



**An Assessment of the Labour Inspection Mechanism
and a Study of Labour Rights
Conditions in Georgia**

**AN ASSESSMENT OF THE LABOUR INSPECTION
MECHANISM AND A STUDY OF LABOUR RIGHTS
CONDITIONS IN GEORGIA**

Labour relations and conditions in heavy and light industry, transport and service sectors;
The study of the mandate and activities of the labour inspection mechanism

The research is published with the support of The East-West Management Institute's (EWMI) Advancing CSO Capacities and Engaging Society for Sustainability (ACCESS) project, funded by United States Agency for International Development (USAID). The content of this publication is the sole responsibility of the Human Rights Education and Monitoring Center (EMC) and does not necessarily reflect the views of USAID, the United States Government, or EWMI.

Research Authors:

Part I – Labour relations and conditions in heavy and light industry, transport and service sectors

- Tatuli Chubabria

Part II - The study of the mandate and activities of the labour inspection mechanism

- Lela Gvishiani, Salome Jokhadze

Researchers: Tatuli Chubabria, Anano Tsintsabadze, Lela Gvishiani, Salome Jokhadze

Research Supervisor: Lina Ghvinianidze, Maia Barkaia

Editor: Nino Kalatozishvili

Translators: Magda Dekanosidze, Ana Jejelava, “Dialogi 2006” LTD

Designer: Tornike Lortkipanidze

Cover: Salome Latsabidze

Photo: Still from Ana Tsimintia's movie “Chiatura 187km”

Circulation: 300

ISBN: 978-9941-0-9597-9

It is forbidden to copy the material without written consent from the Human Rights Education and Monitoring Center (EMC).

Address: 12a I. Abashidze Street, Tbilisi, Georgia

Phone: +995 032 2 23 37 06

E-mail: humanrightsemc@gmail.com

fb: <http://fb.com/RIGHTSEMC>

www.emc.org.ge

We would like to express our deepest gratitude towards the East-West Management Institute's (EWMI) ACCESS Project for assisting the process of promoting labor rights and for supporting the present research.

In addition, we would like to express our special gratitude to Ana Diakonidze - the Social Policy researcher and the Invited Lecturer at the Tbilisi State University, for her important contribution to the research process, and for sharing her professional and academic expertise with the research group.

CONTENT

Introduction	10
 Part I. Labour relations and conditions in heavy and light industry, transport and service sectors	
Chapter I. Research methodology	14
1. Selection of the objects the study	14
2. Development of questionnaire guidelines.....	15
3. Data collection.....	16
4. Data analysis	16
 Chapter II. The state of affairs concerning labour rights in mineral extraction and processing enterprises	18
1. Labour conditions: health, safety and working environment at workplace	19
2. Other components of labour rights: inappropriate regulation of labour relations, inappropriate remuneration, sanitation, nourishment and transportation	26
3. Inadequate social security guarantees for the employees at hard, hazardous and dangerous workplaces	33
4. The need for strengthening of response to violations at enterprise level and mechanisms of labour inspection	34
 Chapter III. Situation concerning labour rights for the persons employed in the field of railway transport	40
1. Labour conditions: health, safety and working environment at workplace	41
2. Other components of labour rights: inappropriate regulation of labour relations, inappropriate remuneration, inadequacy of management and personnel policy	47
3. Inadequate social security guarantees for the employees at hard, hazardous and dangerous workplaces	50
4. The need for response to manufacturing violations	52

Chapter IV. The situation concerning labour rights in garment factories	56
1. Unstable job and inadequate remuneration.....	57
2. Inefficient regulation of labour relations	59
3. Machinery and operational conditions at the workplace	60
Chapter V. The situation concerning labour rights of the persons employed in supermarket chains	63
1. The problem of precarious employment	64
2. Drawbacks of labour agreements and the problem of inadequate remuneration	66
3. Labour conditions at workplace	67
Chapter VI. Trade Unions	70
1. Labour Unions of the employees working in heavy industry.....	70
2. The possibilities of organizing employees and its restrictions in light industry and service sector	76
Conclusions.....	80

Part II. The study of the mandate and activities of the labour inspection mechanism

Chapter I. Methodology	84
1. Research of the national legal framework	84
2. Request for public information	85
3. Strategic proceedings (litigations).....	85
4. Working meetings and individual interviews.....	85
5. Research of international legal standards and practices established in other countries.....	85
6. Limitations of the Research	87
Chapter II. The main legal basis of the labour inspection mechanism (review of national and international legal framework)	88
1. Review of international obligations of Georgia concerning the labour inspection mechanism	88
2. The Main Legal Framework of Functioning of the Department of Inspection Labour Conditions (Analysis of Georgian Legislation)	91
Chapter III. The aims of the labour inspection mechanisms, sphere of action and authority	94
1. The aims of the labour inspection mechanisms, sphere of action and authority implementation forms in the light of the international standards	94
2. Goals, Scope of Work and Powers of the Labour Conditions Inspection Department (Analysis of Georgian Legislation and Inspection Department Practice).....	112

Chapter IV. Review of Institutional Framework of Labour Inspection in Light of International Standards and National Legislation	129
1. Review of Institutional Framework of Labour Inspection in Light of International Standards	129
2. Institutional Framework of the Labour Conditions Inspection Department according to the National Law	143
Conclusion	155
Recommendations	157
Annex 1.	161

Introduction

The presented research attempts to describe the assessment of mandate and activities of the labour inspection mechanism, labour relations and labour conditions for persons employed in different sectors. Amendments to the Labour Code and accompanying legislation, implemented in the period of 2013-2015 preconditioned the gravity of the issues under consideration. Ensuring guarantees in regard to separate components of labour rights in the legislation, and formation of new mechanisms concerning protection of rights or development of labour policy resulting in creation of labour inspection, labour dispute mediation and trilateral negotiation format are related to the reforms conducted throughout the above referred period. Abovementioned changes were supposed to become the precondition for transformation of labour policy.

Despite the reforms and the policy declared by the government, the statistics of fatal accidents and work-related injuries at the workplaces according to which in the period of 2011- June 2016 724 persons were injured and 252 died due to industrial accidents, which indicates to the urgent need for better protection of the employee rights¹.

Confrontations organized by the workers demanding basic labour conditions or strikes organized by trade unions in different sectors of employment during the last few years reveal the gravity of labour right violations². Besides, high level of unemployment in different geographical areas, or employment sectors is conducive to exploitation of workers, who due to the lack of alternative employment have to agree to part-time employment, low remuneration and inadequate labour conditions.

It is noteworthy, that the abovementioned amendments were preceded by a 10-year period after the rose revolution of 2003, when structural reforms were carried out in the Economy of Georgia for the rapid and maximum liberalization of the market. In the opinion of the International Labour Organization (hereinafter ILO) and EU, deregulation of the market was carried out following the abolition³ of fundamental guarantees of labour and social security. Additionally, according to the reports by ADB, despite the fact, that Georgia was significantly advanced in the

1 Fatal accidents and work-related injuries – infographic, (27.02.2016), Human Rights Education and Monitoring Center (EMC), available: <https://emc.org.ge/2016/02/27/emc-10/>; last seen: 09.12.2016. Correspondence N2857080, The Ministry of Internal Affairs of Georgia, 15 November, 2016.

2 Tsintsabadze A., The Influence of Neo-Liberal Policy on Labor Rights in Georgia, (27.04.2016) The South Caucasus Regional Office of the Heinrich Böll Foundation, <https://ge.boell.org/ka/2016/04/27/neoliberaluri-politikis-gavlana-shromit-uplebebez-sakartveloshi> Last seen: 01.12.2016.

3 Jobelius, M., Economic liberalism in Georgia: A challenge for EU convergence and Trade Unions, Perspective, Friedrich Ebert Stiftung Tbilisi, April 2011. Available: <http://library.fes.de/pdf-files/id/08135.pdf>. Last seen: 09.12.2016.

world rankings by indicators⁴ of doing business, rapid increase was not followed by the reduction⁵ of poverty or unemployment.

A new government has been aiming at inclusive growth since 2012. Social-economic Development Strategy of Georgia considers human capital development as a priority⁶. Besides, in the frames of EU Association Agreement (hereinafter Association Agreement) Georgia undertook a number of obligations for the purpose of reviewing of the labour policy and improvement of labour standards in the context of facilitating the trade and sustainable development, employment, social policy and equal opportunities⁷.

Considering the existing challenges and the policy declared by the government of Georgia, the assessment of labour administration system implemented by the state to transform labour policy, on the one hand and, and the study of legal status of employees in the workplaces, on the other, is becoming particularly important.

Therefore, the present research analyzes the mandate of labour conditions inspection, which is one of the most important mechanisms of elimination and prevention of labour right violations. The aforementioned analysis is based on the evaluation of national legislation and practice in relation with international standards and experience of different countries.

In addition, the subject of the research of labour rights conditions was employees' personal experience and in particular, the nature of labour relations with their employers, labour conditions in the light and heavy industry, transport and service sectors. Moreover, the research examined the practice of employees' confrontations and strikes, as well as the state of the affairs of trade unions and their development opportunities.

4 In 2010, Georgia held 11th place in the World Bank's 2010 »Doing-Business Report«, and also 26th place in the »Index of Economic Freedom« compiled by the American Heritage Foundation. See: Jobelius, M., Economic liberalism in Georgia.

5 In 2007 Real GDP Growth Rate was highest, reaching 12.3%. Besides, in 2003-2015 GDP per capita raised from 919\$ to 3.700\$. However, the unemployment level decreased from 13.8% to 12% in 2005-2015: Base on the latest data provided by UNICEF, 11.9% of households and 13.3% of the total population live below subsistence minimum. See: "Georgia- Country Partnership Strategy (2014-2018)", Analysis of Economy and poverty, Asian Development bank. Available: "<https://www.adb.org/documents/georgia-country-partnership-strategy-2014-2018>". Last seen: 09.12.2016. See "The Welfare Monitoring Survey - Summary" (November, 2016) UNICEF, available: http://unicef.ge/uploads/Welfare_Monitoring_Survey_Georgia-GEO_WEB.pdf. Last seen: 09.12.2016. See Gross domestic product, National Statistics Office of Georgia, available: http://www.geostat.ge/?action=page&p_id=118&lang=geo. Last seen: 09.12.2016.

6 Social-economic development strategy of Georgia, Georgia, 2020. The Government of Georgia (November, 2013) Available:<https://napr.gov.ge/source/%E1%83%A1%E1%83%A2%E1%83%A0%E1%83%90%E1%83%A2%E1%83%94%E1%83%92%E1%83%98%E1%83%90/ViewFile.pdf>. Last seen: 09.12.2016.

7 Trade and sustainable development, CHAPTER 13, TITLE III, FREEDOM, SECURITY AND JUSTICE; Employment, social policy and equal opportunities, CHAPTER 14, TITLE VI, OTHER COOPERATION POLICIES. EU-Georgia Association Agreement, Official Journal of the European Union, Volume 57, 30.08.2014. Available: <http://www.parliament.ge/uploads/other/34/34754.pdf>. Last seen: 09.12.2016.

As a result, the first part of the research reveals the state of affairs of labour relations and labour conditions from the perspective of the workers employed in industrial, transport and service sectors, while the second part deals with the mechanism of labour condition inspection and provides critical analysis concerning its mandate and activity based on local legislation, international standards and applicable models in different countries.

Part I
Labour relations and conditions
in heavy and light industry,
transport and service sectors

Chapter I.

Research methodology

The study of the state of affairs concerning labour rights of the employees in different sectors through qualitative method of the research was conducted in the form of face-to-face comprehensive interviews with the employees. The collected data highlights the employees' assessment about labour conditions and the needs concerning security guarantees of the employees, and also their opinions about labour condition inspection, other mechanisms of labour administration system and the state of affairs concerning trade unions. The abovementioned method made it available to characterize a wide range of state of affairs concerning labour rights and employees' needs.

1. Selection of the objects the study

For the purpose of studying the state of affairs concerning labour rights the selection of the objects of the study employed in the industry, transport and service sectors was determined according to several statistical indicators. The workplaces under research in the selected sectors on the one hand were identified based on the information about the location of the large-scale and considerable resistance of the employees, and on the other, by considering unrestricted access of the research team to interview the employees. Furthermore, it should be noted that the research does not mention the names of the companies whose employees have been interviewed as far as for the research purposes it is significant to observe the state of affairs concerning labour rights protection according to employment sectors and not specific companies.

According to the data provided by the National Statistics Office of Georgia the number of persons employed in the private sector from 1999 to 2016 does not exceed 700 000¹. The persons employed in this sector were selected from industrial and service fields.

