19204/19/en/pdf#:~:text=A%20legal%20entity%20under%20public%20law%20is%20a%20separate%20organisation.political%2C%20state%2C%20social%2C%20educational>).

43 “Statute of the Legal Entity under Public Law – Labour Inspection Service”, *supra note*, 41, Art. 5(3).

44 57% of occupational safety and health and 62% of labour rights-related site inspections were carried out in Tbilisi in 2021; “2021 Report”, *supra note*, 35, pages 21, 30.

45 “Activity Report of the Labour Conditions Inspection Department”, *supra note*, 28, page 53.

46 “Labour Inspection Service Assessment 2021”, *Social Justice Center*, 2021, pages 32-33, https://socialjustice.org.ge/uploads/products/pdf/%E1%83%A8%E1%83%A0%E1%83%9D%E1%83%9B%E1%83%98%E1%83%A1_%E1%83%98%E1%83%9C%E1%83%A1%E1%83%9E%E1%83%94%E1%83%A5%E1%83%AA%E1%83%98%E1%83%90-ENG_1651067075.pdf.

be addressed through organisational measures (the stimulation of social partnership, the fixing of transparent procedural requirements and evaluation criteria, the implementation of ethical standards, activity reporting, etc.), discussed in the present and other chapters of this report.

2.4. FORMS OF SOCIAL PARTNERSHIP AND TRUST BUILDING

In terms of transparency and accountability, the importance of social partnership tools cannot be overemphasised. Representatives of parties to the Tripartite Social Partnership Commission as well as of relevant committees of the Parliament and of the Public Defender's Office are included in the composition of the Board of Advisors of the Labour Inspection Service.⁴⁷ An active involvement of the members of this consultative body, and the development of appropriate recommendations by them, is essential to improve the efficiency of labour inspection activities and to establish an effective labour inspection system in the country,⁴⁸ eliminating shortcomings related to the lack of mechanisms for the institutional involvement of social partners (employers and employees).⁴⁹ During the interviews, positive general feedback was provided regarding the evaluation of the activities of the Board of Advisors, including discussions on institutional activities and the need to close regulatory gaps, consultations on the interpretation of legal norms, etc.

Cooperation and collaboration with other government services and private institutions engaged in labour protection are named by the International Labour Organization among the key principles guiding labour inspection.⁵⁰ A genuine commitment to cooperation and open-minded culture is also highlighted by the International Association of Labour Inspection.⁵¹ Different kinds of cooperation with state and municipal bodies, including information exchange, joint monitoring and inspections, and coordinated functioning are directly enshrined in Article 17 of the Law of Georgia on the Labour Inspection Service, and Articles 4 and 14 of the Rules and Conditions of Entry and Inspection of the Facilities Subject to Inspection.⁵² Providing a list of cooperation agreements in its last annual report, the Labour Inspection Service indicated that cooperation with ministries, public agencies and other institutions covers areas such as integrated monitoring, preventive measures, data exchange, recommendations, educational and awareness raising activities, etc.⁵³ During the interviews, active cooperation in the field of exchange of information with different institutions, including public registers, was emphasised.

It is also important to note that the reform has brought not only budgetary autonomy but also increased funding,⁵⁴ positively affecting the structure and number of staff,⁵⁵ as a response to the perception of inefficiency, incompleteness, and superficiality of activities.⁵⁶ Staffing and other related issues are discussed in detail in the chapter "Staff and organisational structure".

47 "Law of Georgia on the Labour Inspection Service", *supra note*, 31, Art. 9.

48 "Labour Inspection Service Assessment 2021", *supra note*, 46, page 34.

49 "An Assessment of the Labour Inspection Mechanism and a Study of Labour Rights Conditions in Georgia", *supra note*, 27, page 142.

50 "Labour Inspection: What it Is and What it Does", *supra note*, 33, pages 13, 20.

51 "International Common Principles for Labour Inspection", *supra note*, 32, page 12.

52 "On the Approval of the Rules and Conditions of Entry and Inspection of the Facilities Subject to Inspection", *Government of Georgia*, Resolution No. 99, 2020, <https://matsne.gov.ge/ka/document/view/4796359?publication=2>.

53 "2021 Report", *supra note*, 35, pages 57, 78-79.

54 From GEL 1.5 million in 2019, GEL 3.2 million in 2020 to GEL 4.4 million in 2021 and GEL 6.3 million in 2022; "Labour Inspection Service Assessment 2021", *supra note*, 46, page 31; "Law of Georgia on 2021 State Budget", No. 45-116ლ-X83, 2020, <https://matsne.gov.ge/ka/document/view/5071216?publication=3>; "Law of Georgia on 2022 State Budget", No. 1184-VI8ლ-X83, 2021, <https://www.matsne.gov.ge/ka/document/view/5309246?publication=0>.

55 Number of labour inspector positions: until 2017 – 25; in 2018-2019 – 40; in 2020 – 100; in 2021-2022 – 109; "2021 Report", *supra note*, 35, page 13.

56 "An Assessment of the Labour Inspection Mechanism and a Study of Labour Rights Conditions in Georgia", *supra note*, 27, pages 35-36.

2.5. PREVENTIVE NATURE OF ACTIVITIES AND SIGNIFICANCE OF SANCTIONING TOOLS

Among the principles and objectives of the institution, enshrined in Articles 4-5 of the Law of Georgia on the Labour Inspection Service and Article 2 of the Statute of the Legal Entity under Public Law – Labour Inspection Service, objectivity and impartiality, legality, professionalism, the protection of confidentiality as well as the provision of information regarding the implementation of labour legislation, raising public awareness, the review of complaints with a sanctioning tool, inspections, and proposals to refine labour legislation, are emphasised. These principles and objectives, assessing them in the context of the above-mentioned main institutional goal to ensure the effective application of labour norms, clearly reveal the need to create a proper balance between preventive, partnership and legal education-oriented measures, on the one hand, and supervisory activities with sanctioning authority, on the other. Although a preventive environment was supposed to be an ultimate goal, an institution without the power to use coercive measures would be difficult to expect to play an important role, especially in transitional societies.

The Social Justice Center's evaluation of the activities of the Labour Conditions Inspection Department in 2017 revealed the lack of supervision powers because the institutional mandate was extremely curtailed, and was mainly limited to awareness raising and consulting of employers.⁵⁷ This situation has led not only to the strengthening of institutional status but also to the development of a mandate with a sanctioning tool, which will be discussed in more detail in the next chapter. From an institutional point of view, it is important to assess the impact of such changes on stakeholders' and public perceptions of the institution's objectives and operating principles.

What is relevant in evaluating the activities of the labour inspectorate is not the fact of the application of sovereign powers, but the possibility of exercising them and the inevitability of the consequences, which also have a preventive impact, contributing to a culture of compliance with the law, and thus to the labour inspectorate as a partner in the development of this culture, but not as an enemy or a source of threat. Supervision without the threat of penalties or legal action would weaken the credibility of the labour inspection function. On the other hand, the goal is not to punish offences but to have the law enforced, inspection without advice would be too legalistic.⁵⁸ During the interviews, stakeholders emphasised that the legal framework creates all the conditions for the Labour Inspection Service to become a prevention-oriented partner in the fields of occupational safety and health as well as the protection of labour rights, that practice reveals positive developments,⁵⁹ and only the future will show whether it will not become a self-serving, punitive institution.

⁵⁷ *Ibid*, pages 126-127.

⁵⁸ "Labour Inspection: What it Is and What it Does", *supra note*, 33, page 17.

⁵⁹ Even the performance of an additional function of the implementation of high scale Covid-19 management measures in 2020-2021, although hindering the full implementation of the direct mandate, was evaluated during the interviews by a majority of stakeholders as a positive contribution to awareness raising about the institutional mandate and empowerments, building relations with and trust among social partners and society as a whole.

3. MANDATE

3.1. DEVELOPMENT OF INSTITUTIONAL FUNCTIONS

To achieve the objectives set for the establishment of an institution, it is essential to provide the institution with sufficient powers. Effective protection of employees' rights cannot be achieved only through a material legal framework. It is indispensable for a mechanism to be created to oversee the realisation of these rights, which will provide employees with a real opportunity to protect their labour rights in practice.⁶⁰

ILO Labour Inspection Convention No. 81 identifies three main functions of the labour inspectorate, revealing the strategic substance of the institutional mandate: a) to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work; b) to supply technical information and advice to employers and workers; c) to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.⁶¹ Though international experience reveals two major types of labour inspection in terms of their mandate, namely inspection agencies with "general" mandate, the competence of which extends to the whole spectrum of working conditions and employments, and inspection agencies with "special" mandate, the competence of which is rather narrow, as a rule, limited to the oversight of occupational safety,⁶² in countries where labour inspectors deal only with occupational safety and health issues there are other public institutions or organisations responsible for checking whether employers comply with their legal obligations towards employees.⁶³ Inspection and advice should go hand-in-hand to give incentives to employers to adhere to the objectives of the law and, accordingly, adopt a more positive attitude towards the need for improvements in working conditions, encourage information-sharing and an exchange of best practices between enterprises, stimulate a dialogue between employers and employees, and give employees a better understanding of their rights (awareness raising).⁶⁴

Historically, incomprehensive mandate, applicable only in the field of occupational health and safety (not including the control of labour conditions, such as working time) and only to workplaces with hard, harmful or hazardous labour conditions, has been identified as a significant problem,⁶⁵ not constituting a fully-fledged labour inspection system,⁶⁶ a major challenge for the realisation of core labour standards in Georgia.⁶⁷ The absence of will for the application of international standards in the field of occupational safety and health was also revealed by the fact that Georgia did not ratify occupational safety and health, as well as some important labour rights, related ILO

60 "Fragmented Labour Inspection – Labour Rights Left without Oversight", *supra note*, 23, page 8.

61 "Labour Inspection Convention", *supra note*, 15, Art. 3. The same activities are also emphasised in ILO Labour Inspection (Agriculture) Convention No. 129; "Labour Inspection (Agriculture) Convention", *supra note*, 16, Art. 6.

62 "Fragmented Labour Inspection – Labour Rights Left without Oversight", *supra note*, 23, page 7.

63 "A mapping report on Labour Inspection Services in 15 European countries", *European Federation of Public Service Unions*, 2012, https://www.epsu.org/sites/default/files/article/files/EPUSU_Final_report_on_Labour_Inspection_Services.pdf.

64 "Labour Inspection: What it Is and What it Does", *supra note*, 33, page 17.

65 "Abolition of Labour Inspection in Georgia: Consequences for Workers and the Economy", *supra note*, 12, page 3.

66 "The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') assessment of Georgia covering the period 2016-2017", *High Representative of the Union for Foreign Affairs and Security Policy, European Commission*, 2018, pages 10-11, http://trade.ec.europa.eu/doclib/docs/2018/january/tradoc_156541.pdf.

