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DEFICIENCIES OF THE CURRENT LABOR SAFETY REFORM IN GEORGIA

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INTRODUCTION

Ensuring a safe environment in the work place has been a major challenge in Georgia for years. The severity of labor rights violations is reflected by the large number of workers' strikes and protests in recent years during which calls for the realization of a safe working environment were repeatedly voiced. Moreover, according to official data, in the period between 2011 and 2016, 776 employees were injured and 270 died at their respective workplace as a result of work-related accidents.

In response to these problems, the Labour Conditions Inspection Department was created in 2015. As a matter of fact, the mandate of the Labour Conditions Inspection Department is limited to matters concerning labor safety. The department can only conduct an inspection with prior approval of the employer, and the authority of the department is limited to issuing non-binding recommendations, which is in contradiction with the minimum standards of the International Labour Organization (ILO).¹

As current statistical data shows, after the creation of the Labor Inspection Department, the rates of workers' mortality as well as the number of people injured at the workplace as a result of work-related accidents, have remained significantly high and has in fact even increased.²

Establishing an effective and accurate mechanism of labor inspection, equipped with appropriate levers and compatible with the standards of the International Labour Organization (ILO), was one of the obligations the Georgian authorities committed themselves to in the framework of the 2014-2016 EU-Georgia Association Agenda³ and it is defined in chapter 13 and 14 of the EU-Georgia Association Agreement.⁴ To date, these obligations have not yet been met.⁵ Moreover, transforming the current Labour Conditions Inspection Department into an effective mechanism represents one of the goals stipulated in the 2017 Draft National Action Plan for the implementation of the Agenda of the EU-Georgia Association Agreement.⁶

In spite of the obligations undertaken by the government on both national and international levels, the Government of Georgia has significantly delayed this process. To justify this inaction, it points to the deterioration of investments and the process of rapid economic development. Thus, the economic team of the Georgian government, which includes high officials of The Ministry of Economy and Sustainable Development and The Economic Council, has more influence on the development of the labour policy than the Ministry of Labour itself. Moreover, the reforms implemented in the sphere of labour safety are vehemently opposed by business associations.

1 Human Rights Education and Monitoring Center (EMC), "An Assessment of the Labour Inspection Mechanism and a Study of Labour rights Conditions in Georgia"; Tbilisi, 2017. Pg. 92-93. Available: <https://emcrights.files.wordpress.com/2017/01/research-labour-rights.pdf>. Last seen: 24.09.2017.

2 Fatal accidents and work-related injuries – infographic, Human Rights Education and Monitoring Center (EMC); Available: <https://emc.org.ge/2017/02/24/emc-226/>. last seen: 24.09.2017.

3 Association Agenda between the European Union and Georgia; Trade Union rights and core labour standards; Available: https://eeas.europa.eu/sites/eeas/files/associationagenda_2014_en.pdf; Last seen: 24.09.2017.

4 EU-Georgia Association Agreement; Chapter 13: Trade and Sustainable Development; Chapter 14: Employment, social policy and equal opportunities;

5 "Implementations of EU-Georgia Association Agenda 2014-2016 Assessment by Civil Society"; March 2017; Pg. 29. Available: http://www.osgf.ge/files/2017/Publications/Final_report_ENG.pdf; Last seen: 24.09.2017.

6 2017 Draft National Action Plan for the implementation of the Agenda of EU-Georgia Association Agreement; „transformiwnng the labor conditions monitoring department (the labor inspection) into an effective mechanism, through strengthening its institutional, administrative capacities and increasing its competencies according to ILO standards, which includes widening its mandate and at the first stage granting a free access to it for inspecting the components on health and safety at work.”

THE DRAFT LAW ON “LABOR SAFETY”

Currently, in response to the above mentioned challenges and international responsibilities undertaken by the Georgian authorities, the Georgian parliament is reviewing a draft law on “Labor Safety”, which was initiated by the Georgian government in June 2017⁷.

THE LIMITED SCOPE OF THE LAW

A significant drawback of the draft law is its limited scope of action. The draft law covers not all types of employers, but only to those who are identified as being especially risky, hazardous and hard, with the complete list expected to be approved by the government of Georgia within six months after enacting the law.