One of the core issues of the research is to study the state of affairs concerning labour rights of the persons employed in heavy industry as far as the indicator of injuries and fatal cases in the abovementioned sector is one of the highest. In addition, the trade unions in this sector are especially active in terms of demanding the protection of labour rights from the employers and state.

As for the service sector, its share is the highest in the western developed economies in terms of its share in GDP and the number of workplaces (compared to industry). Consequently, observa-

¹ The number of employees - business statistics, 199-2016 National Statistics Office of Georgia, http://www.geostat.ge/?action=page&p_id=211&lang=geo. Last seen: 09.12.2016.

tion of the state of affairs concerning labour rights in the aforesaid field is important since the current model of economic development of Georgia is striving to increase the share of this sector. The need for studying supermarket chains in the given employment sector was triggered by the fact that employees and students are active in terms of labour right protection². Additionally, the research studied the legal status of workers employed in light industry in private sectors. The course of documenting of legal status in the abovementioned sector was promoted by sectoral structural unit within trade unions.

At the same time, it turned out to be important to consider that according to the data provided by National Statistics Office of Georgia, from 2006 to 2015 the percentage of the persons employed in the state sector was decreasing, falling from 20% to 15.4 %³. The above-mentioned fact made it interesting to study legal status of the persons employed in the state sector. As a result, the research focused on studying the legal status of the workers employed at hard, hazardous and dangerous workplaces in the field of railway transport where injuries and fatal cases are quite frequent and trade unions are active at the same time.

2. Development of questionnaire guidelines

Before field works and interviews were conducted, a two stage questionnaire guidelines were developed in the frames of the research. In particular, the guidelines were modified accordingly after a pilot interview.

In order to study labour conditions the guidelines included the questions which aimed to identify dangers and risks related to production process; provide with relevant tools and protective means and assess labour environment, discuss the issues of equipment functionality, reconstruction and maintenance in the working spaces, describe the length of current working hours (working hours, holidays, etc.), determine adequate infrastructure and service condition for workers' welfare (canteens, changing rooms, etc.) by the employees. The questions also dealt with the assessment of agreement relations between employees and employers.

At the end of the interview the participants were asked to talk about labour conditions inspection mechanisms and trade unions.

2 Aptsiauri, s.: "Working is not easy – demonstration against labour exploitation" (4.10.2015); "Liberal". <http://liberali.ge/news/view/18169/shroma-ar-aris-ioli--aqtsia-shromiti--eqspluatatsiis-tsinaaghmdeg>. Last seen: 09.12.2016.

3 Distribution of employees by institutional sectors, 2006-2015, National Statistics Office of Georgia, http://www.geostat.ge/?action=page&p_id=145&lang=geo. Last seen: 09.12.2016

3. Data collection

In the frames of the research the data was collected in 3 enterprises for extraction and processing minerals (30 interviews), 2 railway transport companies (8 interview), 4 garment factories (7 interviews) and 4 different service sectors represented by chain hypermarkets of food and consumer products (7 interviews). The data was collected throughout January-June, 2016. 13 workplaces and 52 interviewees have been studied in total.

The study of labour conditions in the heavy industry and transport sectors became available based on the experience of cooperation and communication with the trade unions established since 2012. The respondents were selected from the leadership and active and proactive members of so-called alternative “yellow trade unions”, who are involved in advocacy concerning legal status of employees.

For the purpose of studying labour rights in the light industry and service sectors the research was based on the information provided by the interviewees at various workplaces. In the course of selection interviewees the cases about labour dispute were obtained and “snowball effect” was used when the interviewees participated in arranging the meetings with other participants of the research.

4. Data analysis

At the stage of data analysis the method of topic-based coding was used. After the initial analysis and coding, data blocks were created, according to which the discussion by the interviewees about the state of affairs concerning labour rights in the given employment sector is described in separate subchapters. The research analyzes the state of affairs concerning trade unions and opportunities in different employment sectors in the separate chapter.

In the course of studying the state of affairs concerning labour rights in heavy industry and transport sectors, labour conditions, as well as the opportunities of social security for the workers employed at hard, hazardous and dangerous workplaces were analyzed. In addition, the research revealed the interviewees’ opinions about responding to manufacturing violations and the state inspection mechanism.

The study of state of affairs concerning labour rights in light industry and service sectors made it possible to research new perspectives of labour right violations related to labour precarity together with labour conditions, the issue of part-time employment and its instability.

Furthermore, the interviews with self-organized trade unions at the stage of data analysis made it available to submit data independently about current models of trade unions and the possibilities of their development.

The research comprises of six chapters. The first chapter describes the methodology. The second chapter deals with the workers' opinions employed in mineral extraction and processing enterprises about the state of affairs concerning their labour rights and needs. The third chapter highlights the abovementioned issue among the employees in railway transport sector. The fourth chapter describes the workers' visions in the garment factories, the 5th one emphasizes the same issue among the employees in the supermarket chains. The 6th chapter attempts to describe the state of affairs for trade unions and development opportunities in the studied employment fields.

Chapter II.

The state of affairs concerning labour rights in mineral extraction and processing enterprises

In the course of research and documenting of labour rights in the enterprises for extraction and processing minerals, the research identified as the object of the study the regional cities of industrial type, which emerged and developed in Georgia in the period of the Soviet Union⁴. In the abovementioned cities various production factors are concentrated on one location promoting the efficiency of industrial production as it reduces different production related costs (raw materials, human resources, transport, etc.). In addition, local community in those cities has close social or economic links with the production process providing the stability of the production process due to rare renewal of the staff and low mobility of people. The engagement of local citizens in the industrial production process can be observed from generation to generation. Considering the above referred factors, industrial zones cannot overcome the problem of strong dependence of workers on the production process, which determines the position of the enterprises, and weakens the possibilities of proper implementation of labour rights.

The main purpose of the research in the given context is to study the working conditions of the workers, employed at different positions, examine social protection guarantees for the employees working in hard, hazardous and dangerous conditions and assess effectiveness of inspection of production violations, or the existing response mechanisms.

The research also focuses on examination of the state of affairs in the sphere of human rights of the employees in different positions working aboveground and underground, but does not envisage observation of working conditions of personnel on administrative-managerial positions. The research deals with the employees working in two, three or four different shifts where the majority of people interviewed are employed in hard, hazardous and dangerous working conditions.

The research was conducted among the members of local labour union and the meetings were held in the premises of the union in the form of face-to-face comprehensive interviews. In case of those enterprises, where the labour union does not have the office, the data was collected through meetings in the public area or other neutral territory. Overall, individual and group interviews were carried out with 29 interviewees in three different enterprises (11, 10 and 8 interviews in each case). The majority of employees in those enterprises are male workers, and only 20% of the participants are female. Working experience for the employees ranges from 3 to 41 years.

⁴ The names of regional cities are not given to limit the possibilities of identification of enterprises.

1. Labour conditions: health, safety and working environment at workplace

For the purpose of observing health, safety and working environment of the employees in the enterprises for extraction and processing minerals, the research studied the condition of infrastructure and machinery and also the issue of equipping the employees with uniforms and necessary equipment. The possibilities of providing first aid and emergency medical care at workplace were also studied. The research identifies the problems related to responding to and investigating the cases of industrial injuries and fatal accidents. Additionally, the research reviews sanitation matters.

“Employers shall be obliged to provide employees with a working environment that is maximally safe for the life and health of the employees”. (Paragraph 1, Article 35, Labour Code)

1.1. The need for upgrading and modernization of infrastructure and machinery of the enterprise

The participants of the research say that the infrastructure in the enterprise is old, unreliable and there is a need for restoration and modernization of the machinery or reorganization of the enterprise using the existing resources to reduce the number of industrial injuries and ensure the productivity and safety of work. The interviewees consider that temporary and one time restoration of the machinery and installations does not meet the need for the upgrading of the infrastructure.

The participants of the research speak about the life and health related risks connected to outdated machinery. One of them states:

“We rely only on God. We do not have any kind of support. The machinery is out of order but we still operate it. We ask our managers to fix the equipment, but there is no possibility. There is nothing we can do. We are expecting something bad to happen in every single minute.”

Besides, the people employed in the mines emphasize the need for putting their lives under risk in order to properly fulfill the task with the existing machinery. *“Sometimes we ignore our own safety, we take little risks. In the end the result turns out to be quite tough”*, says one of the miners.

“When going to work, my family members pray day and night, fearing if I can go back home, again”, says another interviewee.

The employees speak about the lack of relevant infrastructure for performing the work properly. They indicate the fact that locomotives and passenger cars often stop or are out of order due to being outdated. In such cases the employees have to walk long distances and carry heavy equipment: “Drilling machine weighs about 150-160 kg and two people have to carry it with shoulders for 100-150 meters,” claims one of the participants. The interviewees say that in case of industrial injuries, due to lack of passenger cars, the workers have to take the injured out of the mines. When the locomotives run, the employees talk about the need for road reconstruction: “The locomotive arrives, but the thing is that the road is not in a good state. You fix here and it gets damaged there. It was not fully reconstructed. They just repair some sections mechanically which are in a terrible condition. The locomotives have to work in a very busy mode and cannot fully perform the duties”, says one of the participants.

The interviewees state, that the employers do not implement safety standards and provide full technological equipment due to high financial expenses. Instead, they temporarily fix machinery and installations and solve the need for infrastructure upgrading through such sporadic single-time efforts and unsustainable manner. One of the workers says:

“Almost all working conditions are deteriorated such as individual-protective means, safety norms, machinery and outdated equipment. Proper attention is not paid to buy them. All these issues are related to money and thus the company avoids.”

One of the participants talks about the working area: “The only thing they did was roofing, but the strong wind destroyed the roof as it was not properly done.” Another interviewee talks about the same problem: “The machinery is very, very old. They fix but it isn’t worth a dime. Our locksmiths are constantly in troubles. They are unable to revive the dead. The situation is extremely hard”.

“Employers shall be obliged to provide employees, within reasonable time, with full, objective, and comprehensive information available on all factors affecting employees’ life and health or safety of the natural environment”.(Paragraph 2, Article 35, Labour Code)

Human Resources Development Convention of International Labour organization (#142) defines the obligation of informing employees. Based on it, information and guidance shall cover the choice of an occupation, vocational training and related educational opportunities, the employment situation and employment prospects, promotion prospects, conditions of work, safety and hygiene at work, and other aspects of working life in the various sectors of economic, social and cultural activity and at all levels of responsibility.(Paragraph 2, Article 3, Human Resources Development Convention of International Labour organization (N. 142)).

1.2. Poor working conditions

The research showed that in the studied enterprises at certain workplaces the workers have to work in the unhealthy environment. The interviewees speak about the inappropriate ventilation or thermal insulation system, the contact with hazardous substances and unbearable working conditions due to not taking the work instructions into consideration.

The participants of the study say that as the need for maintenance of certain machinery was ignored, it resulted in the unacceptable working conditions in the enterprise. For instance, one of the participants speaks about the unbearable working conditions due to malfunction of ventilation system: *“During the Soviet period, the ventilation system used to operate. In winter it gets extremely cold, we are freezing. If you go close to the kiln, lean against it like this – you will get warm from the front side, then you have to turn. It’s like a fireplace. That’s why it is open from this and that side. In fact, if you pour cold water on it, will make it freeze. The situation is intolerable”*. The ones employed on the same kiln tell about unbearable heat in the summer due to the malfunctioning of the ventilation system:

“Just imagine, now it is 40 degrees Celsius outside. The situation is extremely intolerable and the kiln, a big kiln with the diameter of 10 meters working on 10 MW. It can even melt a stone and we have no ventilation. Last year they brought a fridge for us to drink cold water, not to die.”

The employee responsible for the cable transport service at different workplaces speaks about the non-existence of thermal insulation in the working room and health and life-threatening working condition:

“The situation is unendurable... The place where I work does not have windows. We have to be in draught, water is coming from upstairs and we’re getting soaked. What’s more, there is power wiring and makes the situation extremely dangerous.”

The interviewee employed in the different enterprise talks about the thermal insulation and the need for renewal of working space while describing the labour conditions for the people working on a crane. He states:

“Cranes are old, broken, with no glass at all, electric heaters have just been installed inside, just little electric spiral heaters. With crane driver inside, no windows, no glass. Sometime it freezes, reaches -5-6 degrees Celsius. Last year it was so cold, freezing. The drivers used to get down, get warm for a little while and go up again. During one shift they had to get down 5 or 6 times. The cranes are not glazed, they are shaking and only God knows when they fall down.”

The interviewees also talk about the cases of oncological diseases due to hazardous working conditions and metal dust at certain workplaces. The employees in various places speak about the contact with numerous poisonous gases. One of the participants says: “Here is dust, lungs, heart. These gases contain poisonous substances, just one inhalation is enough to put you down. You will get disabled over time”.