67 "Targeted Surveys on application of core labour standards: Georgia", *Directorate-General for Employment, Social Affairs and Inclusion, European Commission, Publications Office*, 2020, page 5, <https://data.europa.eu/doi/10.2767/269110>.

conventions and ESC provisions.⁶⁸

As mentioned above, the situation has improved significantly after the adoption of the Organic Law of Georgia on Occupational Health and Safety in 2019, amendments to the Labour Code of Georgia in 2020 and the Law of Georgia on the Labour Inspection Service in 2021. Under Articles 3 and 5(2) of the Law of Georgia on the Labour Inspection Service,⁶⁹ the institution's responsibilities are linked to the implementation of labour norms, the definition of which is included, among others, in both the Organic Law of Georgia on Occupational Health and Safety and the Labour Code of Georgia. Article 75 of the Labour Code of Georgia⁷⁰ also grants the Labour Inspection Service the power to ensure an effective application of legal norms related to labour rights, including the timely identification and prevention of direct and indirect discrimination, sexual harassment, gender sensitivity, forced labour and labour exploitation, the performance of agreements reached through labour mediation and the enforcement of other main issues prescribed by labour legislation.⁷¹ The Labour Inspection Service was also nominated as a supervisory body under the Organic Law of Georgia on Occupational Health and Safety, expanding the scope of this law and its applicability to all areas of economic activity,⁷² and eliminating the previously emphasised contradiction with the international standards established by the ILO, which envisages the examination of the full spectrum of labour rights as a scope of operation of the labour inspection.⁷³

Several aspects are important for the proper implementation of the extended mandate for the protection of labour rights, a decent, safe and non-discriminatory working environment: a) universal application to everyone; b) the sufficiency of legal regulation; c) proportional attention to all areas covered by the mandate.

3.2. INFORMAL WORK AND OTHER UNIVERSALITY-RELATED CHALLENGES

One of the essential preconditions for the adequate protection of employment-related rights is that the mandate of the labour inspectorate must cover not only all areas of economic activity,⁷⁴ but also all participants of the labour market, with informal economic sector and self-employed individuals not left behind.⁷⁵ This is particularly important given the fact that Georgia has one of the highest informal economies in the world,⁷⁶ posing threats to employees' rights, especially in non-standard, crisis situations.⁷⁷ To be adequate and appropriate, the labour inspection system should be extended to cover all workplaces in the informal economy in order to protect workers

68 Weekly Rest (Industry) Convention No. 14 (1921), Occupational Safety and Health Convention No. 155 (1981), Night Work Convention No. 171 (1990), Safety and Health in Mines Convention No. 176 (1995), Safety and Health in Agriculture Convention No. 184 (2001) and others; a full list of non-ratified conventions available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210_COUNTRY_ID:102639; examples of non-accepted ESC provisions – *supra note*, 18.

69 "Law of Georgia on the Labour Inspection Service", *supra note*, 31.

70 "Labour Code of Georgia", *supra note*, 30.

71 "Activity Report of the Labour Conditions Inspection Department", *supra note*, 28, page 6.

72 *Ibid*, page 5.

73 "An Assessment of the Labour Inspection Mechanism and a Study of Labour Rights Conditions in Georgia", *supra note*, 27, page 127.

74 "Labour Inspection: What it Is and What it Does", *supra note*, 33, page 13.

75 "An Assessment of the Labour Inspection Mechanism and a Study of Labour Rights Conditions in Georgia", *supra note*, 27, pages 110 and 127.

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

77 Giorgi Tchanturidze, Tamar Surmava, "Impact of the Pandemic on the Labour Market and Employees Positions", report supported by the United States Agency for International Development and the East-West Management Institute, 2021, pages 22-23, <http://ewmi-prolog.org/images/files/8108GTUCReportENG.pdf>.

and provide guidance for enforcement bodies, including on how to address working conditions in the informal economy.⁷⁸ The possibility of identifying the informal sector relations as labour relations should be defined by law, and the labour inspectorate should be given a mandate to determine an employment relationship by law,⁷⁹ applying the “principle of preference of facts”⁸⁰ which emphasises the substance of the relationship instead of the form (the title) of the contract. The interviews with the stakeholders revealed insufficient attention to this issue, a formal approach determined largely by the specifics of the legal regulation. The representatives of the Labour Inspection Service acknowledged the lack of indicators to identify informal work.

In this respect, it is important to note a broader concept of beneficiaries of protection in the field of occupational safety and health, including both employees who carry out certain work on the basis of an employment agreement, and “other persons”, defined as those who perform work or an activity with the employer’s permission or based on another agreement,⁸¹ while the Labour Code of Georgia provides for a narrower one, naming those performing under an employment contract only.⁸² There is not only the concept of “employee” as a person who performs certain work on the basis of an employment agreement or a public servant but also the concept of “interested person” that includes employees, employees’ associations and the Public Defender’s Office, enshrined in the Law of Georgia on the Labour Inspection Service.⁸³ Such legal regulation, considered in conjunction with the provision of Article 13(1) of the Law of Georgia on the Labour Inspection Service, stating that the Labour Inspection Service carries out inspections on the basis of a complaint of an interested person, as well as the provision of Article 77(1) of the Labour Code of Georgia, excluding the right of the Labour Inspection Service to impose sanctions for violations of rights provided for in Articles 47-50 of the Labour Code that regulate the termination of employment, collective redundancies and the transfer of undertakings, can be interpreted as limiting the right of initiating an inspection not only to interested parties not directly named in the law but also to employees whose employment contract has been terminated. Although during the interviews the representatives of the Labour Inspection Service indicated that the concept of “employee” is interpreted broadly as including both those seeking to conclude an employment contract and those with whom the employment contract was terminated, some stakeholders found the possibility of a restrictive (narrow) interpretation of the existing regulation as a limitation of the institutional mandate.⁸⁴

Positive signs towards a systematic approach were also observed during the interviews, as the representatives of the Labour Inspection Service emphasised the importance of avoiding the delimitation of institutional powers in the field of occupational safety and health, and in the field

78 “Transition from the Informal to the Formal Economy Recommendation”, *International Labour Organization*, No. 204, 2015, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R204.

79 “Informal and Non-standard Employment in Georgia: Challenges and Possibilities to Reform”, *Social Justice Center*, 2021, page 48, https://socialjustice.org.ge/uploads/products/pdf/Shroma_170x240_ENG_WEB_1642772083.pdf.

80 “Regulating the Employment Relationship in Europe: A Guide to Recommendation No. 198”, *International Labour Office, European Labour Law Network*, 2013, page 33, https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_209280.pdf.

81 “Organic Law of Georgia on Occupational Health and Safety”, *supra note*, 29, Art. 3. It is worth noting that the wording “employee or other person” is also used in defining workplace in Article 3 of the Law of Georgia on the Labour Inspection Service, which also enables a broader, more inclusive interpretation of the legal framework.

82 “Labour Code of Georgia”, *supra note*, 30, Art. 3(3).

83 “Law of Georgia on the Labour Inspection Service”, *supra note*, 31, Art. 3.

84 Such restriction could be illustrated by a practical example where the Labour Inspection Service refuses to consider requests from individuals to assess the compliance of an employment relationship with the legal requirements if such relationship has already been terminated. The significance of such an approach would become even higher if one would bear in mind the prevailing tendency, emphasised by stakeholders, that employees often avoid making complaints against their employers for fear of possible negative consequences (termination of employment or deterioration of working conditions), which means that the possibility of recourse to the Labour Inspection Service for assistance in enforcing statutory employment rights after the termination of the employment relationship is much greater.

of the protection of labour rights, linking, for example, the regulation of overtime or night work to the employee's right to safe and healthy working conditions, even through joint inspections, which would allow interpreting the competence of the Labour Inspection Service broadly not only in terms of the subjects affected but also in terms of the physical locations to which initiatives may be directed,⁸⁵ which is extremely important in cases of non-standard labour relations.

On the other hand, the Public Defender's Office in their written observations emphasised the narrow interpretation of the scope of competence in the field of anti-discrimination, applied by the Labour Inspection Service refusing to deal with cases of possible discrimination (e. g. sexual harassment) in a horizontal relationship (by a non-supervisor) and referring such cases to the Public Defender's Office. An employer's liability is not limited to direct illegal actions. An employer is also subject to an obligation to ensure a working environment that complies with legal requirements. The refusal to assess the fact of possible discrimination in the context of this obligation would have a negative impact on the effectiveness of the protection of employee's rights.

Assessing the reasons for choosing the narrow definition of subjects entitled to initiate inspections in the newly assigned area of the supervision of labour rights, as well as excluding the evaluation of the lawfulness of the termination of employment, collective redundancies and the transfer of undertakings from the mandate of the Labour Inspection Service, stakeholders identified among the main grounds the need to limit the workload and to leave extremely complex evaluative functions, which can only be attributed to highly qualified specialists, and the competence of courts. Such reasoning suggests the next stage in the development of the regulatory environment awaiting the future to achieve a fully-fledged institutional mandate.

Among other aspects of legal regulation that are worth mentioning, the stakeholders emphasised some outdated technical regulations in the field of occupational safety and health, complicating the interpretation and application of the law in situations related to the specifics of individual forms of economic activity. The possibility to conclude oral employment agreements, although limited in terms of the duration of the employment relationship,⁸⁶ may also be seen as hampering the capacity of the Labour Inspection Service in the fight against illegal work. The non-existence of clearly set substantive standards on labour rights (for example, a minimum wage, standard daily working time, a minimum rate of remuneration paid for overtime, a maximum limit for total overtime work, etc.) also has a negative impact on the statutory protection of employees and at the same time on the institutional powers (actual and perceived) of the Labour Inspection Service.

The crucial function of the Labour Inspection Service to be mentioned here is the submission of proposals to improve the labour legislation,⁸⁷ bringing to the notice of the competent authority defects or abuses resulting from the unsuitability of the existing provisions or omissions.⁸⁸ Although it was highlighted as an institutional goal,⁸⁹ and the representatives of the Labour Inspection Service have identified some examples of proposals for improvements to the legal framework prepared by the institution, a systematic approach addressing shortcomings or limitations emerging while performing other functions is of paramount importance.

85 Under Article 3 of the Organic Law of Georgia on Occupational Health and Safety, a work area includes all the workplaces and related territories taken together, where the employee and other person(s) are present/move around for work-related purposes, and who directly or indirectly are under the control of an employer. A similar definition of work space is provided in Article 3 of the Law of Georgia on the Labour Inspection Service.

86 "Labour Code of Georgia", *supra note*, 30, Art. 12(1-3).

87 "Law of Georgia on the Labour Inspection Service", *supra note*, 31, Art. 5(2).

88 "Labour Inspection: What it Is and What it Does", *supra note*, 33, page 18.

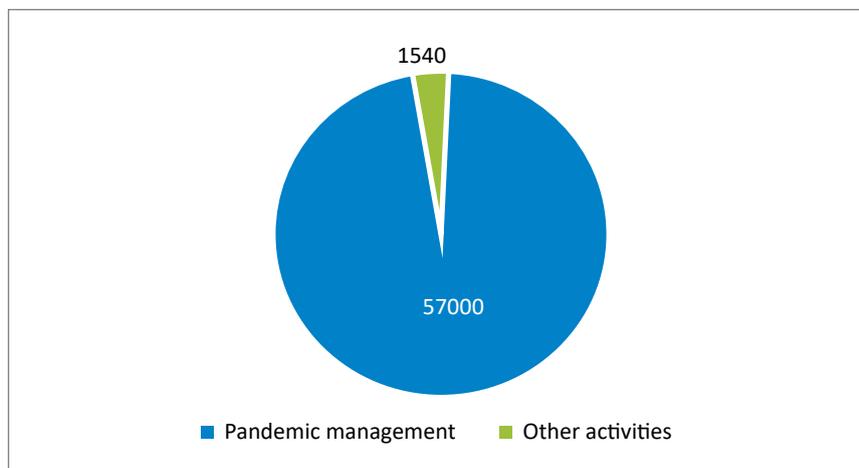
89 "Activity Report of the Labour Conditions Inspection Department", *supra note*, 28, page 63.