Apart from this, it is problematic that the prerogative of defining the sphere of action of the law, both when it comes to narrowing and expanding it, will only be available to the government, independently of the parliament.

ABSENCE OF A MECHANISM FOR UNCONDITIONAL ACCESS TO THE WORKPLACE

It is obvious that for the effective implementation of the proposed bill, it is immensely important that the supervisory body has unconditional access to all workplaces. The proposed bill does not provide for such a mechanism. According to this draft the state supervisory mechanism requires a prior approval by court order for it to be able to enact non-selective control (that ought to be its main duty). In the absence of mechanisms of unconditional access to workplaces, the labor inspection mechanism is deprived of the ability to respond swiftly, thus weakening its scope considerably, especially in places characterized by increased risks that endanger life and health.⁸

THE INEFFECTIVENESS OF SANCTION MECHANISMS

The novelty of the draft law is to confer to the inspection mechanism the power to introduce sanctions such as warnings or setting penalties as well as suspending the functioning of enterprises. Until now the inspection body only had the right to issue recommendations. However, the vague rules of invoking sanctions defined in the draft law and extremely low fines (approx. EUR 17 with the maximum fine being approx. EUR 1,710), puts their adequate and effective functioning under question.

7 The draft law of Georgia on “Labor Safety” initiated by Georgian government. Available: <http://info.parliament.ge/#law-drafting/13972>. Last seen: 24.09.2017.

8 Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference 95th Session, 2006.

THE NECESSITY OF TRANSFORMING AND STRENGTHENING THE SUPERVISORY BODY

In order to guarantee proper implementation of the draft law, the current labour inspection mechanism requires a significant transformation and strengthening both at institutional and individual levels, which is immensely important for functioning independently and effectively. Although the government initiated a new reform in the sphere of labor security, the explanatory note of the bill makes it clear that its enactment does not result in new financial liabilities. However, with the resources available in 2017, which includes 20-25 inspectors and approx. EUR 197,000 of the overall budget, the fulfillment of large-scale reform of a transformative nature is practically impossible. This increases the risks of discrediting the idea and significance of the labour inspection. At the same time, there is no clarification in the law that helps to understand which entity will be responsible for its implementation, making the law enforcement vague.

The view of the Georgian government regarding the reform is not adequately responding to the needs of labor safety and health supervision. However, the draft law on labor safety includes a number of positive notes regarding to the normative safety standards, but gaps in the draft law considerably weaken its effectiveness and do not create the ground to ensure employees' safety and health in a proper way.

The fact that this issue obviously is problematic is also emphasized by the Ombudsman of Georgia, trade unions and the International Labour Organization (ILO), which call on the parliament to make the draft law compliant with existing ILO conventions. However, business associations are against the inclusion of provisions on additional protection guarantees in the labour safety draft law. Most of them openly and publicly oppose the introduction of any type of labor inspection system.⁹

CONCLUSIONS AND POLICY RECOMMENDATIONS

- Enlarge the scope of the Georgian Law regarding 'Labor Safety' and make it apply to all workplaces without any exemptions;
- Enable the Labor Inspection to have unconditional and free access to workplaces. This implies that the mechanism would have to have the power to conduct inspections on its own and without any prior approval of the court;
- The Georgian Law on 'Labor Safety' shall consider the appropriate system of sanctions, including the appropriate rule for the usage of sanctions and adequate penalties for fines, which will have both preventive and reactionary effects;
- The state needs to create an adequate legislative and institutional framework that will transform the existing department into a fully-fledged labor inspection body and consider its independence and effective institutional capacity. This entails putting in place guarantees of inspectors' individual independence; furthermore, the bill should directly refer to the labor inspection as the body responsible for enforcing the law.

⁹ Interview with the head of the Georgian Employers' Association (GEA), who stresses that there is no necessity of adopting a special law on labour safety, as it will be the waste of financial resources and pressure on business. Journal 'Liberali' <http://liberali.ge/articles/view/30406/risi-shetsvlis-imeri-unda-gvqondes-dasaqmebis-adgilebze><http://liberali.ge/articles/view/30406/risi-shetsvlis-imeri-unda-gvqondes-dasaqmebis-adgilebze>.