According to the interviewees, the health of the workers in one of the enterprises is under risk due to the violation and improper performance of the production rule. The employees working on the kiln state that they have to carry out repair works of the operating equipment for the production not to deter if the machinery switches off:

“If the maintenance works are conducted inside the kiln, the people have to go into the hot kiln to carry out the repair works. However, according to the instructions the temperature of the kiln needs to be decreased to the relevant degree, then the kiln needs to be heated for the person to work in normal conditions, but in fact, it does not happen so. Here it is very important the kiln to stop in the minimum time and it means that people are made to work in this hot environment and intolerable conditions.”

“Employers shall be obliged to introduce a preventive system ensuring labour safety and timely provide employees with relevant information about labour safety-related risks and measures for preventing the risks. Additionally, employers shall inform employees about the rules for handling the dangerous equipment and, if necessary, provide employees with personal protective equipment. Along with technological progress, employers shall timely replace hazardous equipment with safe or less hazardous equipment, as well as shall take all other reasonable steps for employees’ safety and for protecting their health” (Paragraph 4, Article 35, Labour Code)

“The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular, Safe and healthy working conditions” (Subparagraph (b) of Article 7 of International Covenant on Economic, Social and Cultural Rights)

1.3. The need for equipping with relevant working tools and machinery

The research showed that the administration of the enterprise does not pay proper attention to equipping the employees with working tools and their renewal. This is the reason why work productivity, hard work and safety are permanent challenge.

The employees of one of the enterprises say that in case of unforeseen or planned manual work the enterprise does not provide them with working tools. Besides, the employees state that they buy necessary basic tools at their own expenses. Moreover, the replacement of the tools with different means is their individual responsibility. “Nobody is interested what we have, how we are going to work tonight, what tools we have, what we need, if we need something else and so on... It happens so that we turn out to be inventors quite often,” says another participant.

The need for working tools is constantly ignored by the administration of the enterprise. One of the participants says: “We asked for [the tools] and they say to get them from anywhere. The main thing is to get the work done and they are not interested how. “Additionally, regarding the certain equipment, the employees note that the equipment is outdated and needs renovation. “It is like sending a soldier to the front line without a gun”.

1.4. The need for equipping with proper overalls and means of protection

When the production process is hard, hazardous and dangerous, the employees talk about the problem of improper equipping with overalls and means of protection for the purpose of avoiding occupational diseases or industrial injuries. They note that the means of protection are of low quality and not sufficient, and are provided rarely and irregularly. Additionally, the research revealed that in different places of work, the means of protection to be used during industrial accidents are out of order.

According to the employees from different enterprises the overalls are of poor quality, inadequate for performing the work tasks and uncomfortable as well. “They are really of poor quality. We are provided with them just once a year and they get damaged even in six months’ time”, states one of the participants. “The quality is awful. You put it on once and it gets torn”, says another interviewee. While talking about the inconsistency of the overalls with the work, another participant states: “[Overalls] are made of rough material, totally useless. If you just wear them for 8 hours even without doing anything, and you just walk in them, at the end of your shift, you will fall down anyway”.

Besides, the employees state that the enterprise does not renew the overalls on a regular basis and the employees have to work in civilian clothes. Sometimes, purchasing the overalls is individual financial burden for the employees: “When the overall gets torn, we go and buy it at our own expenses as the management provides us with overalls just once a year.”

In addition, the employees note that they are provided with minimum protective equipment and in some cases with useless tools for protection against hazardous and dangerous conditions that makes it impossible to ensure protection during the industrial accidents. For instance, while talking about the means of protection against occupational diseases, the employee from one of the enterprises talks about the protective masks provided by the employers.

“Protective masks are the only means of protection that cannot ensure the full protection and sometimes the amount of masks is not enough. If you are given one mask in every 8 hours, the amount of dust can be so big that one mask is not enough” – says the interviewee.

In another case, the interviewee speaks about the impossibility of adequate response during industrial accidents due to lack of relevant equipment: “Let’s take a crane, for example. It is working, moving. You go up the crane, there is a special firebox. Sand, special fire extinguisher is supposed to be in it. Yet the box is in place, it is empty. The tank is there”. In other places where there is equipment, the participant talks about the need for its renewal: “We have some basic items such as gas measuring device, self-rescue device but all outdated, needs renewal.”

“An employer shall be obliged to take every reasonable step to timely localize and liquidate the effects of an industrial accident, to administer first aid, and to implement evacuation”.
(Paragraph 5, Article 35, Labour Code)

“The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular, Safe and healthy working conditions” (Subparagraph (b) of Article 7 of International Covenant on Economic, Social and Cultural Rights)

1.5. Impediments to first aid and emergency medical care

The research showed that for the employees of examined enterprises the first aid services are arranged. However, the employees highlight that medical centers are not properly equipped and talk about the need for equipment renewal. As the participants of the study admit, the resources allocated for first aid cannot respond to the severity and frequency of accidents and industrial injuries. The medical staff from different enterprises participating in the research note:

“There is no special room equipped for medical care. There is nothing there, even the chairs to sit on. We sit on the broken chairs. The closet for medication is of inappropriate size, with not enough shelves. We cannot assign shelves for different purposes such as for surgical,

therapeutic, medication, ampoules. There is no couch for the patient, they have to sit on the broken chair and get the first aid in such conditions. “

“We don’t have oxygen bags, no means to fix the fracture as it is necessary.”

Additionally, according to the interviewees, nonexistence of medical centres in regional cities in order to respond to industrial injuries in a timely manner, makes the situation much worse. The participants say that unlike the period when hospitals operated in different cities, at present only outpatient clinics can be seen there that limits the possibility to get medical care in time in case of need for special medical intervention. *“In the city there should be an emergency centre, especially when there is such a big enterprise and also burn care facility due to gases and explosions being quite often”,* says one of the interviewees about the need for going to another city for emergency medical care.

1.6. The problem of proper examination of industrial injuries and fatal cases

The workers employed in different enterprises talk about the problem of improper identification, registration and compensation of industrial injuries and fatal cases and the necessity of relevant investigation or response for the purpose of approximation of existing practice to labour standards.

As the participants of the research declare, due to intimidation and bribery of the injured, the low amount of injuries and accidents is described, investigated and compensated in the enterprises. They assert that in order to avoid the disclosure of statistics related to injuries and fatal cases, the employees are blackmailed or put under pressure that minimizes the possibilities of punishing the persons responsible and improving the conditions of labour safety. The employees from various enterprises say:

“They blackmail the injured and tell: “if you want anything, don’t say that you got injured at work. We will arrest your shift manager and the head of your section. That’s why keep refraining not to harm our friends. Such system works well for them.”

The employees claim that the company tries to make the injured change their decisions about the request of compensation by intimidation. One of the participants talks about those compromises the employers try to agree the family members of the injured or dead:

“When an employee gets injured, the company always tries to persuade him to say that he was not injured at work saying they will support you in everything, take a sick leave, you can even take a month after the sick leave and then you can get back to work without any problems.”

The interviewees say that the family members of the decedent often agree to compromise if the funeral expenses are covered in return. The participants also recall the cases when the enterprise concealed the facts of industrial injuries and fatal cases by imposing fines or threatening to reprimand the employee. While talking about the need for bringing to trial the person responsible for abovementioned violations, one of the participants asks a rhetorical question: “Who is actually responsible for such cases? I am looking for one, I want him to come here.”

2. Other components of labour rights: inappropriate regulation of labour relations, inappropriate remuneration, sanitation, nourishment and transportation

When studying other components of labour conditions in the enterprises for extraction and processing minerals, the research revealed the problem of inappropriate regulation of labour relations and inappropriate remuneration. The issues of shortage and lack of professional staff was especially important that causes the need for additional work among the employees. During the documenting of labour conditions, the research also studied the issue of nourishment, sanitation and transportation services of the employees.

2.1. Inappropriate regulation of labour relations and inadequate remuneration

*“A labour agreement shall be in writing, if labour relations last for more than three months”
(Paragraph 1¹, Article 6, Labour Code)*

The protection of labour rights, fair remuneration of labour and safe, healthy working conditions and the working conditions of minors and women shall be determined by law. (Paragraph 4, Article 30, the Constitution of Georgia)

“The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular, fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (Subparagraph (i) of Article 7 of International Covenant on Economic, Social and Cultural Rights)

“Where food, housing, clothing and other essential supplies and services form part of remuneration, all practicable steps shall be taken by the competent authority to ensure that they are adequate and their cash value properly assessed. (Social Policy (Basic Aims and Standards) Convention of International Labour organization, N 117)

The research showed that not having the agreement is a barrier in case of violations regarding the working conditions when negotiating with the enterprises or legal dispute proceedings. Additionally, in certain cases entering into a labour agreement between the employer and the employee takes place without providing the information on the working conditions. In some cases the employment is carried out based on the order without drawing up labour agreement.

The interviewees state that the employees do not often have exact information about the terms of employment, rights and obligations, exact remuneration, dismissal procedures, overtime work, its remuneration rule, holidays, the rule of using the sick leave, sanctions or regulation rule of other working conditions. One of the interviewees speaks about the lack of knowledge about agreement conditions: *“We do not know what the labour agreement is. Personally I have never seen one. Who will ever show it to us? We are not aware what is written in it and what we have signed.”*

The employed in different enterprises believe that their work is not adequately reimbursed. Due to the drawbacks or lack of the relevant provisions in the agreement the interviewees require to be provided with the information on salary decrease or increase trends, salary indexation and fair allocation of the salaries between the employers and the employees.

The participants of the research claim that their work is not adequately reimbursed considering hard, hazardous and dangerous conditions at work. It is important to note that one of the grounds of workers' strike in the enterprise is low salary. The research revealed that the amount of employees' remuneration is not conditioned by the type of work. One of the participants says that the employer sets the salary range according to high level of unemployment and high demand of the applicants for the given position instead of the job description. The prisons employed in various enterprises state:

“If you don't want, you are free to leave. No one urges you to work. Lots of people are willing to start work here who will be satisfied with the conditions that you have.”

“Somebody mas say that you are employed, you have a salary, livelihoods but what are the conditions beyond this salary, the extent of work you are supposed to do, whether it is your duty to do the work or not.. Thousands of problems hide behind.”

In the regional cities due to the lack of alternative workplaces there is high demand of employment in certain enterprises and the cases of nepotism, “[Getting a job in the enterprise] is not easy. You have to address someone, your acquaintance, who knows the people in charge in the enterprise well.”

Besides, in the industrial cities the high level of unemployment, poverty, dependence on bank loans and low possibilities of social welfare, low salaries and worker exploitation make the persons vulnerable. One of the employees says: *“The employer gets what he wants at the expense of our hardship. We fear that one day they will close down the [enterprise]. We have bank loans, our children need food, education.”*

The employees from one of the enterprise speak about the trends of salary decrease in the last years and indicate that due to neglecting the need for salary indexation, the real cost of remuneration is even lower than it used to be.

Additionally, the employees are not informed about the production volume and its correlation between the levels of their remuneration. *“We get the information as if we are lost, metal is not exported any more or its price decreased and thus we cannot sell or stuff like this, but in fact these are all untrue”*, says one of the workers. The lack of information on these issues raises doubts among the employees that the employer decreases the amount of salary for the purpose of maximizing profit or regardless the profit increase leaves the amount of salary unchanged. One of the interviewees says: *“The reason they decreased salaries is that they care about their pockets. They want their income to get higher and higher.”*

The inadequacy of remuneration is also provided by the fact that the enterprise increases the workload for existing personnel at the expense of decrease of number of the employed.

Furthermore, the interviewees note that the remuneration does not correspond to actual workload in cases when “apprentice” agreements are permanently renewed. According to one of the interviewees “apprentice” salary shall envisage low salary for the employees only in the period of mastering. However, on the contrary, in the enterprise remuneration set for the “apprentice” is fixed over the years. *“In order to save money, they still give the salary for the “apprentice” -24 Gel, when they have to give 27 Gel [per shift]. I have been an apprentice for 3 years already earning the salary for apprentice.”* –says one of the participants.

Different interviewees complain about the fact that at the place of work remuneration covers the cost of nourishment, transportation and health insurance even in cases when the employees do not use the abovementioned services.

The interviewees talk about the unfair differences in the remuneration for the employees in various positions. In particular, in the studied enterprises the employees complain about inadequate difference between the remuneration of a worker and administrative staff. One of the employees tells that bonuses are only given to the employees in higher positions for execution of plans unlike

the ones performing the work of extracting and processing minerals whereas the execution or exceeding of plans is the result of their labour.