3.3. FOCUS ON ALL AREAS OF ACTIVITY

As mentioned above, the expansion of the areas of the institutional mandate highlights the importance of sufficient, proportional attention to all issues covered. Whereas the adequacy of staff (including inspectors) and other organisational issues will be addressed in another chapter of this report, several problematic mandate-related aspects emerged during the assessment.

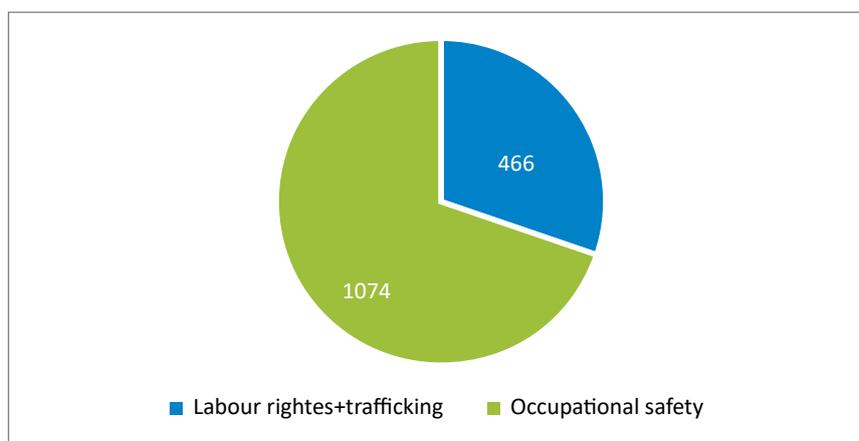
In addition to the extended mandate, the Labour Inspection Service was also entrusted with a very large-scale temporary function related to the management of the Covid-19 pandemic, which had a negative impact on the implementation of the institution's primary functions. During the interviews, the representatives of the Labour Inspection Service and the stakeholders emphasised that this function was time-consuming and accounted for the absolute majority of the institution's actions in 2020-2021, which prevented both the full-scale implementation of the extended mandate and the possibility of a detailed assessment of the importance of such extension.⁹⁰

Number of activities in 2021



When monitoring statistical data, it should be noted that the number of activities in the field of labour rights, when compared to the number of activities related to occupational safety and health issues in 2021, does not reveal a focus on this new area of the institutional mandate.⁹¹

Number of activities in 2021



⁹⁰ Under the latest annual report of the Labour Inspection Service, 57 000 activities related to the management of the pandemic were performed in 2021, when the total number of activities related to the supervision of forced labour and labour exploitation (139), labour rights (327) and occupational safety and health (1 074), amounted to 1 540; "2021 Report", *supra note*, 35, page 10.

⁹¹ Data taken from the 2021 annual report; "2021 Report", *ibid*, page 10.

The statistics for the first quarter of 2022, provided by the Labour Inspection Service in the course of this assessment, show positive development both in total numbers as well as the portion of labour rights-related activities.⁹² It is also important to mention that only 36 inspections out of 327 activities in the field of labour rights, conducted in 2021, were based on complaints which, having in mind the powers to apply sanctions, were linked by the Public Defender's Office to the low level of the awareness of employees about inspection powers,⁹³ highlighting the importance of providing the public with information promoting the observance of labour norms, and raising of public awareness through information campaigns and other effective actions,⁹⁴ as another function of the Labour Inspection Service. In response to this conclusion, the representatives of the institution emphasised during the interviews the importance of public awareness measures, acknowledging that only the first steps are being taken to improve communication and expand the network of information channels.

Although the decision of the legislator to start the list of extended functions of the Labour Inspection Service with the provision of consultations and information, only then specifying the review of complaints and inspections, is criticised on the ground that in a situation where labour rights are being massively violated and the statistics of injuries and deaths in the workplace are still alarming, focus on active inspections is essential,⁹⁵ it is important to emphasise that, on the one hand, as mentioned above, there is no contradiction between enforcement tools and preventive measures,⁹⁶ and, on the other hand, the actual situation does not indicate concentration on educational functions. Although in its 2021 annual report the Labour Inspection Service provided data on actively organised trainings on different topics⁹⁷ and the establishment of a call centre in May 2022, the institution still does not have a website to be used for informational purposes, where relevant information on the legal framework and the functions of the institution, as well as annual reports, could be published. A website is also an indispensable tool for exploring the possibilities of consulting, where recurring individual consultations on topical issues could be placed in the Q&A section and made available to a wide range of addressees,⁹⁸ and where electronic questionnaires used to collect generalised information, including feedback tools,⁹⁹ may be uploaded, as well as a channel for publishing administrative offence reports that the Labour Inspection Service is unable to deliver in person or via post services, as provided for by both the Law of Georgia on the Labour Inspection Service and the Organic Law of Georgia on Occupational Health and Safety.¹⁰⁰

Similarly, the goal of introducing an electronic document management system, although been prioritised for several years,¹⁰¹ that, depending on its functionality, could not only help to optimise procedures, systematise and summarise information about the institution's activities but also

92 Under the information provided, 499 inspections in the field of occupational safety and health and 239 inspections in the field of labour rights were handled within 3 months. Continuing at the same pace, the numbers for 2021 would be doubled. It is important to note that the growth is more significant in the area of labour rights.

93 "Public Defender's 2021 Parliamentary Report", *Public Defender (Ombudsman) of Georgia*, 2021, page 210, <https://www.ombudsman.ge/res/docs/2022040413242699860.pdf>.

94 "Law of Georgia on the Labour Inspection Service", *supra note*, 31, Art. 5(2).

95 "Labour Inspection Service Assessment 2021", *supra note*, 46, pages 18-19.

96 "Labour Inspection: What it Is and What it Does", *supra note*, 33, page 14.

97 "2021 Report", *supra note*, 35, page 61.

98 Example of a Q&A tool used in Estonia is available at: <https://www.ti.ee/en/faq-working-environment-self-service-labour-inspectorate>.

99 Examples of such tools (questionnaires and surveys) used in Lithuania are available at: https://www.vdi.lt/Forms/Tema.aspx?Tema_ID=60&lang=en.

100 "Law of Georgia on the Labour Inspection Service", *supra note*, 31, Art. 20(9); "Organic Law of Georgia on Occupational Health and Safety", *supra note*, 29, Art. 18(8); currently, these reports are published on the webpage of the Ministry (along with general announcements), which does not have a special section or a proper search tool to effectively find a report; some examples are available at: <https://www.moh.gov.ge/ka/announcements/>, <https://www.moh.gov.ge/ka/announcements/743/>.

101 "Activity Report of the Labour Conditions Inspection Department", *supra note*, 28, page 63.

increase the openness and transparency, is still not achieved. After ensuring that the above-mentioned tools will be enabled in the nearest future, the representatives of the Labour Inspection Service could not indicate specific deadlines during the interviews. It is also important to note that among the reasons that have prevented their implementation the lack of resources (both human and financial) was identified, although, in response to a question about how the situation had changed with the establishment of the Labour Inspection Service as an independent body, the representatives of the Labour Inspection Service emphasised the sufficiency of both funding and human resources. On the other hand, the tools in question are being developed with the help of donors, so it is important to ensure their institutionalisation and continuity.

3.4. IMPORTANCE OF SANCTIONING

While the primary mission of labour inspection is to ensure that employers comply with the law by managing and preventing risks effectively, sanctions remain an essential part of enforcement.¹⁰² As mentioned above, the inevitability (deterrent nature) of the consequences rather than the fact of the application of sovereign powers itself contributes to the culture of compliance with the law. This was the reason why the legal framework, under which institutional authority was limited to voluntary inspections and issuing recommendations and there was no unconditional access to workplaces and no unscheduled inspection without court permission, received harsh criticism,¹⁰³ and the changes that eliminated these shortcomings,¹⁰⁴ implementing the international principle of providing the labour inspectorate with proper credentials,¹⁰⁵ were assessed positively.¹⁰⁶

During the interviews, the representatives of stakeholders also commented positively on the extended powers of the Labour Inspection Service to impose sanctions, implementing the ILO standard set out in Article 18 of Labour Inspection Convention No. 81, that adequate penalties for violations of 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. In the labour inspectorate frameworks of various countries, the most common and accepted sanctions are warnings, monetary penalties, the suspension or termination of activities, the revocation of a licence, and civil and criminal sanctions.¹⁰⁷ Warnings, monetary penalties and the suspension of activities are among administrative sanctions to be imposed by the Labour Inspection Service applying Articles 76-80 of the Labour Code and Articles 18-23 of the Organic Law of Georgia on Occupational Health and Safety.¹⁰⁸ During the interviews, the representatives of employees' organisations criticised the practice whereby warnings constitute an absolute majority of sanctions imposed for violations of labour rights,¹⁰⁹ stressing that they are not dissuasive enough and do not encourage employers to take measures to ensure the protection of

102 "Labour Inspection: What it Is and What it Does", *supra note*, 33, page 15.

103 "Abolition of Labour Inspection in Georgia: Consequences for Workers and the Economy", *supra note*, 12, page 3; "An Assessment of the Labour Inspection Mechanism and a Study of Labour Rights Conditions in Georgia", *supra note*, 27, pages 126-127, 155; "Labour Inspection Service Assessment 2021", *supra note*, 46, pages 15-16.

104 "Law of Georgia on the Labour Inspection Service", *supra note*, 31, Art. 16(2).

105 "Labour Inspection Convention", *supra note*, 15, Art. 12.

106 "Activity Report of the Labour Conditions Inspection Department", *supra note*, 28, page 5; "Fragmented Labour Inspection – Labour Rights Left without Oversight", *supra note*, 23, page 4.

107 "An Assessment of the Labour Inspection Mechanism and a Study of Labour Rights Conditions in Georgia", *supra note*, 27, pages 111 and 157.

108 The Labour Inspection Service may only suspend activities when inspecting occupational safety and health and violations related to child labour and forced labour are identified (Article 20(3, 12) of the Law of Georgia on the Labour Inspection Service). The Labour Inspection Service may only use warnings and monetary fines for violations of labour rights.

109 According to the Public Defender's Office, they accounted for 192 out of 195 sanctions applied in 2021; "Public Defender's 2021 Parliamentary Report", *supra note*, 93, page 212.

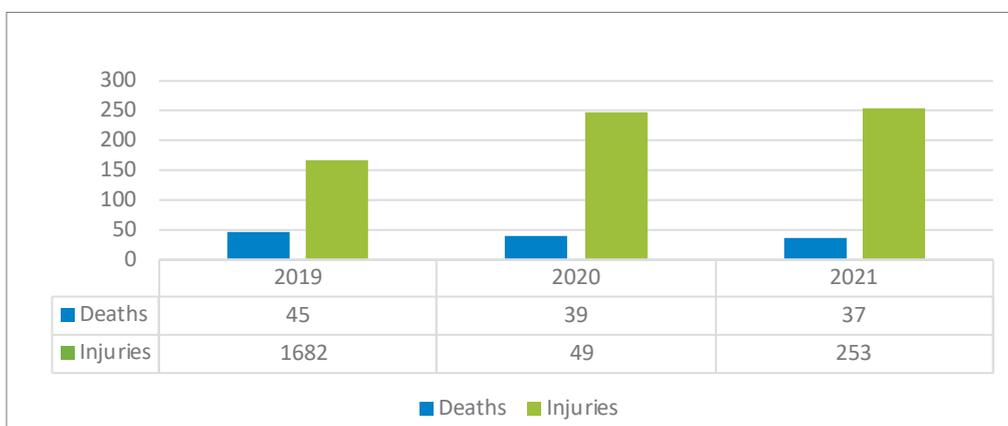
employees' rights by reducing the effectiveness of sanctions and eliminating their preventive nature.