In addition, as the employees say, the employers treat them in unfair and unequal ways when the amount of the remuneration unreasonably changes by not giving bonuses and in the forms of sanctions. The employees state that in certain cases the penalty sanctions are inadequately high even the violations are not considerable that means the salary deduction from 10 to 20 %.

2.2. The shortage of professional staff and increased workload

The employed in different enterprises speak about the shortage of professional staff. As a result the enterprise neglects safety norms and makes the labour exploitation possible. Additionally, the employees in these enterprises consider that the appointment of the staff with lack of vocational education in managerial positions excluded the chances of improvement of labour conditions.

For instance, employees from different enterprises say that in spite of shortage of staff, new vacancies have not been announced for years. The enterprise tries to compensate the workforce shortage by distributing additional responsibilities on the existing personnel. One employee talks about the staff reduction in the technical maintenance service: *“The staff has to be reduced and they are not interested if [the machinery] breaks down, who fixes it?”*

Furthermore, the interviewees say that the production scale has been decreased over the last decades resulting in the deduction of the staff and switching off the machinery required for mechanized labour process. However, the enterprise does not meet the need for reorganization due to the production reduction. When the number of machinery under operation and the relevant staff are not adequate, the risks of accidents arise that make the labour conditions more hazardous and tough. The interviewees recall the fatal cases when not considering the need for reorganization and the shortage of staff caused the death of certain persons. *“The administration is to blame because one person only must not work on the kiln, but three”*, speaks one of the participants about the responsibility of enterprise administration while talking about the deceased worker as a result of explosion.

The employed in different enterprises state that they do not have to work overtime due to strict regulations of work shifts. One of the interviewees states: *“We are demanded much more than it is envisaged under our obligations. For example, when you go down and the work is left unfinished from the previous shift, you have to complete it first and then execute your plan. Not only this, when the head comes, he can add so much more to my work that it is likely for me not to stay alive afterwards.”* Another participant says: *“as we do not have enough workers, I have to do extra work. Sure, I will always help my workers, but the enterprise must care to have the right amount of workers.”*

The participants of the research indicate the fact that the personnel employed in the administration of the enterprise lack the relevant qualification that causes obstacles for forming adequate working conditions, documenting and inspection.

“Nowadays a big problem is that the managers are incompetent. They do not know technical terms, there are specific things that need technical knowledge. There are people, will be inspections, and the management here does not have practical or theoretical experience and such kind of people can be seen massively, even though this work is the hardest,” says the interviewee from one of the enterprise.

2.3. Failure to protect hygienic norms and unsanitary conditions at the place of work

The employed in heavy industry company talk about the failure to protect hygienic norms and unsanitary conditions, taking into consideration the fact that performing their tasks involves working underground, high level of dust and dirt. In the places where there is no waters supply, no portable toilets are arranged. The situation in existing toilets is not improved. The interviewees think that one-time restoration was carried out for on infrastructure but the situation was improved through unsustainable ways and no measures are taken to preserve the infrastructure.

According to the interviewees, during working for 6-hour shifts in the mine the employees do not have the access to the toilets. There are not toilets at the places they work or the relevant portable infrastructure that is used in such situations. The problems related to water supply are the reason for closing down the toilets, unhygienic and unsanitary conditions. One of the participants says: “There is no toilet. There used to be one but now they closed it down.” Due to above-mentioned reasons at the places of work the environment is contaminated. One of the employees says: “There is untidiness everywhere. The place we change clothes is very dirty. The smell of toilet is almost everywhere... the situation is quite hard.” Due to lack of water the employees cannot protect hygienic norms: “We cannot even wash our hands. When there is a meal time, there is no possibility for us to wash hands, you have to eat with manganese hands.” – notes another interviewee.

The participants of the survey talk about insufficient number of toilets in certain enterprises that makes it impossible to protect hygienic norms or using shower-baths means disturbing employees from working.

For instance, the employees in certain places consider that not every employee is given the chance to protect hygienic norms. The employees of one of the enterprise declare that in 10-12 story buildings the toilet is only on one floor. In other enterprise some shower-baths operate only, the number of

which do not comply with the number of the employees. It excludes the possibility of using them during shift hours and means taking additional time from the employees.

The employees in different enterprises state that in certain parts of the building just cosmetic repairs of toilets are carried out periodically and no relevant works are performed for infrastructure maintenance and cleaning.

2.4. Inadequate catering services

In certain enterprises where meals for the employees are provided by the employers, the employees complain about the food quality, poor service and the fact that employees in different positions are not provided with same quality food. In cases when the meals are individual responsibility of the workers, they talk about the low quality of food provided by the private company in the premises of the enterprise and the financial problems.

Where the meals are provided by the enterprise, the employees are unhappy with quality of food and the quantity of drinking water. In such cases the employees demand the involvement of Food Quality Service to check the quality of food. They also require to place relevant labels on the food served by the enterprise about the basic components of the food. In addition, the employees ask for the increase of the quantity of drinking water.

“We have talked about the portion of meals to the management before telling that the quality is poor. It is worthless. Please submit it to the food quality Service to prove that the food is edible. Check and make sure that people cannot eat this stuff.” – says the interviewee.

“Sour milk (matsoni) was unfit to eat, cutlets were so disgusting that even the animal could not eat them. They were roasted just from one side. And the stuffing was something unknown,” says another interviewee.

While talking about the drawbacks of the service, the interviewees say that when offering just one form of food service, the enterprise does not envisage that due to the production rule the persons working in different positions have to be provided with food in different forms. For instance, in one of the enterprise, due to the fact that several canteens do not operate on different locations, the employed in different positions do not have the equal access to food service. In the conditions of uninterrupted production the employees in various positions cannot take the break and their employment conditions make it impossible to leave the working place for mealtime. One of the interviewees says: “*When working in shifts we don't have breaks, for example, if I take the break,*

then electrical machinery needs to be switched off but it is not possible. You have to go on working. The canteen is a half kilometer away and that's why I cannot use it."

Furthermore, the persons employed underground say that they do not get meals at all during one full shift, but in different cases they have arranged the dining space themselves, where the workers take home-made food. One of the miners says: *"The ones who work for 2 shifts bring food from home, but the ones working in one shift don't... in the depot there we have arranged space with kind of small table."*

In case when there is private catering facility in the premises of the enterprise where take-away food is sold, the interviewees talk about the poor quality of food and affordability.

"Even a dog will refuse to eat this food, I swear," – says one of the interviewees.

"The prices have gone up so much that it is possible that such prices are not in the market" – talks another interviewee about the prices of food.

2.5. Inadequate Transport Services

In different enterprises where transportation of the employees is provided, the interviewees complain about the quality of service and also the problems of equal access to the service for the employees in different shifts.

In the number of enterprises the employees are dissatisfied with the fact that the vehicles are very old. The employees state that in certain cases the bus drivers took the responsibility for the maintenance works. *"The company provides the transportation for the persons working in shifts, but I would like to state that the buses are outdated soviet period buses. Water leaks through the roof and of course no heating is provided,"* says the interviewee. Another interviewee talks about the individual initiatives by the employees regarding the responsibility for fixing the vehicles: *"We applied the management several times for the vehicles to be in good working conditions but in vain. The vehicles are very old, I don't know where they were found. These buses never used to wok, but then the drivers repaired them at their own expenses but they still remain problematic."*

The interviewees talk about the incompatibility of the vehicles with the working schedule as the transportation service cannot meet the needs for all the employees. As a result, the persons working in different shifts have to travel independently on a regular basis by means of public or private transport unlike those employees for whom the service provided by the employer is reasonable.

3. Inadequate social security guarantees for the employees at hard, hazardous and dangerous workplaces

The research showed that in certain enterprises the employees at hard, hazardous and dangerous workplaces do not have the social security guarantees that could ensure their health, minimum welfare and decent old age. The workers do not have adequate healthcare possibilities. The employees point out the drawbacks in the health insurance and the determination of occupational diseases and nonexistence of relevant ways of compensation.

The research showed that regardless the health insurance provided by the employers, the interviewees talk about the problem of physical and financial availability of healthcare services (especially, it refers to the provider clinics) that in case of industrial injuries reduces the possibilities of healthcare. One more problematic issue is the need for transportation to another city for medical service and getting the full course of treatment. One of the employees says:

“As for the insurance, you have to go to [another city] and the distance is not short, 40km [...] And when a sick man has to travel such a long distance. And also it is connected with costs. The hospital as it is called is not the hospital at all. One cannot even enter there. You have to queue all day long. There is no equipment to examine the patient. The doctor can only prescribe medication.”

One of the employees from another enterprise talks about physical availability of service provider clinics: *“I am not interested in the insurance, I cannot even use it as I cannot go to the doctor at all. The provider clinic is somewhere in Zestaponi. What am I supposed to do there?”* –says another interviewee.

Additionally, the interviewees say that they do not get regular medical examinations. Where there is the practice of such examinations, the services are inadequate and do not ensure proper examinations and identification of diseases.

The interviewees also state that occupational diseases are not intentionally identified since the enterprise cannot ensure transferring the abovementioned persons to do lighter work or for the purpose of improvement of the conditions setting social benefits. The employees from one of the enterprises claim that instead of getting social security guarantees, they face to be fired in cases chronic diseases are diagnosed. *“Several employees with such diseases were fired saying that they would not let them work in the mine with this diagnose. If the diagnose does not fit to working in the mine, then you have to give me lighter work to perform and give me the chance to get treatment.”*

The interviewees also talk about the need for setting different retirement age and so-called regressive pension. In the past, in the frames of social policy retirement age was appointed early for the persons

working in hard, hazardous and dangerous positions due to short life expectancy. And the employees received so-called regressive pension after industrial injuries or occupational diseases were revealed. However, the employees admit that for the purpose of implementing early retirement scheme one of the structural barriers is the small amount of pension and impossibility of alternative employment. One of the interviewees comments about the aforesaid: *“[After retirement] it was possible to get rid of the harmful environment and preserve health so that you could work somewhere else. But this “somewhere else” is not in [our city] because no other facility works here except for our enterprise.”*

The employees in different enterprises talk about preferential income tax and the need for targeted household social supplements the persons working at hard, hazardous and dangerous positions used to get in the past.

4. The need for strengthening of response to violations at enterprise level and mechanisms of labour inspection

The research revealed that the employees in heavy industrial zones talk about the necessity of response to the violations of labour conditions in an effective manner. The given subchapters describe the problem of employer’s responsibility and accountability in case of violations of labour rights, highlights the weakness or onetime and instable character of methods of responding to the violations from internal inspection services of the enterprise and also from the department of labour conditions inspection on the national level.

4.1. Neglecting the need for response to violations of labour rights by the enterprise and temporary solution to the problems

The employees in different enterprises claim that the facts of labour standard violations are often neglected and the problems are not evaluated according to their actual severity by the employers. Even internal supervision services of labour security do not respond to the violations. The research showed that raising separate issues by the employees are not the basis of working meetings or changes. In some cases the problems are only temporarily solved.

In certain enterprises there are technical supervision services but according to what employees note, they are not responsive to heavy and dangerous labour conditions as a rule and do not carry out preventive activities. These services impose sanctions on the employed persons and never indicate about the employer’s responsibilities in terms of labour security protection. *“They ostensibly write letters, walk in white hats and that’s it. God forbid to write down something critical for the director to be informed,”* says one of the interviewees cynically. Another employee notes

that supervision is the oppressive mechanism against the workers: *“What I want to express is that [technical safety] service should take care for the people not to get injured. They are oriented on spotting their employees while violating the rules.”*

The interviewees talk about the negligent and degrading approach to labour conditions by the employers:

“Nobody pays any attention to us. They are only interested in taking manganese and for the quality to be high. Nothing ever interests them, no workers and the condition we have to work. Nobody comes to us and asks how we work, in what conditions, in hygienic or workload terms.”

“The situation is unbearable. We are humiliated, nobody cares about us.”

In the enterprises there are no mechanisms of studying the workers' needs and taking them into consideration. The employees have problems when trying to present the information to the employers in a proactive manner. One of the participants describes the problems of communication between the management and workers that is common for all other studied places of employment in heavy industrial zones: *“You cannot talk to the director general. As he says no worker is allowed to talk to him as the administration has to deal with the problems with the workers. It's a real chaos.”*

4.2. Weakness of labour inspection mechanism on the national level

The participants of the research indicate the problems of inefficiency of labour inspection mechanisms, the need for unconditional access of inspection in the places of employment and highlight the necessity of employment of staff with relevant qualification. For the purpose of increasing the inspection potential and dealing with violations of labour conditions, the interviewees note about the need for equipping the mechanism with reactionary and preventive means. The employees consider that powerful labour inspection is the effective means of protection citizens' rights in the state.

The research showed that the employees think that inspection carried out by the state is necessary. However, they admit that in spite of labour inspection mechanisms, their labour conditions have not changed. One of the interviewees states:

“It is necessary for the labour inspection to take place and the inspector to check these labour conditions and processes. If there weren't not patrol police... Yet some rules exist, there are signs put up but without patrol police nothing will come out. We know the rules but somebody has to control them. The situation is like this and [has not changed] so far.”

The research revealed that the workers have nihilistic approach to existing mechanisms of inspection. One of the participants says: *“I am not sure what the labour inspection can be. People are somehow disappointed that something good will ever happen.”* The research also showed that in one of the enterprises where the labour inspection had already carried out monitoring, the inspection of the enterprise and studding of labour conditions was incomplete and superficial.

The interviewees also talk about the necessity of providing the relevant information to the inspection by the trade union itself to ensure comprehensive research of the sites. In addition, the employees talk about the incompetence of the inspection staff and therefore think that labour unions have to be more involved in the process.

The employees complain that the labour inspection does not have direct access to the inspection of workers' conditions and security. While talking about unrestricted access to the works of employment by the labour inspection, one of the interviewees notes the need for the inspection to enter the enterprise for monitoring without company's permission and be equipped with effective mechanisms in order to eliminate violations.

“If the director of the enterprise requires ‘come and inspect my company’ it is a full nonsense. I won't tell anyone to come and inspect the conditions me and my children live in. it is superficial, the labour inspection does not have right to impose penalties when detection violations unless the inspection starts without preparation. If the inspection starts unexpectedly, the administration will not be able to put things in order.”

One of the interviewee talks about the necessity of consent of the enterprise in order to carry out inspection: *“It turns out that labour inspection is just a name. Inspection should be flexible, mobile, able to get access to everywhere without preliminary warning.”*

The interviewees emphasize the responsibility of labour inspection to protect citizens' interests in relation with private companies. One of the interviewees says:

“The inspection, let's call it labour, environment or whatever, is effective only when the state structure is formed, effective and efficient. A model – relationship between the state and the employees needs to be changed. The state shall realize that not everything depends on an investor but relies on citizens and employees. The state begins with me, you and us. We are the state. Me and you are the state...”

Summary of the employees' opinions:

While studying the labour rights for the employees working in the enterprises for extraction and processing minerals, the research revealed that the most severe violations at the places of employment are related to the inadequate **health, safety and working environment conditions:**

- The facts that the infrastructure in the enterprises is old, unreliable and the need for restoration, modernization of existing machinery or reorganization of production with existing resources makes the labour conditions extremely intolerable that results in low labour efficiency and high safety risks;
- Equipping the employees with tools and the need for renewal of instrumentation in the enterprises is not paid proper attention therefore the issues of labour productivity and safe labour is a constant problem among employees;
- The research also revealed that in the enterprises due to violation of labour conditions the health of employees is under risk in certain places. The means to protect against occupational diseases are very low or do not exist. The employees working at hard, hazardous and dangerous workplaces note that they are not properly equipped with protective facilities;
- Inadequately equipped first aid services with constant need for renewal of relevant facilities make labour safety and health protection difficult;
- The improvement of relevant conditions for labour safety and health protection, the prevention of industrial injuries or accidents is impeded by inadequacy or nonexistence of detecting, registering, responding and effective investigation of such cases;

Observing other components of labour rights revealed the circumstances related to **inadequate regulation of labour relations, inadequate remuneration, and shortage of skilled staff and overload of work:**

- In certain enterprises, people are employed without concluding labour agreement, and in other ones the employees are not informed about the agreement content;
- Due to inadequate regulation of labour relations, the information about salary increase/decrease trends is not transparent, indexation of salaries is not done;
- There is a significant difference between the salaries for persons working in administrative positions and other employees;

- The employees' work is not adequately remunerated considering hard, hazardous and dangerous work conditions. One of the main reasons for workers' strike was low remuneration;
- The shortage of professional staff is the problem in various enterprises and therefore safety norms are neglected in the production process and the company makes the employees do hard and overtime work.

Sanitation problems, restrictions of nourishment and transportation services were also revealed at the employment places:

- In the places of employment underground where water supply is not provided, portable toilets are not installed. In case of such infrastructure measures are not taken to improve the wet closets. In the places where infrastructure onetime reconstructed, the conditions improved though unstable means and measures are not taken to preserve it;
- In certain enterprises where the meals are provided by the employer, the quality of food is poor and the quantity of insufficient. In other enterprises catering service is faulty since the need for nourishment for persons working in different shifts is not equally provided. In case the meals are individual responsibility of the employees, the issue of affordability of products in the catering facility in the premises of the enterprise remains problematic;
- In the number of enterprises where transportation for the employees to the places of work is provided, the employees complain that the vehicles are old and in poor condition. They are also dissatisfied with the problem of having equal access to the transportation service for the employees working in different shifts.

Social security guaranties are poor and in certain cases do not even exist for the employees at hard, hazardous and dangerous places of work.

- Despite the fact that employers provide health insurance, the problem still is physical and financial access to medical services;
- In certain enterprises the employees working in hard, hazardous and dangerous places, are not provided with periodical medical examination. In the places where the practice is implemented, the service does not intend to diagnose and investigate the diseases;
- In case occupational diseases are diagnosed, instead of offering social security guarantees, the employees face to be sacked. The employees see the need for so-called regressive pension;

- One of the main needs for the employees is early retirement age to be defined for the persons working in hard, hazardous and dangerous places in exchange for the reducing life expectancy and ensuring the descent old age.

The research revealed the need for **responding to violations** at the enterprise level:

- In various enterprises labour standards are often neglected and the problems are not evaluated according to their actual severity by the employers;
- Raising problematic issues by the employees are not the basis of working meetings or changes. The employers are indifferent to the problems that is offensive for the employees;
- In certain enterprises there are Technical supervision internal services but as employees note, they are not responsive to faulty and dangerous labour conditions. These services impose sanctions on the employed persons and never indicate about the employer's responsibilities in terms of labour security protection.

The research regarding the need for strengthening labour inspection mechanisms revealed that:

- In spite of forming labour inspection mechanism and carrying out relevant monitoring in separate enterprises, the labour conditions of the employees have not changed;
- According to the employees' assessment, the inspection of the enterprise and studying of labour conditions are incomplete and superficial. Additionally, the problem is insufficient qualifications for labour inspection staff;
- The employees complain that the labour inspection does not have direct access to the inspection of workers' conditions and security. The abovementioned system is not equipped with effective mechanisms in order to eliminate violations;
- The employees consider that it is the state's responsibility to protect the interests of the citizens of Georgia before private companies.

Chapter III.

Situation concerning labour rights for the persons employed in the field of railway transport

For the purpose of studying labour rights for the persons employed in the field of railway transport, the employees working within the city or on regional scale, underground or above ground, in shipping and transportation services, were identified as the objects of the study. The above-mentioned field of employment was chosen as one of the main objects of studying hard, hazardous and dangerous places of employment. Additionally, studying the legal status for the persons employed in abovementioned field was important for the purpose of observing the workplaces under state ownership.

For the purpose of studying labour rights of the persons employed in the field of railway transport, the research carried out observations on the legal status of the persons employed in two largest companies under the state ownership. One of the companies is a current employer on a regional scale.

The research examines the labour conditions of the employees at hard, hazardous and dangerous workplaces, social security guarantees and the mechanisms of manufacturing violations and the response to them. The research highlights labour legal status of the persons employed underground and aboveground in different positions and does not cover the cases of those employed in the position administrative management. The data was collected among the persons with different educational background and employment terms where the majority of the people interviewed are employed in hard, hazardous and dangerous conditions.

The research was done among the members of local labour union in the premises of the union or office spaces in the form of face-to-face comprehensive interviews. Overall, individual and group interviews were carried out with 8 interviewees (4 and 4 interviews in each case). The majority of employees in those enterprises is male workers and therefore there are no females among interviewees.

1. Labour conditions: health, safety and working environment at workplace

While studying the labour conditions of the persons employed in railway transport companies, the research identified the main topics such as the need for renewal and modernization of infrastructure and machinery; also the issue of equipping the employees with uniforms and tools. The participants of the study underestimate the mechanisms of investigating and responding to industrial injuries and accidents. The research identifies the problems related to reacting and investigating the cases of industrial injuries and fatal accidents. The research also highlights the weaknesses of possibilities of providing first aid and emergency medical care. While assessing the working environment, the acute issue is the impossibility of protection hygienic norms and poor sanitation at workplaces.

1.1 The need for renewal and modernization of infrastructure and machinery

When talking about labour conditions, the persons employed in the railway transport field state that the vehicles and equipment are old. They also note the need for restoration and modernization of the machinery. They say that modernization takes places in certain areas but inadequately. The problematic issue is manual labour in certain workplaces due to lack of relevant infrastructure.

The interviewee employed in one of the railway company while assessing the appropriateness of infrastructure to emphasize the severity of the problem, says the following about the locomotives: *“The locomotives are depreciated and the cranes were produced earlier than the Soviet period...”*

The staff of one of the railway companies say that repair work for machinery is carried out on ad hoc basis and there is no proper maintenance within the whole system. In addition, the locomotives providing freight services are not renovated at all, unlike the passengers trains.

The interviewees admit that in certain cases infrastructure and machinery are restored locally in an improper manner that results in inadequate conditions at workplace. The interviewee working on a railway transport admits:

“They cut off the front parts of old carriages and replaced with new ones. And the people believed the carriage was quite new. I was aware of the old carriage structure. They were protected against decay. They endured dampness and were permeated with anti-fire varnish, were arranged with noise insulation panels and now they have removed everything, put the plank and covered with linoleum and imagine the amount of noise that penetrates in the cabin...”

At one of the workplaces employees speak about the practice of partial renovation of the locomotives that does not fully solve the problem of train modernization: *“The whole system that is supposed to be inside the train, engines or electrical wiring, is new. But the parts what is visible for the passengers, is painted and is the same old parts. The metal may work but it is still old...”*

While talking about the hard work due to poor infrastructure, one of the interviewees admits that the lack of proper machinery made it necessary to perform manual work and imposed the responsibility on individuals:

“The assistant is obliged to clean the locomotive using diesel fuel which is toxic, poisonous. The assistant is not obliged to clean and polish the locomotive. Special washing machine is supposed to perform this task. [...] [At one of the workplaces] there is one and the locomotive is washed there. But here we don't have one and that's why you are responsible for cleaning it. “

1.2. Conditions at workplace

The research showed that for the employees in the field of railway transport, the conditions are unsafe for health and security. However the employers do not take proper measures in this regard. The employees believe that improving working environment is a onetime act and is carried out unsustainably. In addition, in one of the companies, the employees consider that security service is poor and in order to maximize the profits the management does not spend money on security measures.

The employed in different companies claim that in hard labour conditions due to improper infrastructure, they do not feel safe and have to take care about improving the conditions individually. One of the participants talks about the deterioration of health at work and the attempts to recover it *“I had a stiff neck the weeks ago. We do some things ourselves to cover these holes.”*

At another workplace the interviewees note that where working environment was restored, the works were not properly done and covered just certain areas. The interviewee says:

“As I mentioned before, the situation in the working rooms and etc. have improved somehow, but with low quality, the walls were painted once, something was done but not everywhere, in just some places, the works did not cover the whole country and now the works have to be performed again...”

The interviewees working underground highlight the constant problem of dirt, damp and moisture. One of the participants emphasizes the need for proper equipment beyond the improvement of infrastructure:

“There should not be the pollution as it is right now. We like comparing with Europe but I don't think that in any European countries train drivers face such conditions. Those, who have to work in the tunnels, have to walk in water, work in moisture. They need overalls, new tools.”

It is important to mention that the persons employed in certain positions have to work in unsafe conditions for health that in the long run causes occupational diseases and will affect their life expectancy:

“Dirt, salt and iron dust. None of the equipment worked here, even the monitors that used to be installed here as the iron dust damages the microcircuit chip. Therefore, our bodies have to endure this and we do but for how long, this is the question.”

As the interviewees say, the companies by refusing to ensure health and security, save money. One of the interviewees speaks about the neglecting of safety norms in order to economize:

“I told the head of the division yesterday that it is impossible to economize at the expense of violation of safety norms. They economize in absolutely everything. They were not interested that by saving money the safety could be violated.”

The research also revealed that in the process of exploitation of freight and carrier transport it is important to strengthen security services. While assessing the existing security service, one of the interviewees says: *“One member of security service accompanies us on freight transportation, but the guard is appointed by the state and all the guards I have taken with me slept in the back cabin”*

1.3. The need for equipping with relevant tools

The interviewees employed in different positions highlight the problem that they are not adequately equipped with tools. They say that in certain cases the outdated tools are not renovated and the request from the employees' side is neglected. At certain workplaces, the employees talk about the cheapness and low quality of products purchased through tender applications. The research revealed the cases when the employees have to purchase equipment with their own funds to avoid the problems.