Although the representatives of the Labour Inspection Service emphasised that sanctions are selected giving priority to the persuasion of employers to comply with the law, both the direct response of individual employers subject to the sanction and the overall reaction of all labour market actors to the sanctioning policy, as well as to the perception of operational efficiency, are crucial. The view expressed by a large number of stakeholders that stricter sanctions in the field of occupational safety and health, along with a high level of potential inspection, forces employers to invest more in preventive measures and that in the field of labour law employers tend not to eliminate irregularities until they have been inspected, knowing that they will only receive a warning during the first inspection, clearly demonstrates the importance of an effective sanctioning policy in the implementation of a culture of consistent respect for the protection of labour rights. Insufficient attention of employers to the introduction of appropriate preventive measures was used as a practical example by the Public Defender's Office in their written observations.

3.5. WORK-RELATED ACCIDENTS AND OCCUPATIONAL DISEASES

In terms of specific areas of activities, although occupational safety and health was highlighted as an issue receiving most attention, the statistics do not show a major breakthrough: the number of workplace deaths decreased slightly from 45 in 2019 to 39 in 2020 and 37 in 2021; on the other hand, the number of occupational injuries increased from 168 in 2019 to 249 in 2020 and 253 in 2021:¹¹⁰

Number of activities in 2021



Statistical information provided by the Labour Inspection Service in the frame of this assessment reveals the same tendencies for the first quarter of 2022.¹¹¹ During the interviews, individual stakeholders emphasised that according to Article 15(1) of the Organic Law of Georgia on Occupational Health and Safety minor accidents are not communicated to the Labour Inspection

110 "2019 Activity Report", *Labour Conditions Inspection Department of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia*, 2019, page 21, https://www.moh.gov.ge/uploads/files/2019/Failebi/LCID_Geo_a4_1.pdf; "Activity Report of the Labour Conditions Inspection Department", *supra note*, 28, page 22; "2021 Report", *supra note*, 35, page 24.

111 According to the data provided, 9 employees died and 67 employees were injured in January-March 2022.

Service. Although such regulation is not uncommon,¹¹² it makes statistics incomplete, and the failure to record some accidents does not encourage the pursuit of the safest possible working conditions.

The statistical increase in injuries may be related to the active involvement of the Labour Inspection Service, revealing more alleged violations. However, occupational safety and health is still regarded as a significant problem,¹¹³ emphasising high numbers of irregularities detected as a result of inspections, employers being reluctant to even try to identify threats at workplaces and work areas or to assess and manage risks, and to provide trainings and instruction guidance.¹¹⁴ At the same time, it is essential to emphasise that it is not enough to anticipate and implement measures aimed at occupational safety and health. It is very important to evaluate the efficiency and effectiveness of such measures, identifying the obstacles to substantial improvement. Insufficient time to develop a preventive culture was identified during the interviews as one of the most important reasons. On the other hand, stakeholders emphasised that in the field of occupational safety and health most of the preventive activities are employer-oriented, providing them with information, and evaluating internal rules of occupational safety and health, but low working culture and reckless approach of employees to their safety, as well as the safety of their colleagues, is underestimated. More attention could be paid to awareness-raising initiatives in this field of the institutional mandate. This conclusion is also relevant in the light of previously mentioned written observations of the Public Defender's Office regarding the insufficient attention of employers to the introduction of appropriate preventive measures, which confirms the importance of awareness-raising campaigns, especially in small and medium-sized businesses as well as in rural and/or mono-industrial areas.

It is also worth mentioning that despite the existing mechanism, under which work-related accidents and occupational diseases are investigated by a commission/group set up by the employer (Article 6 of the Rules for the Registration, Investigation and Reporting of Accidents in the Workplace¹¹⁵ and Article 6 of the Rules for the Registration, Investigation and Reporting of Occupational Diseases¹¹⁶) and the mandate of the Labour Inspection Service includes inspections to identify the causes of accidents and reveal the facts of occupational diseases and an obligation to investigate occupational accidents,¹¹⁷ the existing legal regulation does not clearly answer the question of the status of the investigation carried out by each of the mentioned subjects and the consequences of possible discrepancies in the results (conclusions on the causes of accident), the persons responsible and the measures to be taken to prevent such accidents from occurring in the future.¹¹⁸ During the interviews, the representatives of the stakeholders also emphasised that focusing on occupational

112 Similar procedural requirements regarding communication to the labour inspectorate of serious or fatal accidents only are also applicable in other countries, for example, in Lithuania (Article 43(2) of the Law of the Republic of Lithuania on Occupational Safety and Health; "Law of the Republic of Lithuania on Occupational Safety and Health", No. IX-1672, 2015, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/3c128c0120eb11e58a4198cd62929b7a?jfwid=fhhu5mpna>), Estonia (information available at: <https://www.ti.ee/en/work-environment-and-work-relations/work-accidents>).

113 "Labour Inspection Service Assessment 2021", *supra note*, 46, page 54.

114 "Report on the Needs Assessment in Respect of Social Rights in Georgia", *supra note*, 4, page 35.

115 "On the Approval of the Rules and Form of Registration of Accidents and Occupational Diseases in the Workplace, Investigation Procedures and Reporting Rules", *Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia*, Order No. 01-11/6, 2018, <https://matsne.gov.ge/ka/document/view/4307493?publication=3>.

116 *Ibid.*

117 "On the Approval of the Rules and Conditions of Entry and Inspection of the Facilities Subject to Inspection", *supra note*, 52, Art. 6(4), <https://matsne.gov.ge/ka/document/view/4796359?publication=2>; "Rules for the Registration, Investigation and Reporting of Occupational Diseases", *supra note*, 115, Art. 7, 10.

118 An example of such delimitation could be the model applicable in Lithuania, according to which the employer's commission investigates non-serious accidents only, and serious accidents, as well as non-serious accidents, when there are no conditions for an investigation at the employer level or when the parties do not agree with the results of the investigation conducted by the employer's commission, are investigated by the labour inspectorate; "Law of the Republic of Lithuania on Occupational Safety and Health", *supra note*, 112, Art. 44(3).

accidents insufficient attention is paid to the assessment of working conditions to identify occupational diseases and their causes. Therefore, it is extremely important not only to provide effective tools to labour inspectors in this field but also to acquire the necessary knowledge and skills to identify and respond to the risks related to it.

A statutory measure – employers' obligation to appoint an occupational safety specialist¹¹⁹ – was also highlighted during the interviews as a step forward in ensuring safe working conditions. At the same time, it was emphasised that the measure had not been fully implemented due to shortcomings in the accreditation system administrated by the Labour Inspection Service,¹²⁰ because after being criticised for failing to ensure quality,¹²¹ the programme was suspended and renewed only in the second half of 2021. After the amendments had been introduced to legal regulation, increasing the number of teaching hours, separating a training organisation and an examination centre, assigning the coordination of a qualification examination and the passing of certification to the Labour Inspection Service, and developing an electronic programme through which the exam will be passed,¹²² training as well as examination centres were selected. During the interviews, the representatives of the Labour Inspection Service acknowledged that there are no criteria set for the number of specialists to be accredited per year, and could not indicate when conditions for full compliance with the requirement for all employers to have accredited specialists could be expected.

3.6. SUPERVISION OF LABOUR RIGHTS

As regards the supervision function in the field of labour rights, which has been entrusted to the Labour Inspection Service since 2020, although the parties to an employment relationship can defend their rights by initiating litigation in a court, the importance of the role of the Labour Inspection Service is revealed by the fact that employees are often reluctant (due to fear of ruining a relationship with the employer) or unable (due to lack of legal knowledge or financial resources) to initiate labour disputes. Having regard to practical experience in dealing with courts or such institutions as the Public Defender's Office, which has long been responsible for labour discrimination-related matters, during the interviews the representatives of employers' and employees' organisations emphasised the lack of flexibility and consistency in interpreting labour law norms and the principles of their application by the Labour Inspection Service. On the other hand, the representatives of the Labour Inspection Service acknowledged that this is a new field of their mandate, emphasising a strong focus on staff qualification and training. Some overlap of institutional competences, in this case, is justified by the aim to maximise the enforcement of employment standards, provided that the institutions work together to achieve uniformity and consistency of practice, avoiding disproportionate procedural burden on employers. In this context, the importance of awareness raising in areas such as public perception and institutional credibility, as well as greater involvement in social partnership at the organisational level, should be re-emphasised. Employees' access to sufficient information about their rights and appropriate means of protection of those rights, and employers' proper assessment of the significant role of social partnership in developing safe and decent working conditions, creates preconditions for an effective working environment that meets international standards.

119 "Organic Law of Georgia on Occupational Health and Safety", *supra note*, 29, Art. 7(1).

120 *Ibid*, Art. 7(6).

121 "Labour Inspection Service Assessment 2021", *supra note*, 46, page 43.

122 "On the Approval of the Scope, Rules of Implementation, and Conditions of an Accredited Programme for Occupational Safety Specialists", *Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs*, Order No. 1-81/6, 2021, <https://matsne.gov.ge/ka/document/view/5255143?publication=0>; "Labour Inspection Service Assessment 2021", *supra note*, 46, page 44.

The development of the mandate allows the Labour Inspection Service not only to identify cases of forced labour and labour exploitation¹²³ but also to respond effectively within the scope of its authority, provide recommendations and, if necessary, legislative proposals for the elimination and prevention of such cases, take care of threats posed through recommendations, information campaigns and other awareness-raising measures.¹²⁴ In this respect, the institutional mandate has been strengthened by the sanctions provided for in the Labour Code for violations of the prohibition of forced labour,¹²⁵ implementing the recommendation of the Social Justice Center (issued in 2017) to include in the legislation the issue of enforceability of sanctioning mechanisms with regard to forced labour and exploitation.¹²⁶

Summarising the assessment of the institutional mandate in the field of labour rights (working time, overtime, night work, paid leave, weekly rest period, fair remuneration, anti-discrimination, etc.), significant progress in legislation is obvious, and the implementation of policy reforms is also visible, but, as the Government of Georgia provided in its 15th National Report on the Implementation of the European Social Charter, there is a need for a longer period of time to elapse from the start of the expansion of the institutional mandate to produce comprehensive statistics on the basis of its activities.¹²⁷ The same position was emphasised during the interviews with stakeholders, identifying among the main reasons the obligation of the Labour Inspection Service to implement large-scale Covid-19 pandemic management measures.

The European Committee of Social Rights also concluded in its Third Report on the Non-Accepted Provisions of the European Social Charter¹²⁸ that after significant progress had been made there were no major obstacles for Georgia to accept the majority of the Articles of the European Social Charter in the near future. In the light of the institutional mandate, there is no basis for considering the legislation to be incompatible with the requirements laid down in ILO Labour Inspection Convention No. 81,¹²⁹ therefore disagreement with the calls for the ratification of main international documents cannot be seen as based on objective circumstances. During the interviews, stakeholders emphasised political reasons and issues of mentality, identifying the maintenance of the opportunity to step back as the main threat.