One of the interviewees speaks about the need for possessing relevant tools by means of which they could replace outdated ones and increase labour productivity. He also speaks about the fact of neglecting the employees' request regarding relevant equipment by the employers:

“There should be more people on staff, with proper tools so that we wouldn’t have to use old wrenches. I have been asking for a new wrench for ages but nobody ever listens to me. A new wrench will save time, perform a task in high quality and increase the labour productivity. We have been asking for 4 years but in vain.”

While talking about the need for renewal of the tools, another interviewee says: *“Locksmiths today work using the tools from Bronze Age. Can you imagine that if a wrench breaks, nobody will get another one? They have to go and buy one themselves. There are no tools, like in primeval era...”* It is important to mention that about outdated tools and the practice of their renewal one of the interviewees blames the company for choosing cheap tools through tenders and demands the responsibility on quality.

Additionally, some employees talk about the fact that they have to equip themselves with tools: *“The locomotive is not equipped with [different tools], but the train drivers are demanded to have the tools, so they buy them and carry in bags. If something gets damaged and you don’t have a wrench, you will get punished. For instance, the locksmith has to bring some of the tools from home to work. If he is not able to perform work, he will be punished.”*

1.4. The need for equipping with relevant overalls

The employees working in hard, hazardous and dangerous conditions in the field of railway transport say that they are not properly equipped with overalls. They emphasize the need for renewal of clothes in a timely manner, seasonal changes and quality assurance.

The research showed that the persons employed in different places complain about the poor quality of overalls and rare intervals of their renewal. One of the members of labour union speaks about the need for seasonal clothes: *“They have winter overalls but are demanded to wear them in the summer. I had problems in some locations, the employees phoned me. I went to find out the situation. The thing was that administrative fine was deduced from their salary for not wearing overalls in 40 degrees Celsius”*

In other places of employment the employees mention a period of several years for renewal of overalls: *“It is an order from our director that the train drivers get a new overall. The last one we wore for 3 years was a violation. It took us a year and half to make them guess that the overalls have to be in good condition. They held tender, the company won with no tailors. They then assembled them and made these overalls. We are wearing them even today. It is a real shame and hope soon we will change them.”*

1.5. The problem of studying industrial injuries and violation of labour rights

The research showed that hard industrial injuries and fatal cases are detected periodically among the workers employed in the field of rail transport. In certain places there are not arranged first aid and emergency rooms that makes it difficult to provide the injured with quick and relevant medical care. Additionally, the employees talk about inadequate response and insufficient attempts to take preventive measures against violations by internal supervision services. The interviewees blame the abovementioned services for repressions of their employees, unfair treatment and neglecting the established rules for labour condition violations.

One of the major issues related to healthcare and safety is the inability to get first and emergency medical aid while performing the work in the process of transportation. The interviewees claim that there are not possibilities to be provided with medical care on board the locomotive. In various places the participants state that inpatient emergency rooms are not adequately equipped. One of the employees says: *“I can’t say how efficient it is as it is supposed that sufficient amount of medications to be in the emergency rooms. I can’t say how the room is equipped. There were some cases that somebody needed some medicine but there was not any.”*

The persons employed in rail transport company talk about the need for investigating industrial injuries and accidents and recording them. Furthermore, a number of interviewees say that labour security supervision units do not respond to the cases adequately. One of the interviewees recalls the case when the person deceased while performing the task, but this case was not investigated and identified as the responsibility of the incident participant:

“In the sorting depot of Tbilisi the examiner of the carrier was killed by cutting of his head by the train in the working process. Of course, it turned out that it was his fault. What I am saying is that there is need for control from outside and not from inside the company. Thus the results would be different,” says another person.

The employees also admit that internal supervision services are punitive mechanisms against the workers and cannot meet the need for elimination of system violation of labour security. At one workplace, it is considered that the internal supervision service does not study the reasons for causing the violations and are not focused on prevention of violations. The interviewee states:

“There is no special service to record every case of violation, then bring it and send to the head of the department. And the head of the department does not think that there could have been something wrong with the equipment, or the cause was the lack of tools, for instance, hammers, bolts, etc. He turns up saying that auditing service reprimanded him due to us as some violations has been detected and deduces 20 or 30 % of the salary.”

In the other company internal supervision service is referred to as general inspection which is responsible for performing internal investigations together with the employer and trade union when accident happen. However they do not follow the relevant procedures.

“There are 3 kinds of industrial injuries, caused by employer’s safety standards, employees’ negligence and both of the above mentioned in combination. One thing is that they should have provided me with compensation and medical care and another thin is, that they should have eliminated the violation. Neither of the cases occurred as it was quite easy to neglect my situation.”

One of the interviewees talks about the above-mentioned general inspection, referring to it as the mechanisms of pressure and intimidation on the employees:

“I don’t know if you are informed or not, [...] [the employer] formed monitoring and inspection service which may go to my family members and tell them for me to behave well. So they give information about me to my family. They really act this way and we even made plotting on this case.”

The interviewees consider that the supervision service imposes fines on the employees for breaking security norms when the employer itself is responsible for violations:

“[the employees] have winter overalls but are demanded to wear them in the summer. There was the case when for [not wearing] overalls in 40 degrees Celsius resulted in deducing 20% from the salary. There were such kind of fines. Wearing or not wearing overalls [...] did not cause real problems for [the company], and the safety rules weren’t violated..“

According to the comments made by the participants, particularly problematic is the case when the loss caused by violation of labour standard becomes individual responsibility of the employees holding the lowest positions instead of the persons responsible for providing relevant working conditions.

“When a freight train overturned, diesel oil was spilled and there were other problems too. The train driver was blamed for everything and in five days the diver had a heart attack, as the loss was in the millions,” recalls the interviewee.

1.6. Failure to protect hygienic norms and unsanitary conditions at the workplaces

The persons employed in rail transport companies complain about the sanitation problem in various places. They also talk about the insufficiency of recreation spaces where they could eat during breaks.

The interviewees say that in certain areas the infrastructure of wet closets is renovated but in an improper manner. One of the interviewees notes: *“This place was renovated two years ago, they constructed a toilet, bathroom, installed a shower cabin which is out of order as it was not properly installed. We are constantly telling them to fix it. The situation used to be more disgusting with terrible smell.”*

It is important to highlight that in different companies restoration works have not been conducted at all. The interviewees talk about the cases in the regions when female employees have to leave a workplace in order to use a wet closet:

“For instance, the [situation] is better in certain depots, but in others it is disastrous. There are no toilets and the female workers in certain regions have to go home to use the toilets. Where the wet closets were constructed it is good, but in other places this process is delayed. Overall, the situation is tough in certain places and in others it is ok.”

In certain cases the interviewees highlight the lack of responsible staff for cleaning and above-mentioned problems.

2. Other components of labour rights: inappropriate regulation of labour relations, inappropriate remuneration, inadequacy of management and personnel policy

When studying labour conditions of the persons employed in rail transport companies, the research revealed the problem related to the drawbacks of labour agreements and inappropriate remuneration. In addition, the research deals with the challenges regarding management and personnel policy.

2.1 Inappropriate regulation of labour relations and inappropriate remuneration

The research showed that the workers in the field of rail transport are employed on individual contract basis and in certain cases - collective contract basis. But the lack of knowledge in terms of contractual agreement, and impossibility to negotiate with the employer in equal format re-

garding the changes of conditions, is a real problem for the persons employed in rail transport companies to protect labour rights. At different workplaces the problem are related to wage policy, the cancellation of bonus system and not considering the indexation of salaries in relation with inflation. The research also emphasized the problem of overtime work remuneration, unfair practice of imposing additional obligation, penalization and sanction.

The employees of rail transport companies have permanent contracts. Furthermore, the research revealed that in one of the rail transport companies the members of different labour union have different collective agreements and the rights guaranteed by labour agreement is also different. In one case, the interviewees consider that collective agreement concluded with the company, is of high standard by the efforts of trade union: *“We asked for a collective contract and we got it. I can freely say that the agreement is one of the best in the state, however need some improvement.”*

The employees for other company state that if they have individual agreements, the conditions cannot be changed through negotiations with the employer and the employee. The employees are not in equal conditions with the employer and as a result the employees have to agree on the contractual changes unconditionally. One participant talked about the case of changing the labour remuneration rule by the employer:

“It happens so that employees tend to sign the [contracts] without even reading it. Once I tried and not to sign it but caused troubles for me. The situation was like this: we had hourly wage but the management wanted us to give fixed salary. In fact the amount we got in a year was divided by 12.”

While talking about the remuneration, the interviewees indicate the need for salary increase. In one case the need for indexation was also detected. *“The situation related to salaries is quite tough. The first thing in ongoing labour dispute is 15 % inflation indexation, because of consumer basket.”* Also, the employees from one of the company state that salaries increased due to cancellation of bonus system and not in line with them:

“I can't say if the salaries had to increase at the expense of cancellation of bonuses. I think that salaries have to be increased periodically, by all means in every company because the requirements are growing, economy in the country is improving and therefore if it is improving for somebody, it needs improve for simple workers as well.”

The issue of disproportionateness of fines in comparison with earned salary is an actual problem and the demand that production losses shall not be reimbursed from the worker's salary. Another problem is also imposing fines on the employees. One of the interviewee talks about the reimbursement of losses during industrial accident:

“In our profession, the damages are quite frequent and the train drivers are blamed for them. Actually it is not their fault but unfortunately they aren’t able to prove the truth. Saakashvili was the first to set the remuneration of losses. There used to be kind of punishment, severe reprimand and deduction of salaries. It is possible to disqualify the train driver – such facts existed and still do.”

The employed in different positions say that the sanctions used against them in case of industrial violations are arbitrary and in certain occasions makes it possible for the employer to manipulate by the amount of the fine. *“I won’t tell you anything, just deduce 5 % from your salary,”* says the interviewee about the case when the decision on the sanctions are made based on individual negotiations.

Besides, the employees with long term of employment at different workplaces doubt about the reasonability and adequacy of certain regulations. In one place of employment, where the sanction rule is regulated, the interviewees talk about the need for reforming it as there are no double and triple fining rules or the time for reprimands is overestimated. *“There are facts of double, triple punishment. You get 3 kinds of punishment for one occasion: disqualification, deduction of salary and different methods,”* says the interviewee.

The calculation rule for overtime work during a working week is one of the most acute problems. The interviewees consider that 40-hour working schedule per week envisaged by the contract is unjustly determined. While talking about working overtime, the interviewee states:

“Sometimes you may have to work 9 days in row and not be considered as overwork. Because after 40 hours per week, the work is considered to be overtime. A week consists of 7 calendar days but the management calculates the amount from Monday including Sunday.”

2.2. Management and personnel policy

The research showed that according to the employees, the challenge in rail transport companies is the political influence on the management and administering of staff recruitment, employment and promotion in unacceptable manner.

The interviewees consider that in the rail transport companies the number of administrative staff is significant and is not dependent from political management of the authority that hinders the management process for the company as one of the employees admits:

“If the manager is skilled, he can’t run the company. Even the general director is not independent because it is governed by the state. If the manager does not want to form the department, he can’t act so, because he is given a political task to form the department. For example, 13 000[employees] are not necessary for the operations of [the company]. He can’t make decisions that ‘I don’t need all these 13000 employees, but I need 10 or 15 of them’. Because the instructions come from the state, government, the minister and so on.”

A number of employees highlight the cases of false vacancies when the persons get the positions due to nepotism. In addition, in one of the companies, the employees state that the reforms in recent years put the rule of selecting and promoting skilled and qualified staff under risk making it impossible to differentiate between job eligibility criteria and salary rate. One of the interviewees talks about the employer’s initiative to give salaries to all train drivers by undifferentiated tariff that weakens the professionalism among the employees. *“The one with different salary drives the train and therefore why should I pay more [says the employer]. It directly harmed the future and decreased the level of learning, affected badly on the driver’s professionalism,* ‘says one of the interviewees while talking about the need for the differentiations of train drivers’ degrees and quality.

The employee from a different company highlights the need for meritocracy approaches in the process of staff selection in the management and ousted management by the political authorities in the period of political landscape change.

“Formation of new staff is hindered by bureaucracy. Until nepotism is over, the situation will be the same. It’s a great misfortune... related to working people. In the times of social explosion, what they do is to change management, this is an easy solution.”