123 Articles 3 and 4 of the Rules of State Supervision for the Purposes of Preventing and Responding to Forced Labour and Labour Exploitation provide for the rights of the supervisory body to carry out scheduled and unscheduled inspections without prior permission and/or notification; "On the Approval of the Rules of State Supervision for the Purposes of Preventing and Responding to Forced Labour and Labour Exploitation", *Government of Georgia*, Ordinance No. 112, 2016, <https://matsne.gov.ge/ka/document/view/3215791?publication=0>.

124 *Ibid*, Art. 5.

125 "Labour Code of Georgia", *supra note*, 30, Art. 75, 79.

126 "An Assessment of the Labour Inspection Mechanism and a Study of Labour Rights Conditions in Georgia", *supra note*, 27, page 157.

127 "15th National Report on the Implementation of the European Social Charter", *Government of Georgia*, 2022, pages 5-6, 9-12, 14-15, 25-26, <https://rm.coe.int/rap-rcha-geo-15-2022/1680a58823>.

128 "Third Report on the Non-Accepted Provisions of the European Social Charter: Georgia", *European Committee of Social Rights*, 2021, <https://rm.coe.int/3rd-report-georgia-na-provisions-eng/1680a5d629>.

129 "Labour Inspection Convention", *supra note*, 15.

4. OPERATIONAL PRINCIPLES AND PROCEDURAL ASPECTS

4.1. IMPORTANCE OF STRATEGIC PLANNING

Efficiency and effectiveness, transparency, consistency and coherence, universality, proportionality, equality, cooperation and collaboration are among procedural aspects-related principles defined by the ILO as guiding labour inspection.¹³⁰

Efficiency and effectiveness are first of all based on setting clear priorities. Although strategic planning is aimed at fulfilling the institution's mission and refining key goals, the topics that were covered in the previous chapters, the procedural aspects of strategic planning are no less important in building a successful, results-oriented organisation. Strategic plans should not only address all areas within the authorised scope of the labour inspectorate but also establish measurable results of key tasks and activities, utilise clear qualitative and quantitative indicators (performance measurement systems), assessing the impact and value of interventions.¹³¹

The handbook "Measuring Performance of the Occupational Safety and Health Function", prepared by the International Association of Labour Inspection,¹³² could be provided as an example, emphasising that after a situation analysis, the definition of the goals to be achieved and the allocation of resources (inputs), activities (e.g., conducting inspections, building partnerships, running surveillance programmes, supporting research) with measurable outputs (e.g., the number of inspections conducted annually, targeted inspections or enforcement programmes or campaigns, fines, prosecutions undertaken, partnerships developed, guidance publications issued) and outcomes (e.g., injury rate reduction at workplaces, an increase in the awareness of a particular issue) should be set to measure efficiency (the lowest amount of inputs to create the greatest amount of outputs) and effectiveness (the extent to which goals are achieved and targeted problems are solved).¹³³ The same principle can be used successfully in the field of the protection of labour rights as well.

Whereas only supervision functions in the area of occupational safety and health have been included in the mandate of the Labour Inspection Service during the preparation and approval of the National Strategy 2019-2023 for the Labour and Employment Policy of Georgia, institutional strengthening has also been linked to this area, identifying quantitative indicators to be achieved, such as reducing the number of people killed and injured in occupational accidents by 30%, conducting 1 000 inspections per year, increasing the number of inspectors to 1 inspector per 20 000 employees, organising at least two meetings of the Tripartite Commission on Social Partnership per year and others.¹³⁴ Although more than two thirds of the strategy's implementation period passed, and the institution's mandate has expanded since September 2020 to include the protection of labour rights, at the time of the preparation of this assessment the National Strategy 2019-2023 is not adjusted. According to the representatives of the Labour Inspection Service, draft amendments and the draft

130 "Labour Inspection: What it Is and What it Does", *supra note*, 33, pages 19-20.

131 "International Common Principles for Labour Inspection", *supra note*, 32, page 10.

132 "Measuring Performance of the Occupational Safety and Health Function: A Handbook for Labour Inspectorates", *International Association of Labour Inspection*, 2009, <https://www.iali-aiit.org/ws/media-library/dd3dd3a1e4354ac-49d5759096c050992/handbook-for-labour-inspectorates---english.pdf>.

133 *Ibid*, pages 25-27.

134 "On the Approval of the National Strategy 2019-2023 for the Labour and Employment Policy of Georgia", *supra note*, 5, pages 33-34, 51-54.

of the 2022-2023 Action Plan for the National Strategy for the Labour and Employment Policy of Georgia were prepared, which include the exercise of state supervision over the implementation of labour norms, using such indicators as inspections carried out and the percentage of inspected entities, the number of trainings and retrained staff to increase the qualification/capacity building of labour inspectors, provision with the relevant material and technical base, considering the regional offices, and naming the Ministry responsible for the implementation of these activities and defining the Labour Inspection Service only as a partner state agency.

Although the annual report of the Chief Labour Inspector shall contain, among other issues, a strategy of the Labour Inspection Service and different statistical data (on inspections, violations identified, accidents and occupational diseases),¹³⁵ the law does not directly require the provision of clear criteria (indicators) that would allow assessing the fulfilment of the strategic goals, or the obligation to analytically evaluate available statistics to identify progress and set goals for the next period. As the content of the last four annual reports¹³⁶ reveals, they lack analytical elements. Although the work done is described and statistical information is provided, the objectives are in most cases formulated in a generalised way,¹³⁷ and it is not clear whether and to what extent the objectives set out in the previous year's report have been achieved and, if not, for what reasons.¹³⁸ A similar conclusion regarding the awareness-raising function is given in the 2021 assessment prepared by the Social Justice Center, where, after analysing the reports on the activities of the Labour Inspection Service, the unsystematic and inconsistent manner of presentation of information, making it difficult to identify the target groups as well as goals and results, was highlighted.¹³⁹ As mentioned above, the absence of clearly defined targeted outputs and outcomes complicates the assessment of both efficiency (the selection of activities) and effectiveness (inputs, the allocation of resources) and limits the scope of further performance-based planning.

4.2. JUSTIFICATION OF INSPECTION PLANS

As inspections are carried out on the basis of both complaints of interested persons (reactively) as well as on the institution's initiative (proactively),¹⁴⁰ the authority of the Labour Inspection Service to carry out scheduled inspections, being in general assessed positively,¹⁴¹ is also related to the risks of abuse of power,¹⁴² which makes crucial the justification of inspection plans based on objective criteria (indicators). The priority areas for scheduled inspections should be determined in accordance with the rules defined by the Government, and the list of specific organisations to be inspected according to the established priority areas should be determined by the Chief Labour

135 "Law of Georgia on the Labour Inspection Service", *supra note*, 31, Art. 10(1).

136 "Report for 2018", *supra note*, 11; "Annual report of Labour Conditions Inspection Department 2019", *supra note*, 24; "Activity Report of the Labour Conditions Inspection Department", *supra note*, 28; "2021 Report", *supra note*, 35.

137 For example, to retrain staff, to equip the office with material and technical resources, to raise public awareness, to facilitate public involvement, etc. ("Activity Report of the Labour Conditions Inspection Department", *supra note*, 28, page 53; "2021 Report", *supra note*, 35, page 69). It should be noted that future plans formulated in the 2021 Report do not contain a single quantitative indicator.

138 For example, the 2020 annual report contains goals such as increasing the number of labour inspectors to 120, implementing electronic document management, and creating a webpage; the last two goals are repeated in the 2021 Report, while the fact that the first goal has not been achieved is revealed by providing an updated number of inspector positions (109), however, without specifying either the first goal or the reasons why it was not achieved; "Activity Report of the Labour Conditions Inspection Department", *supra note*, 28, page 53; "2021 Report", *supra note*, 35, pages 13 and 69.

139 "Labour Inspection Service Assessment 2021", *supra note*, 46, page 39.

140 "Law of Georgia on the Labour Inspection Service", *supra note*, 31, Art. 5(2), 13; "On the Approval of the Rules and Conditions of Entry and Inspection of the Facilities Subject to Inspection", *supra note*, 52, Art. 10(1).

141 Particularly because of its preventive role, and its influence on the formation of a culture of compliance.

142 "Labour Inspection Service Assessment 2021", *supra note*, 46, page 20.

Inspector.¹⁴³ However, as the representatives of the Labour Inspection Service acknowledged during the interviews, no such priority areas were set for inspections in the field of labour rights, and *ad hoc* unwritten standards for deciding which sectors to inspect are being used. In this respect, the situation is more advanced in the field of occupational safety and health, where, according to the Methods of Determining the Priority Sectors of Economic Activity and the Rule of Risk Assessment, a detailed procedure for the identification of priority areas and risk assessment is described, including criteria allowing the division of employers into different risk groups, the frequency of inspections of entities assigned to different groups, the minimum number of inspections according to the number of sites registered in different sectors subject to inspections.¹⁴⁴ On the other hand, although the mentioned aspects of legal regulation are repeated in the 2021 annual report,¹⁴⁵ no analysis and/or conclusions of whether these quantitative requirements envisaged by policy makers are being met in practice are provided.

Not only the setting of goals and the means of implementing them, defined by quantitative criteria, but also their publicity is extremely important for the development of a culture of trust through openness and transparent operational practices. Most of the stakeholders emphasised during the interviews the lack of publicity of institutional plans and even criteria on the basis of which these plans are prepared. Such arguments cannot be regarded as a criticism of the Labour Inspection Service's right to organise unscheduled inspections, and enter the workplace without prior notice or permission,¹⁴⁶ designed to ensure the effectiveness of inspections and to contribute to the development of preventive culture, eliminating grounds to criticise the institution for its lack of capacity. On the contrary, these arguments aim to emphasise the importance of the provision of information to employees, employers and stakeholders about their rights and obligations, what is expected from them and what they can expect from the Labour Inspection Service. The fact that the institution still does not have its own website, where detailed information on the institution's operating principles and procedural aspects could be published, should be reiterated here.

4.3. CONSISTENCY AND COHERENCE OF PRACTICES

To ensure the implementation of the principles of consistency and coherence, similar cases must be treated in similar ways under similar conditions to achieve similar prevention and compliance ends, and guidelines for common, coherent and consistent intervention approaches must be provided to labour inspectors.¹⁴⁷ The representatives of the Labour Inspection Service and the Ministry emphasised the important role of the Board of Advisors providing consultations and active cooperation among inspectors to develop the coherence of activities. However, for a newly established, developing organisation it is very important to use all possible performance improvement tools.

Among such tools, detailed procedural guidelines with forms for recording results should be mentioned first. Examples of such guidelines are provided in the Law of Georgia on the Labour Inspection Service and the already mentioned Rules and Conditions of Entry and Inspection of the Facilities Subject to Inspection, containing not only rules on the types and models of inspection,

143 "On the Approval of the Rules and Conditions of Entry and Inspection of the Facilities Subject to Inspection", *supra note*, 52, Art. 10(1), 11(1).

144 "On the Approval of the Methods of Determining the Priority Sectors of Economic Activity and the Procedure for Risk Assessment", *Government of Georgia*, Ordinance No. 80, 2020, <https://matsne.gov.ge/ka/document/view/4793337?-publication=0>.

145 "2021 Report", *supra note*, 35, pages 16-18.

146 "Law of Georgia on the Labour Inspection Service", *supra note*, 31, Art. 16(2).

147 "Labour Inspection: What it Is and What it Does", *supra note*, 33, page 19.

collection and processing of information but also the detailed regulation of measures to be taken upon entering the facility, the duration of inspections, equipment required, collecting different kinds of evidence and the formalisation of conclusions,¹⁴⁸ as well as the Rules for the Registration, Investigation and Reporting of Accidents in the Workplace and the Rules for the Registration, Investigation and Reporting of Occupational Diseases, where not only procedural requirements are provided but also detailed forms to be completed in the course of investigation are included.¹⁴⁹ Detailed follow-up procedures that provide for the setting of deadlines for rectifying irregularities and re-inspections until compliance with legal requirements is achieved¹⁵⁰ are also essential to ensure that inspections are not limited to the detection of infringements and the application of sanctions. Electronic data management systems, which, as indicated by the representatives of the Labour Inspection Service during the interviews, are being prepared, would not only serve for efficient data recording and registration but also create conditions for the use of automatic data search and analysis mechanisms, the generalisation of practice and the refinement of criteria for further development. The preparation of periodic reviews based on the analysis of good practice examples and recurring inaccuracies would contribute to the harmonisation of practices (both in terms of procedural requirements applied and the interpretation of legal regulation). If made public, such reviews could also serve as an effective awareness-raising tool.

Tools to assess public satisfaction and perceptions of performance are worth mentioning. It is important to note that, as confirmed by stakeholders during the interviews, not only are there no public opinion polls (surveys) conducted to assess the quality of the performance of the Labour Inspection Service, the situation in the field of labour relations and occupational safety and health, but also the organisation itself does not employ any feedback tool. An example of such a feedback tool could be an electronic questionnaire offered to be completed anonymously by those involved in the inspection, asking for their views on how they assess the clarity of the purpose of inspection, procedural requirements and its outcome, the process of inspection, the behaviour of inspectors, etc., not only to gather information relevant to the improvement of procedures and behavioural practices but also to assess public attitudes (perceptions) towards the Labour Inspection Service. Although the representatives of the Labour Inspection Service emphasised during the interviews that they did not receive any complaints about the inspectors' behaviour, and highlighted positive comments from some of the inspected subjects, expressing a favourable attitude towards the activities of the Labour Inspection Service and the impact of these activities on the working environment, such positive facts could not be considered comprehensive and objective, especially having in mind the factor highlighted by stakeholders during the interviews that parties to employment relations are not usually inclined to make complaints or openly express dissatisfaction.

148 "Law of Georgia on the Labour Inspection Service", *supra note*, 31, Art. 13-17; "On the Approval of the Rules and Conditions of Entry and Inspection of the Facilities Subject to Inspection", *supra note*, 52.

149 "On the Approval of the Rules and Form of Registration of Accidents and Occupational Diseases in the Workplace, Investigation Procedures and Reporting Rules", *supra note*, 115.

150 "Law of Georgia on the Labour Inspection Service", *supra note*, 31, Art. 20(6-7); "On the Approval of the Rules and Conditions of Entry and Inspection of the Facilities Subject to Inspection", *supra note*, 52, Art. 6(2), 26.

4.4. CONFIDENTIALITY, COOPERATION AND OTHER PROCEDURAL ASPECTS

The aspiration of the labour inspectorate to achieve universal coverage, widening its role and activities to embrace the largest possible number of working people in all economic sectors, even beyond those covered by traditional employer/employee relationships, as the essence of the principle of universality,¹⁵¹ is discussed above, advocating the comprehensiveness of the mandate, the right to carry out unscheduled inspections without permission or prior notice, the need to broadly interpret the list of subjects that can initiate inspections, etc. From the organisational and procedural points of view, additional emphasis should be placed on several topics.

One of the topics is the international standard of confidentiality,¹⁵² which is not only identified as one of the fundamental principles of the Labour Inspection Service¹⁵³ but also implemented through absolute guarantees for complainants or employees that actively collaborate in the course of inspections.¹⁵⁴ The proper application of this principle and active communication (not only through general awareness-raising measures but also through procedures for registering individual complaints, initiating inspections, conducting interrogations or requesting information) that the disclosure to the Labour Inspection Service of violations made by the employer is a safe remedy and that the employee's data or information identifying him/her will be disclosed only upon his or her consent, contribute to the development of the culture of active engagement in the protection of statutory rights. This was also emphasised by the representatives of the Labour Inspection Service and the Ministry during the interviews, observing an increasingly benevolent attitude, a greater willingness to cooperate and more open communication.

Sanctioning rules is another topic that is also related to the principles of proportionality and equality. The "Mandate" chapter already covers both sanctions as such and sanctioning practice, where warnings are usually imposed for violations of labour rights, and fines or even the suspension of activities are more commonly used in the field of occupational safety and health. From the perspective of procedural requirements, to ensure both the proportionality of the sanctions and their uniform application the criteria and principles for selecting the type and level of a sanction must be identified by legislation or consistent institutional practice. The analysis of the provisions of Articles 77-80 of the Labour Code shows that the statutory limits of sanctions depend on the right violated (e.g., in the case of discrimination (Article 78(1)), three times higher fines when compared with those for other violations may be imposed), the employer (their status and level of income (Article 77(1)), the employee's belonging to socially vulnerable groups (a minor, a pregnant woman or a person with a disability (Articles 77(2) and 79(2)), and the recurrence of the violation (Articles 77(3), 78(2), 79(3)). On the other hand, a wide range of sanctions (e.g., from a warning to a fine of GEL 3 000 for discrimination (Article 78(1)) necessitates the existence of procedural guidelines for the selection of a sanction, taking into account the number and seriousness of the infringement, the form of employer's guilt (intentional or negligent), the compliance capacity, the consequences, etc., and providing reasoning for the selection made. As individual stakeholders mentioned during the interviews, there have been cases where a warning was issued after the establishment of multiple (in one case – 19) violations during one inspection. Failure to justify such a decision may call into question the effectiveness of the sanction, and the lack of diversification negates its preventive function and does not encourage employers to take proactive measures.

151 "Labour Inspection: What it Is and What it Does", *supra note*, 33, pages 19.

152 "Labour Inspection Convention", *supra note*, 15, Art. 15.

153 "Law of Georgia on the Labour Inspection Service", *supra note*, 31, Art. 4(2).

154 *Ibid*, Art. 19.

Procedural measures for the implementation of the principle of cooperation include the participation of experts and specialists from other institutions, as defined in Article 9 of the ILO Labour Inspection Convention¹⁵⁵ and Article 16(2) of the Law of Georgia on the Labour Inspection Service,¹⁵⁶ as well as collaboration with national and international, public and private entities for the efficient and high-quality performance of the institution's functions.¹⁵⁷ In terms of collaboration, the development of social partnership should be emphasised once again, especially at the organisational level. The initiative of the creation of a platform for cooperation with other authorities and its strengthening, mentioned in the 2021 annual report,¹⁵⁸ may only be assessed positively, provided that the partnership is not formal and the relationship is based on goodwill, striving for mutual development and results-oriented initiatives.

The completeness of the procedure is ensured by the possibility of an effective appeal against decisions made in the course of it. The right of such appeal is enshrined in Article 21(1) of the Law of Georgia on the Labour Inspection Service,¹⁵⁹ providing that the decisions of a labour inspector are subject to appeal in a court.

155 "Labour Inspection Convention", *supra note*, 15, Art. 9.

156 "Law of Georgia on the Labour Inspection Service", *supra note*, 31, Art. 16(2).

157 *Ibid*, Art. 18.

158 "2021 Report", *supra note*, 35, page 57.

159 "Law of Georgia on the Labour Inspection Service", *supra note*, 31, Art. 21(1).

5. STAFF AND ORGANISATIONAL STRUCTURE

5.1. ORGANISATIONAL STRUCTURE

To create a successful organisation with its own identity, it is not enough to define the goals and priorities, to have a fully-fledged mandate and procedural means to implement it. The comprehensiveness of an organisational structure and the adequacy of qualified, motivated, empowered and well-equipped staff are a particularly significant source of added value.

Not only institutionalisation but also structuring was named among the priority directions of strengthening labour inspection in the National Strategy 2019-2023 for the Labour and Employment Policy of Georgia.¹⁶⁰ The structure of the Labour Inspection Service is defined by the Statute of the Legal Entity under Public Law – Labour Inspection Service,¹⁶¹ according to which the Labour Inspection Service consists of a central office, 6 departments, 14 divisions, 5 units and 2 territorial bodies, which form a unified centralised system. Departments cover not only the main areas of supervisory functions (labour rights and occupational safety and health)¹⁶² but also monitoring and supervision,¹⁶³ administrative,¹⁶⁴ legal,¹⁶⁵ financial and economic¹⁶⁶ issues.¹⁶⁷ Such organisational structure is to be regarded as covering all main aspects of institutional activities.¹⁶⁸ However, having in mind some of the shortcomings related to analytical and publicity (communication) functions, discussed in previous chapters, some doubts arise as to the fact that the data-gathering function and responsibility for statistics and analytical work are split between two departments (the Monitoring and Supervision Department and the Administrative Department), one division of the Administrative Department covers a wide range of different types of activities such as international relations, public relations and analytical work. Those doubts could be a basis for considering structural adjustments.

160 “On the Approval of the National Strategy 2019-2023 for the Labour and Employment Policy of Georgia”, *supra note*, 5, pages 30-31.

161 “Law of Georgia on the Labour Inspection Service”, *supra note*, 31, Art. 7(6); “Statute of the Legal Entity under Public Law – Labour Inspection Service”, *supra note*, 41, Art. 5.

162 The Labour Rights Supervision Department with Units for the Supervision of Workplace Discrimination, Sexual Harassment and Gender Equality as well as the Supervision of Forced Labour and Labour Exploitation (Trafficking), and the Occupational Safety Supervision Department with Divisions of the Supervision of Construction Sector, Mining and Heavy Industry as well as Light Industry and Service Sector.

163 The Monitoring and Supervision Department consists of the Operative Data Gathering, Monitoring and Disciplinary Responsibility Division and the Centre for Supervising an Accredited Programme for Occupational Safety Specialists.

164 The Administrative Department consists of 3 divisions: the Human Resources Management Division; the Business Correspondence Division; and the International and Public Relations, Statistics and Analytical Division.

165 The Legal Department has the Division of Legal Support and the Division of Administrative Complaints and Relations with Courts, as well as the Complaint Administration Unit.

166 The Finance and Economics Department consists of 3 divisions: the Public Procurement Division; the Financial Resources Management and Accounting Division; and the Inventory and Logistics Management Division.

167 A detailed organisational structure is provided in the 2021 annual report; “2021 Report”, *supra note*, 35, pages 11-12.

168 If potential gaps in the organisational structure were to be addressed in the light of systemic challenges, emphasis should be on the fact that the Labour Rights Supervision Department, containing in its organisational structure units responsible for discrimination and trafficking, does not have a separate unit with a focus on informal and non-standard work.