3. Inadequate social security guarantees for the employees at hard, hazardous and dangerous workplaces

The employees of rail transport companies complain that those working at hard, hazardous and dangerous workplaces do not have the social security guarantees. The insurance provided by the employer for the employees working in the field of rail transport is not sufficient guarantee of healthcare. The research showed that the occupational diseases are not investigated properly and in case such diseases are diagnosed the employees are sacked instead of receiving regressive pensions. The employees also consider that categories of hard, hazardous and dangerous work are the basis for unfair distribution. As a result, the employees do not have equal access to various kinds of benefits instead of performed work.

The employees working in rail transport sector emphasize the drawbacks of health insurance package and the problems of using them. The employees believe that insurance companies se-

lected through tender do not envisage the employees' interest. The interviewee talks about the purchased health insurance service through tender: *"As a rule, we lose tenders. These tenders even worsen the social situation for us. When, for instance on market conditions, I need some things, but several interests are between me and the thing in order everybody to make profit and therefore the quality is poor. It is common for every situation."* It is significant to emphasize that one transportation company tried to cancel private insurance after implementing the state universal healthcare program. However as a result of workers' resistance, it failed.

The research showed that the employees in certain places are not provided with medical examinations for the purpose of detecting occupational diseases. In case the practice is implemented, the employees think that the possibilities of identifying the diseases are very low. Targeted medical examinations reduce the possibilities of identifying the disease. One interviewee states: *"... annual examinations, provided by the employer but only for those organs he thinks necessary and nobody is interested what really matters."*

The employed in various companies state that in case occupational diseases are diagnosed they do not have any kind of social security guarantees and face being sacked. One of the employees speaks about the problems related to social security: *"[periodical medical examinations] of course should be provided, but the thing is that when [the employee] gets ill [...] and is on a sick leave, he is sacked for doing so."* The employee fired due to occupational disease is not given a regressive pension. *"Regressive pension is not given in this case, certificate issued by the doctor states that it is not relevant for this load,"* declares the interviewee.

In addition, the employees talk about the need for early retirement age for employees working at hard, hazardous and dangerous workplaces, the majority of whom cannot reach the retirement age. An employee working in the company, where salary supplement is determined for the employees on abovementioned positions as an exception, states:

"About 70-80% of the employees who died, couldn't reach the retirement age. Some died due to cancer or other reasons. When you spend 30 and 35 years underground, it affects negatively on your health. The trouble is that the pension isn't different but it used to be in the Soviet times. They just give us 55 Gel for hard and hazardous conditions and 10 days of paid leave. That's it."

Another employee from the same company considers the amount of pension for the persons working in hard working conditions to be unfair and thinks it is necessary to consider the number of years of work when calculating the amount of sum for pension:

"Imagine the situation in the country where the member of the parliament gets the pension of 500 Gel whereas the pension for the person working in the tunnels for 30 years is mis-

erable. Some of the people may not have worked at all, some had spent years in prison but they get social allowances which is unfair.”

In addition, the persons employed in different positions in one company think that the work categories of hard, hazardous and dangerous conditions are incorrectly determined that results in unfair allocation of supplements. According to the interviewees' opinions, existing division by categories of hard, hazardous and dangerous conditions do not coincide with actual labour conditions. One of the participant estimates the labour conditions for the employees in different positions: *“They think that welders belong to hazardous category as the welder inhales the welding fume, but the locksmith, foreman, carpenter standing next to the welder, and do not inhale it.”*

4. The need for response to manufacturing violations

The research showed that the employees in transportation sector talk about the necessity of strengthening labour inspection mechanisms and studying the violations of labour rights in an effective manner. The research also revealed inefficiency of mediation and trilateral negotiations of labour disputes and the weakness of execution mechanisms of reached agreement.

4.1. The need for inspection of manufacturing violations and effective response

For the persons employed in rail transport field it is very important that the weakness of internal security services at workplaces be controlled by powerful mechanism of state labour inspection. The employees also demand the labour inspection mechanism to have unconditional access to the workplace, be equipped with penalization methods and assess violation of labour rights beyond the issues of labour safety.

The persons employed in the rail transport sector consider that labour inspection shall be very important for the state for the purpose of ensuring health and safety of the employees. *“The state is very indifferent to such issues,”* says one of the interviewees. While talking about the need for inspection, the participant of the research emphasizes the inefficiency of internal investigation mechanisms:

“[The company] only [...] is not to blame for [not investigating industrial injuries] it's the state's fault as well because we don't have labour inspection. [The employer] won't investigate [violations] for sure in his own enterprise.”

The interviewees think that inspections are carried out formally and are not effective since their recommendations are not mandatory. The private company decides if the inspection can have access to workplaces within their premises. One of the employees says:

“I can’t tell what the inspection will check but in my opinion it does not have power. As I know the company has to require for the inspection to inspect the enterprise. The report they prepare is just a recommendation. Just formalities.”

“[Labour inspection] isn’t well formed, they took into consideration EU Association and formed labour monitoring instead of labour inspection, but they don’t know what they are doing.”

The employees interviewed at one of the workplaces consider that labour inspection responds to the dismissal cases if the employee is the member of labour union. The employees also talk about the fear of illegal dismissal in case the employee is the member of trade union and strengthening inspection mechanisms would be important for ensuring labour rights.

4.2. Inefficiency of labour dispute mediation and trilateral commission; the weakness of mechanisms of execution of reached agreement

The participants of the research talk about inefficiency of mediation mechanism. According to their evaluations, labour unions do not have equal power to the employers not to delay and prolong the procedures unilaterally and neglect the agreements reached. The employees consider the format of trilateral commission ineffective due to unequal rights where the negotiations between employers, unions and state representatives are supposed to take place.

The interviewees highlight the inefficiency of labour dispute mediation and the problem of execution of reached agreements. The cases of delaying the meetings based on independent initiative by the employer makes the process of reaching the agreement difficult. Furthermore, the employees of one of the companies speak about the strikes due to violation of agreements:

“To my mind the mediation is not justified because we had 3 strikes [...] [In the company] mediation was involved before but the workers went on strike anyway. When a mediator is involved, ministry of labour is engaged in the negotiation process and the strikes take place, I guess it isn’t good.” – says the interviewee.

During negotiations parties underestimate the possibilities of trade union, manipulate them which is a challenge for the workers:

“[They think that] if we work, we don’t have our own ideas about life, aren’t educated, are illiterate. I was extremely humiliated when I was asked if I was able to read or write... you aren’t supposed to ask questions when they hold positions.”

The persons employed in the same company express their opinions about inefficiency of trilateral commission of social partnership: *“Trilateral commission had a meeting, the video cameras shot everything but all this is ostentatious. It can’t go this way...”*

Summary of the employees’ opinions:

While studying the labour rights of the employees working in rail transport sector, the research revealed that the most acute issues are related to **health, safety and working environment at workplace**:

- For the purpose of ensuring health and safety of the employees there is a need for renewal or modernization of rail transport machinery and equipment;
- The employees’ requests for quality tools for the purpose of increasing labour productivity, is neglected;
- The overalls are of poor quality, do not meet seasonal demands and are renewed very seldom;
- The employers economize by neglecting health and safety norms of their employees at hard, hazardous and dangerous workplaces ;
- There is a critical need for investigating and registering industrial injuries and accidents. The employees consider that internal supervision services are punitive mechanisms against the workers and cannot meet the need for elimination of system violation of labour rights;
- At different workplaces there are problems regarding sanitation of wet closets. The recreation spaces are not arranged where they could eat during breaks.

Observing other components of labour rights revealed the circumstances related to **inadequate regulation of labour relations, remuneration, management and personnel policy**:

- The lack of knowledge of the content of the agreement, and impossibility to negotiate with the employer in equal format regarding the changes of conditions, is a real problem for the persons employed in rail transport companies to protect labour rights;

- The problems are related to neglecting salary increase request and not considering the indexation of salaries in relation with inflation;
- Unfair penalization of the employees and pressure on them using this method is a problem that contributes to inadequate labour conditions;
- The management at workplaces is inadequate, as the number of administrative staff is significant and is not independent from political management of the authority.

Social security guaranties are inadequate and in certain cases do not even exist for the employees at hard, hazardous and dangerous places of work.

- Health insurance provide by the employer is not sufficient guarantee of healthcare;
- At one of the workplaces, occupational diseases are not investigated. In different companies when diagnosing employees with occupational diseases, there are cases of dismissal of such staff and regressive pension is not provided;
- Early retirement is not determined for the employees working in hard, hazardous and dangerous conditions in return for decreasing life expectancy;
- Hard, hazardous and dangerous work categories are the basis of unfair allocation at workplace and as a result the employees do not have equal access to different benefits in return for performed work.

The research also revealed **the need for adequate response to manufacturing violations:**

- The need for efficient state labour inspection mechanisms is urgent at workplaces due to weakness of internal security and supervision services;
- Monitoring was not carried out by labour inspection mechanism at one of the workplaces for the employees in rail transport sector. Where monitoring was done, it turned out that labour inspection recommendations are not mandatory and the private companies may give the access to the inspector in his enterprise;
- The problematic issue is that during negotiations parties underestimate the possibilities of labour union. The employees also point out the weakness of labour dispute mediation or trilateral commission and the problems of failure to execute reached agreements.

Chapter IV.

The situation concerning labour rights in garment factories

For the purpose of studying the situation concerning labour rights of the employees in garment factories, the persons employed in private garment factories in Tbilisi and two more regional cities⁵ were defined as the objects of the research. The purpose of the given chapter is identification of violation of labour rights at workplaces that are not hard, hazardous and dangerous.

Due to the fact, that employment in the garment factories is unstable, the salary of the employees is not the main source of livelihood for the households and represents the supplement only. Since trade unions are not formed in this field and the access to a big group of employees is restricted, the research aims to study individual cases at different workplaces for the purpose of assessing the situation concerning labour rights of the persons employed in this sector.

The research studies the situation concerning labour rights of the employees holding different positions in garment factories but does not cover the cases of those employed in the position administrative management. The data was collected among the persons with working experience ranging from 1 to 10 years and relevant educational background, in their residential buildings or neutral territories, in the premises of office spaces in the form of face-to-face comprehensive interviews. Overall, individual and group interviews were carried out with 7 interviewees (1, 1, 2 and 3 interviews in each case) from 4 different workplaces. The majority of employees in those enterprises are female workers and therefore there are no males among interviewees.

The employees of garment factories are not informed about the mechanism of labour inspection and the Department of Labor Conditions Inspection did not carry out monitoring at workplaces. The practice of inspection of labour conditions periodically is implemented only in some enterprises by international Employers.

⁵ Regional cities are not named for the purpose of restricting the possibilities of enterprise identification

1. Unstable job and inadequate remuneration

In certain garment factories the employment is often precarious and unstable and therefore the tailors have to find new employers which leads to financial instability. Additionally, the tailors in the factories do not have fixed salaries. The amount of salaries is not defined individually but based on the quantity of work performed jointly which also means corporative responsibility and is not profitable for separate employees on certain occasions.

The research showed that in some garment factories labour relations are episodic since the tender winners have possibility to receive orders from time to time. Therefore, the frequency of labour relations is defined by the order deadline and amount of order.

The interviewees say that the abovementioned conditions enable the tailors to have different employers, however they consider that adaptation on labour market and mobility are not their goals. One of the interviewees says:

“We have been working here for a long time, we have not left the place ever since. Others did not stay here. There were periods when we had to stop for a month or week, they left and looked for other jobs unlike us.”

In one of the regional cities, where the main problem for garment factory is the shortage of orders and rare employment possibilities, the instability of production is more acute problem than low remuneration: *“it would be desirable if we had uninterrupted work.”*

In one garment factory the additional problem is the fact that employees get paid periodically and by cash settlement and thus they cannot take bank loans.

In certain cases, due to low wages, the persons chose unemployment. *“When a woman leaves home and takes just 30 and 50 Gel at the end of the month, it is likely that her family members wouldn't want her to work telling her it would be better to stay at home and cook,”* says one of the interviewees. Another participant employed in the same factory also talks about late and low payment:

“You sit at the sewing machine at 9 a.m., The working day lasts to 6:30 p.m. but you stay there until 9 p.m. working overtime, nobody pays you for that. You don't get paid for what you have done. The employers are always complaining about being fined. Earning 20 and 30, or even 100 Gel is not worth leaving home.”