5.2. NUMBER AND QUALIFICATIONS OF STAFF

Institutional resources need to be allocated in a way that allows conducting a minimum number of regular inspections to ensure that the largest possible number of employees benefit from the protection afforded,¹⁶⁹ securing the effective discharge of the duties of the labour inspectorate, including inspections that should take place as often and be as thorough as is necessary to ensure the effective application of relevant legal provisions.¹⁷⁰ Amongst the factors that need to be taken into account are the number and size of establishments, the total size of the workforce and the number and complexity of the legal provisions that should be enforced.¹⁷¹ However, the number of inspectors per employee is currently the only internationally comparable indicator available.¹⁷² The Chief Labour Inspector shall appoint as many labour inspectors as are necessary to ensure that the Labour Inspection Service performs its functions effectively.¹⁷³ In Georgia, as the country of transitional economy with 1 763 300 workers, the minimum amount of labour inspectors has been determined as not less than 80 (1 per 20 000 employees).¹⁷⁴

The number of inspector positions has increased significantly in recent years and amounted to 109 in 2021,¹⁷⁵ theoretically not only reaching but also exceeding a specified threshold. However, two significant factors have to be mentioned at this point.

Firstly, no additional functions that are not aimed at securing the enforcement of legal provisions relating to conditions of work and the protection of workers should be assigned to labour inspectors in so far as they interfere with their primary duties, or the number of inspectors should be increased in case they are called on to exercise additional functions.¹⁷⁶ As mentioned above, the increase in the number of inspectors coincided with the assignment of a very large-scale temporary function related to the management of the Covid-19 pandemic. The representatives of the Labour Inspection Service, acknowledging during the interviews that in 2022 no increase in the number of inspectors is envisaged, noted at the same time that an insufficient period elapsed to objectively assess the situation but, in case of necessity, the current number will not be considered final.

Secondly, the theoretical number of inspector positions has to be actually filled. As it is highlighted in the last annual report of the Public Defender's Office, the Labour Inspection Service failed to fill all the vacancies (31 out of 109 positions were still vacant in 2021).¹⁷⁷ During the interviews, the representatives of the Labour Inspection Service emphasised that the institution is adequately funded, inspector positions are attractive when compared to other public sector positions, the

169 "Report on the Needs Assessment in Respect of Social Rights in Georgia", *supra note*, 4, page 34.

170 "Labour Inspection Convention", *supra note*, 15, Art. 10, 16.

171 "Labour Inspection Service Assessment 2021", *supra note*, 46, page 26.

172 In its Policy and Technical Advisory Services, the ILO has taken as reasonable benchmarks that the number of labour inspectors in relation to workers should approach: 1/10 000 in industrial market economies; 1/15 000 in industrialising economies; 1/20 000 in transition economies; and 1/40 000 in less developed countries; "Strategies and Practice for Labour Inspection", *Committee on Employment and Social Policy, International Labour Office*, 2006, page 4, <https://www.ilo.org/public/english/standards/relm/gb/docs/gb297/pdf/esp-3.pdf>.

173 "Law of Georgia on the Labour Inspection Service", *supra note*, 31, Art. 8(2).

174 "On the Approval of the National Strategy 2019-2023 for the Labour and Employment Policy of Georgia", *supra note*, 5, page 30.

175 "2021 Report", *supra note*, 35, page 13; in the course of this assessment, the Labour Inspection Service provided information that this number (109) has not changed in 2022.

176 "General Survey of the reports concerning the Labour Inspection Convention, 1947 (No. 81), and the Protocol of 1995 to the Labour Inspection Convention, 1947, and the Labour Inspection Recommendation, 1947 (No. 81), the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133)", *International Labour Organization*, 2006, pages 25, 59, <https://www.ilo.org/public/english/standards/relm/ilc/ilc95/pdf/rep-iii-1b.pdf>.

177 "Public Defender's 2021 Parliamentary Report", *supra note*, 93, page 210.

number of candidates is always high and the main reason for not filling the vacancies is complicated selection procedures. However, the data provided by the Labour Inspection Service in the course of this assessment reveal that the number of vacancies on 10 June 2022 still amounted to 24 and the number of inspectors (85) barely exceeded the target limit of 80. The representatives of stakeholders identified during the interviews the lack of necessary specialists and the need for employees with relevant knowledge in the private sector (especially in the field of occupational safety and health)¹⁷⁸ among the possible reasons for not filling the vacancies.

The representatives of the Labour Inspection Service also acknowledged that not all positions of other staff members were filled. The institution has a total of 122 employees/public servants out of 167 possible. The data provided on the distribution of staff members among the departments and the territorial bodies¹⁷⁹ reveal not only the already mentioned unequal distribution between inspectors working in the field of occupational safety and health (55) and those responsible for the supervision of labour rights (30), which during the interviews was mainly explained as based on the subjective factor that the supervision of occupational safety and health has been performed for a longer period of time and the situation in the field of labour rights is still developing, but also the fact that the capacity of the Administrative Department with 3 divisions, covering a wide range of issues (from human resources management and business correspondence to international and public relations as well as statistics and analytical work), is limited to 10 employees/public servants, which may be another reason for the above-mentioned shortcomings in strategic planning, analytical work and communication.

For the effective functioning of the labour inspectorate, the independence and stability of the employment of labour inspectors as public officials are vital.¹⁸⁰ During the interviews, not only the representatives of the Labour Inspection Service but also the stakeholders emphasised that inspectors are granted the status of public servants,¹⁸¹ providing greater protection against dismissal, which is more an exception for a LEPL with a good social package and competitive (as for public sector) salary. The stakeholders also acknowledged that a significant increase in the institution's funding had a positive impact on the supply of tools and equipment needed for the performance of functions, in pursuit of the relevant objective set out in the National Strategy 2019-2023 for the Labour and Employment Policy of Georgia.¹⁸² It is extremely important to develop a focused strategy for human resources, ensuring that inspectors are fully equipped to effectively implement their responsibilities, covered with social guarantees (including fair remuneration), and opportunities for career development and professional growth are institutionalised.

Professionalism, as one of the guiding principles in the activities of the Labour Inspection Service, is closely related to staff qualification. The Chief Labour Inspector is obliged to determine qualification requirements for labour inspectors.¹⁸³ During the interviews, the representatives of the Labour Inspection Service noted that legal education is the qualification requirement necessary for the inspectors employed in the field of supervision of labour rights and technical education or relevant work experience is required in the field of occupational safety and health. While indicating that a large number of candidates are participating in the selection procedures, the representatives of both the Labour Inspection Service and the Ministry acknowledged during the interviews that it is very difficult to find qualified specialists, and special attention is therefore paid to professional development.

178 The Labour Inspection Service did not provide data on staff changes (voluntary redundancies) that took place after the institutional reform in 2021, which would assess the attractiveness of the position and the possible causes of the high level of vacancies even more objectively.

179 The Labour Inspection Service provided data that there are 2 active members of management, 45 in the Occupational Safety Supervision Department, 22 in the Labour Rights Supervision Department, 13 in the Imereti Regional Division, 12 in the Ajara Regional Division, 10 in the Administrative Department, 7 in the Finance and Economics Department, 6 in the Legal Department, and 5 in the Monitoring and Supervision Department.

180 "Labour Inspection: What it Is and What it Does", *supra note*, 33, page 13.

181 "Law of Georgia on the Labour Inspection Service", *supra note*, 31, Art. 11(1).

182 "On the Approval of the National Strategy 2019-2023 for the Labour and Employment Policy of Georgia", *supra note*, 5, page 30.

183 "Law of Georgia on the Labour Inspection Service", *supra note*, 31, Art. 8(1).

In their Guidelines on General Principles of Labour Inspection, the International Labour Organization emphasised the importance of access to high quality training facilities such as their own national school or structural collaboration with universities and/or specialised institutions, adequate resources for the design and implementation of training programmes for initial and periodical training, covering both theoretical and practical (including structured mentoring, visits to workplaces in different sectors with a more experienced labour inspector) components, on the substance of labour law obligations and the requirements they are seeking to enforce, the extent of their legal powers and responsibilities, on technologies and record-keeping, on how to deal with and communicate with employers and workers, and on requirements for independence, integrity, positive problem-solving attitude and the avoidance of corruption or bribery, with a view to upgrading technical skills, enhancing soft skills necessary to work constructively with workers and employers in often difficult and stressful situations and support in changing practices and behaviours, reinforcing ethical behaviour and ensuring independence of labour inspectors.¹⁸⁴

As can be seen from the information provided in the 2021 Report, the trainings include both acquaintance with international and/or foreign practices by participating in qualification events and institutional visits, organised on the basis of various projects, as well as trainings on different fundamental/technical topics.¹⁸⁵ In this context, emphasis should be placed on internal training through the implementation of various measures related to the harmonisation of practices, both in terms of procedural requirements applied and the interpretation of legal regulation. The stakeholders emphasised during the interviews that most of the trainings are currently conducted with the support of donor organisations. Whereas financial assistance cannot be expected indefinitely, it is very important to develop an institution's capacity to manage and finance ongoing high-quality and sufficient training programmes without external assistance, including, among other tools, the utilisation of internal platforms and peer-to-peer experience-sharing tools.

5.3. INTEGRITY

Commitment to professionalism is also inseparable from integrity. The provision of a transparent, fair, supportive and accountable working environment that builds integrity and ethics, the development and implementation of a code of integrity throughout the organisation, and commitment to work according to its values, should be encouraged and promoted.¹⁸⁶

In 2021, the Code of Conduct for Labour Inspectors was approved,¹⁸⁷ emphasising the principles of legality, the protection of and respect for human rights and freedoms, loyalty, objectivity, impartiality and fairness, professionalism, confidentiality and political neutrality (Articles 3-8, 11), an obligation to avoid conflicts of interests (Article 9), a right to be free from external influence (Article 10), which are indispensable for public sector entities and their staff members. The Code of Conduct for Labour Inspectors also sets standards of conduct within the organisation (orientation to professionalism and efficiency, respectful and cooperative relations with colleagues, the effective use of resources, dress code requirements (Articles 12-15)) and in relations with third parties (the transparency, openness, respect, representation of the institution, etc. (Articles 16 and 17)).

The vast majority of these principles and standards of conduct are transposed from the Law of

184 "Guidelines on General Principles of Labour Inspection", *International Labour Organization*, 2021, page 17, <https://www.ilo-emp.org/index.php?eID=dumpFile&t=f&f=156443&token=c513a6c3904b0175bf9752a409466b994a77dbbf>.

185 "2021 Report", *supra note*, 35, pages 62-64.

186 "International Common Principles for Labour Inspection", *supra note*, 32, page 11.

187 "On the approval of the Code of Conduct for Labour Inspectors", *Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia*, Order No. 01-10/6, 2021, <https://matsne.gov.ge/ka/document/view/5088985?publication=0>.

Georgia on Public Service,¹⁸⁸ a law applicable to all public servants. Therefore, the procedure of disciplinary liability for violations of the provisions of the Code of Conduct for Labour Inspectors is implemented in accordance with the procedures established by the Law of Georgia on Public Service.¹⁸⁹ Although dismissal is one of the possible forms of disciplinary liability,¹⁹⁰ during the interviews the representatives of the Labour Inspection Service noted that no complaints had been received or violations of the Code of Conduct for Labour Inspectors had been identified to become a basis for disciplinary action, and that the provisions of the Code of Conduct are seen as guidelines that staff members are aware of and follow.

At the same time, it should be emphasised that the statutory provision, under which each labour inspector is obliged to get acquainted with the Code of Conduct for Labour Inspectors and to confirm full agreement with its content, compliance with principles and standards provided for in it, and agreement to take responsibility for the implementation of its provisions, must be coordinated with training on their content and practical application as well as active means of internal communication to reveal the importance of complying with the requirements laid down.

The role of the Chief Labour Inspector, performing the function of supervisor, becomes very important here. The Chief Labour Inspector is obliged to ensure acquaintance, promote compliance by his/her own example, stimulate zero tolerance for bribery and corruption, encourage reasonable initiatives, take into account the attitudes towards the Code of Conduct during the evaluation, and ensure consistent enforcement,¹⁹¹ which are defined by the International Association of Labour Inspection as key directions towards the implementation of the principle of commitment to professionalism.¹⁹²

188 "Law of Georgia on Public Service", No. 4346-Ib, 2015, Art. 7-18, <https://matsne.gov.ge/en/document/view/3031098?-publication=35>.

189 "On the approval of the Code of Conduct for Labour Inspectors", *supra note*, 187, Art. 18; "Law of Georgia on Public Service", *supra note*, 188, Art. 85-101.

190 "Law of Georgia on Public Service", *supra note*, 188, Art. 96(1); "On the approval of the Code of Conduct for Labour Inspectors", *supra note*, 187, Art. 20(3).

191 "On the approval of the Code of Conduct for Labour Inspectors", *supra note*, 187, Art. 19(2).

192 "International Common Principles for Labour Inspection", *supra note*, 32, page 11.

6. CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

- ▶ Obvious improvements in the development of such organisational goals-related areas as independence, social partnership, regional coverage and credibility must be highlighted, while noting that these significant steps are the beginning of a long journey towards the efficiency of the newly established organisation and that further developments are vital.
- ▶ Ensuring the effective application of labour norms, the protection of labour rights, a decent, safe and non-discriminatory working environment, and a key role in creating a harmonious relationship between employers and employees are specified as strategic institutional directions of the Labour Inspection Service. Both the clear identification of result-oriented goals and a focus on those goals in the performance of day-to-day activities contribute to the development of an effective organisational culture.
- ▶ The model of operating as a legal entity under public law within the framework of the central government (under ministerial control) offers a balance between independence and accountability and increases the institution's operational efficiency. However, the possibility of improper interpretation and implementation of statutory rights of the minister to supervise legality and efficiency and revoke decisions of the Chief Labour Inspector does not allow political abuse or undue interference to be considered eliminated.
- ▶ Although the establishment of two territorial units is assessed positively as the proximity to the workplace facilitates collaboration, contributes to the dissemination of information, and allows for a more accurate assessment of regional specificities, further development based on a pre-determined set of objective criteria is vital.
- ▶ In terms of transparency and accountability, the importance of social partnership tools, including the activities of the Board of Advisors and agreement-based cooperation as a counterweight to underdeveloped tripartite cooperation, cannot be overemphasised.
- ▶ The possibility of exercising sovereign powers and the inevitability of the consequences rather than the fact of application of sanctions itself must be highlighted as credibility-building tools that have a preventive impact, contribute to a culture of compliance with the law and thus to the labour inspectorate as a partner in the development of this culture, but not as an enemy or a source of threat.
- ▶ The assignment of the power to ensure the effective application of labour rights-related legal norms, including the timely identification and prevention of direct and indirect discrimination, forced labour and labour exploitation, the performance of agreements reached through labour mediation and the enforcement of other main issues prescribed by labour legislation, and nomination as a supervisory body in the field of occupational health and safety with an expanded scope of applicability to all areas of economic activity, are considered to be significant positive institutional developments.
- ▶ Despite the positive developments, a formal approach towards informal work, avoiding its

identification as labour relations, as well as such examples of actual or potential restrictive (narrow) interpretation of legal provisions as the list of subjects that may initiate an inspection related to alleged infringement of labour rights or discrimination in a horizontal relationship (by a non-supervisor), reveals the need for the further expansion of the institutional mandate.

- ▶ The exclusion of the right of the Labour Inspection Service to supervise the validity of the termination of employment, collective redundancies and the transfer of undertakings, as well as insufficient¹⁹³ or outdated¹⁹⁴ legal regulation, have a negative impact on the statutory protection of employees and at the same time on the institutional powers (actual and perceived) of the Labour Inspection Service.
- ▶ Ensuring a balanced focus on all activities becomes crucial as the institutional mandate expands. The limited scope of inspections due to the intensive application of pandemic management measures in 2020-2021, a relative focus on occupational safety and health activities, and the insufficient utilisation of awareness-raising tools and channels, reveal the necessity of systematic, objective criteria-based performance improvements.
- ▶ The inevitability (deterrent nature) of the consequences rather than the fact of the application of sovereign powers itself contributes to the culture of compliance with the law. The direct response of individual employers subject to the sanction and the overall reaction of all labour market actors to the sanctions applicable in practice, as well as to the perception of operational efficiency, demonstrate the importance of the introduction of an effective sanctioning policy.
- ▶ Although occupational safety and health was highlighted as an issue receiving most attention, the absence of a breakthrough encourages the search for shortcomings, among which the insufficient attention of employers and employees to measures for safe work, to be tackled through a set of measures, including inspections, awareness-raising activities and employers' obligation to appoint an occupational safety specialist, as well as the lack of a clear delimitation of the competences of employers and the Labour Inspection Service in investigations of cases of work-related accidents and occupational diseases, should be mentioned.
- ▶ Significant progress related to the expansion of the institutional mandate in the field of labour rights is obvious, but there is a need for a longer period of time to elapse to produce comprehensive statistics on the basis of activities. On the other hand, disagreement with the calls for the ratification of main international documents cannot be seen as based on objective circumstances.
- ▶ Some overlap of institutional competences in the field of labour rights is justified by the aim to maximise the enforcement of employment standards, provided that institutions work together to achieve the uniformity and consistency of practice, avoiding a disproportionate procedural burden on employers.
- ▶ The absence of clearly defined targeted outputs and outcomes complicates the assessment of both efficiency (selection of activities) and effectiveness (inputs, the allocation of resources) and limits the scope of further performance-based planning.

193 For example, the possibility to conclude oral employment agreements, the non-existence of such clearly set substantive standards as a minimum wage, standard daily working time, a minimum rate of remuneration paid for overtime, a maximum limit for total overtime work, etc.

194 For example, some technical regulations in the field of occupational safety and health.

- ▶ Criteria (indicators) for the setting of priority areas for scheduled inspections are either not clearly identified and made public (in the field of labour rights) or no analysis and/or conclusions of whether they are being met in practice are provided (in the field of occupational safety and health).
- ▶ For a newly established, developing organisation, it is very important to use all possible performance improvement tools, including detailed procedural guidelines with forms for recording results, follow-up procedures, effective data management systems, assessment of public satisfaction and perceptions of performance measures (public opinion polls (surveys) and/or feedback tools).
- ▶ The proper application of the confidentiality principle and active communication that the disclosure to the Labour Inspection Service of violations made by the employer is a safe remedy and that the employee's data or information identifying him/her will be disclosed only upon his or her consent contributes to the development of the culture of active engagement in the protection of statutory rights.
- ▶ The comprehensiveness of an organisational structure and the adequacy of qualified, motivated, empowered and well-equipped staff are a particularly significant source of added value. Though the present organisational structure is to be regarded as covering all main aspects of institutional activities, a separate unit with a focus on informal and non-standard work, the merger of a data-gathering function and responsibility for statistics, and analytical work in one organisational unit, are worth considering.
- ▶ Not only the number of staff positions but also their filling, the additional assignment of responsibilities not related to the performance of direct functions, as well as unequal distribution among structural units, may have a significant impact on the workload and comprehensiveness of performance. On the other hand, the independence and stability of employment, working conditions and a social package along with favourable conditions for professional development, and an organisational culture that promotes high standards of integrity, contribute to the attractiveness of workplaces.

RECOMMENDATIONS

Institution, its vision, mission and goals

- ▶ To prevent the possibility of political abuse and unjustified interference in institutional independence, the withdrawal of the right of the minister to suspend or revoke illegal decisions of the Chief Labour Inspector (Article 8(2) of the Statute of the Legal Entity under Public Law – Labour Inspection Service) or the provision of objective criteria and clear procedures for the implementation of such right are recommended.
- ▶ The set of criteria for territorial development should be refined according to the situation in the labour market, the results of the institution's activities and public perceptions, and a development strategy based on such criteria should be prepared, approved and consistently implemented.

Mandate

- ▶ To fill the gaps of the institutional mandate the “principle of the preference of facts” which emphasises the substance of the relationship instead of the form (the title) of the contract should be enshrined in law to tackle informal work, the broader concept of beneficiaries of protection in the field of labour rights should be used in the Labour Code as it is in the field of occupational safety and health, and to ensure effective protection of employees’ rights the principle of the most inclusive interpretation of the scope of the mandate should be institutionalised.
- ▶ The mandate of the Labour Inspection Service should be further extended to include the supervision of the validity of the termination of employment, collective redundancies and the transfer of undertakings.
- ▶ To provide the labour inspectorate with effective supervisory tools, the legal framework needs to be improved by repealing the possibility to conclude oral employment agreements, clearly setting such substantive standards as a minimum wage, standard daily working time, a minimum rate of remuneration paid for overtime, a maximum limit for total overtime work, updating all technical regulations in the field of occupational safety and health.
- ▶ The implementation of a webpage as a significant awareness-raising channel with a Q&A section, electronic questionnaires and feedback tools as well as an electronic document management system, not only serving for efficient data recording and registration but also creating conditions for the use of automatic data search and analysis mechanisms, the generalisation of practice and the refinement of criteria for further development within specific (maximally short) deadlines should be prioritised, ensuring their institutionalisation and continuity.
- ▶ The insufficient attention of employers to the introduction of appropriate preventive measures as well as low working culture and reckless approach of employees to their safety and the safety of their colleagues stimulates the need for effective and intense awareness-raising campaigns, including sharing of (making public) generalised institutional practice, especially in small and medium-sized businesses and in rural and/or mono-industrial areas.
- ▶ For the pursuit of the safest possible working conditions, the legal framework needs to be improved clearly delimitating competences of employers and the Labour Inspection Service in investigations of cases of work-related accidents and occupational diseases.
- ▶ The core international legal instruments (including ILO Conventions No. 81 and No. 129, governing labour inspections, as well as non-accepted provisions of the European Social Charter (Revised)) should be ratified within specific (maximally short) deadlines.

Operational principles and procedural aspects

- ▶ Clear criteria (indicators) to assess the fulfilment of the strategic goals should be set and an analytical evaluation of available statistics as well as surveys and feedback tools should be used to identify progress and set future goals.

- ▶ For the setting of priority areas for scheduled inspections, clear qualitative and quantitative criteria (indicators) should be identified, made public and used for performance assessment.
- ▶ From the perspective of procedural requirements, to ensure both the proportionality of sanctions and their uniform application the criteria and principles for selecting the type and level of a sanction should be identified by legislation or consistent institutional practice.

Staff and organisational structure

- ▶ A separate unit with a focus on informal and non-standard work as well as the merger of a data-gathering function and responsibility for statistics and analytical work in one unit are recommended.
- ▶ Special attention should be paid to the development of a focused strategy for human resources, ensuring that inspectors are fully equipped to effectively implement their responsibilities, covered with social guarantees (including fair remuneration), and opportunities for career development and professional growth are institutionalised.
- ▶ The development of the institution's capacity to manage and finance ongoing high-quality and sufficient training programmes without external assistance, including, among other tools, the utilisation of internal platforms and peer-to-peer experience-sharing tools, should be highlighted.

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