Additionally, in such enterprises the amount of salary is defined based on the quantity of work performed jointly. The interviewees state that this amount is equally allocated on each employee which is unfair. They prefer the performed work to be assessed individually. The interviewee says:

“We get paid based on the work performed. It depends on the volume of order, the price of each order. We have collective payment not individual. You don’t get what you earn. The salary earned by the whole team is allocated at the end of month”

“...Evaluation of every operation should be [individual], you will know what is the price of you operation and how much you earn. “

In case of impossibility of alternative employment, the employees working by output-based pay scheme highlight the inevitability of working overtime. One of the interviewees says: *“Today we have an order to make 4000 [items] and we were working because it is in our interest. The sooner we finish the sooner we hand in. Then we will get another order.”* The person employed in another garment factory says:

“When you have to work from 9 to 9. The employers say ‘I don’t make you work’. But when you see that the work requires, then you have to work. But if the employer tells you that if we cannot do the work, we can lose you salary, we are forced to work, we have to be in the factory day and night to meet the deadline. We are totally involved in this situation. For instance we worked 48 hours nonstop and we almost died.”

The research revealed that in certain factories the tailors working by output-based pay scheme in case they fail to perform the order in time, fines are imposed on them. The employees from one factory consider that this agreement between employees and the factory allows the employer to determine the remuneration arbitrarily since the basis of penalization and procedures are not transparent. One of the interviewees says: *“Personally I think that [...] [Employers] will always find reasons for imposing fines no matter how hard we try.”* When talking about unfair allocation of business profit, the same interviewee notes that it should be only employer’s responsibility to pay the fines imposed due to failure to meet the deadline. Such cases shall not have negative effect on the tailors:

“We shouldn’t be responsible for paying fines. Because, let’s take we are paid 0.6 Gel for sewing a t-shirt and 0.25 Gel is paid to the worker out of it. The rest belongs to the administration. They should reduce this amount from their profit not from the workers’. They even confess this fact. Out of 0.60 Gel, 0.25 is for the worker and 0.35 is theirs. So they have to pay for fines. The worker should not be responsible for it.”

1.1. Part-time employment in one of the garment factories

In one of the regional cities, the employees talk about part-time work of the factory. The tailors tend to prefer unemployment and get social allowances leading to the poverty and migration.

According to the interviewees' opinions, the shortage of orders, low remuneration and reduction of the number of tailors hired, are caused by poor management. *"The number of sewing machines is twice as many than the employees."* – says one of the employees.

The interviews also state that it is almost impossible to attract employees in such conditions. *"These people are in [the city], but for them it isn't worth working here. Some of them work in shops, some don't work and prefer to stay at home,"* says the interviewee, *"Even announcing the vacancy is not necessary that... [The factory is looking for staff]"*.

In the same city the interviewees say that improper and precarious employment is the reason that makes the families, below the poverty line recipient of living allowances as social assistance, choose to be unemployed rather than get improper jobs and inadequate remuneration

"A person prefers to get 50 Gel every month. If there were a 1 year or 6-month contracts, people would risk more. If these people earn salary even for a month, the allowances are stopped for them. .. There are lots of people willing to work but fearing that they can lose [living allowances], avoid coming here," says the interviewee.

The interviewees say that in the garment factories the shortage of employment chances led to migration of tailors. One of the interviewees states:

"Some of the tailors went abroad, some got married in different cities, some don't turn up, found another jobs and so on."

2. Inefficient regulation of labour relations

The research revealed that in different garment factories labour relations are improperly regulated. While working in one factory, in spite of working experience there, temporality of employment excludes long term or permanent agreements and accordingly social guarantees related to the employment. In case the employees have agreements, they are not informed about the content of the document.

In the garment factories where the production is continuous, the problem is lack of labour agreements. One of the employees says: *"We could not succeed to conclude agreements. ...for our rights to be protected. I have been out of work since Easter and have not got money. They don't care- you work, you get paid, and you don't work, no payment."* In the garment factories the employees talk about the necessity of working overtime in order to meet tight deadlines. In the factories where a working week consists of 6 days, employees have to work every day and exceed the length of the 8-hour working day determined by internal regulations.

Due to unstable employment and lack of agreements, the employees cannot get benefits related to work such as holidays, sick leave, maternity leave, etc. In certain factories, the employees compensate the restriction of the right of a leave of absence by temporarily suspended production. One of the interviewee describes the situation: *"This is our holidays – [the period] in between the contracts. This is a 'forced' vacation when have to leave this way and now we were told that they will say when we restore works by the end of the month."* The given situation limits the employees' chances to have access to private insurances provide by the employer.

In spite of unstable employment and lack of social guarantees related to work, the interviewees think that employment is guaranteed. The research showed that the employees are not afraid of dismissal since there is constant demand on the current employees. The tailors with several years of experience admit that in case of orders they always go back to workplaces. The interviewee from one of such factories says: *"there are no [dismissal] cases. Unless the employees wish, nobody will fire them. The have been working there for years. If you don't want to leave, you won't get sacked."*

The situation is different in case of continuous production. The employees talk about the practice of renewal of agreements by 3 months. Unlike the previous cases, when the production process is continuous, the rules of using leaves of absence is regulated for the employees (in one of the factories there are 3-week holiday periods in the winter and another 3 weeks in the summer) and the insurance is provided by the company. However, the problematic issue is ineffectiveness of the rule of concluding an agreement when the persons do not have possibilities to be informed about labour conditions. One of the interviewee says: *"The employer just turns up saying you have to sign here. When everybody signs, what else I can do?"*

3. Machinery and operational conditions at the workplace

Observation of labour conditions revealed that the issue of the relevance of machinery is not problematic for the employees, but impossibility of adjustment of temperature and lighting creates improper labour conditions at different workplaces. Additionally, while talking about operational conditions, the employees emphasize that infrastructure is very old and it is necessary to designate space for canteens.

The research showed that the employees work on machinery with different capacities and quality. However in those factories the inadequate labour conditions caused by the machinery was not highlighted. In certain factories the machinery is modernized and as a result working is mechanized and safe. The machinery turned out to get damaged frequently only in one factory.

While talking about labor conditions, the interviewees at certain workplaces highlight that the temperature is inappropriate in some working spaces. The research showed that in several factories heating is not provided during winter and cooling and ventilation in the summer period. The interviewee states: *“In winter is cold, freezing, it is like sitting outside. There are small heaters, but once you start working, you don’t feel cold.”* The tailor from the same factory talks about the summer period: *“it is very hot as the building is huge and not very old but when the sun shines, it’s stuffy.”*

In other garment factory employees talk about improper lighting. They also note the fact of dust caused by textile and the factories are not provided with relevant ventilation system. The employees consider that protective masks are not the sufficient way to get rid of dust.

The employees from other factory note the fact that the infrastructure is very old. However they add that among other labour conditions the latter is the least important:

“Needs to be repaired but for us the basic thing is to have work and get paid. Comfort and repair work remains secondary for us. For me personally, it is important to have a job and salary.”

As for other labour conditions, out of the studied factories one is provided with a canteen and in the rest of the factories the employees highlight the need for arranging space for canteens.

Summary of the employees’ opinions:

The research showed that in garment factories **instability of employment and improper remuneration** are conditioned by the following factors:

- In certain factories the production process is not continuous that results in temporary employment and instability;
- In certain factories tailors do not get fixed salaries and the remunerations is determined based on the volume of work performed jointly, not individually which also means collective responsibility and in some cases has negative effects on individual employees;
- Employees get paid periodically and by cash settlement and thus they cannot take bank loans;

- The problem related to extremely low salary and working overtime was also detected that is not supposed to be reimbursed;
- Working by output-based pay scheme causes inevitability of working overtime as long as the failure to meet tight deadlines will lead to penalization of employees.

In one of the regional garment factories, the problem of **incomplete employment is as follows:**

- The factory works full time and fails to provide employees with relevant remuneration. Therefore, the tailors choose to stay unemployed and use living allowances leading to the poverty and migration.

At various workplaces the interviewees face the **problems of inefficient regulation of labour relations:**

- The employed in different garment factories have not concluded labour contracts. In case these agreements are drawn up, the employees are not informed about the content of the document;
- In spite of being employed permanently temporality of employment excludes long term or permanent agreements;
- Lack of long term or permanent agreements excludes social guarantees related to the employment at temporary workplaces.

While studying other labour conditions, **machinery and operational conditions at workplaces** were evaluated:

- Observation of labour conditions revealed that the issue of the relevance of machinery is not problematic for the employees, but impossibility of adjustment of temperature and lighting creates improper labour conditions at different workplaces;
- Another problem is that infrastructure is very old and it is necessary to designate space for canteens for the purpose of improving working environment.

Chapter V.

The situation concerning labour rights of the persons employed in supermarket chains

For the purpose of studying the situation concerning labour rights of the persons employed in supermarket chains, the employees of the chain hypermarkets of food and consumer products in Tbilisi were identified as the objects of the research. Like the previous chapter, the purpose of this chapter is to identify violation of labour rights in the places that cannot be considered as hard, hazardous and dangerous. The research studies the condition concerning labour rights of the persons holding the consultant positions does not cover the cases of those employed in the position of administrative or supervision management.

In the given employment sector the interest of studying labour conditions was conditioned by precarious employment and weak possibilities of organization the employees. In the sectors highlighted in previous chapters, the cases of employment in the field of industry of transportation, are characterized by stability and the tradition of trade unions conditioned by the specifics of this category itself. It is considerable to take into notice that service sector is characterized by variable and instable workplaces. Since trade unions are not provided in this sector, the research studies the cases of individuals at different workplaces in order to evaluate the condition of labour rights for the persons employed in this sector. The data was collected among the members with relevant educational background and working experience ranging from several months to 4 years.

The research was done in the working space of the participants and neutral territories in the form of face-to-face comprehensive interviews. Overall, individual interviews were carried out with 7 interviewees at four different workplaces (1, 2, 2 and 2 interviews in each case). The majority of employees in those enterprises are female workers and therefore there are no males among interviewees.

Within the research, the interviewed employees in supermarket chains are not informed about labour inspection. Moreover such monitoring was never conducted at their workplaces.

1. The problem of precarious employment

The research showed that employment as consultant is not attractive due to different factors. The remuneration for full-time workers is inadequate, the employees are dependent on the income of other family members and this type of employment is the additional source of income for their households. The majority of persons employed in these positions are young persons, and they are trying to combine the work with their studies.

Young interviewees, who say that they were employed in order to have independent livelihood, admit that consultant's salary is not enough to cover individual consumer expenditure independently and fully. In different interviewees' cases, the remuneration does not cover rent, tuition, training, and transportation or healthcare costs fully and the interviewees rely on the help of their relatives. However, one of the interviewee, despite the need for material support from different members of the family, says that abovementioned jobs enable to live independently: *"I don't understand when people say that there are no workplaces. I think that isn't true. The salary may not be so high to become rich, but it's enough not to live at someone else's expense."*

In case of dependent persons, the interviewees can only ensure supplementary income for their households: *"From my salary no money is left for my family needs. I have to cover an installment loan... We have to borrow from salary to salary, it can be an express loan or something like this... we are quite hard up,"* says one of the female interviewee about her own contribution to her family income.

The full-time or half time employees combine working in the supermarket with getting higher education and the interviewees think that gaining working experience will be the precondition of their future carrier success. However, the research showed that to combine work in the supermarket chain with higher education limits the possibility of gaining relevant qualifications due to shortage of time. The interviewees with different working schedules claim that working full-time makes it difficult for them to choose and study all interested subject fully. In addition, in parallel with employment and education, the interviewees cannot manage to go through internships relevant to their profession to gain qualification. The student of the Faculty of Business Administration considers that working in the supermarket is significant experience: *"[employment here] is temporary. Just to gain experience. Certificates and experience are extremely important today. What's more, you have got your own pocket money."* However, the research revealed that the family members of consultants have negative attitudes to actual employment conditions but young people do not agree. Different interviewees say:

"My parents are very surprised that I stayed for so long in the[supermarket] and did not look for another job."

"My family members tell me to leave this job but I don't want to."

1.1. Temporality of employment and high mobility among places of employment

The participants of the research speak about the temporary character of employment as a consultant due to inadequate labour conditions, low salary, and high mobility of persons employed in supermarket chains and spontaneous decisions to quit.

For instance, several interviewees talk about the temporary working experience in different supermarket chains before they were employed at recent workplaces. In certain supermarket chains, due to discontent with labour conditions in consultant positions, mobility is high. One of the interviewees says that the lack of improvement possibilities of labour conditions made the employees search for other places of employment:

“The staff here is constantly changing. Nobody is interested why it happens so... what if the manager [talks] to that employee, arrange meetings or stuff like this... Aren't they interested why so many employees leave? It turns out that new [staff] doesn't stay for some time, they come and go.”

The employees of one of the supermarket talk about the case that there used to be bonus system to keep the employees but since it was cancelled the condition of keeping the staff weakened. “[The employees] come and go. What if there is kind of minimum stimulation. We used to get 30 gel in every three months but not anymore.”

The research revealed that the employers impose different sanctions on those who leave jobs without prior notice. A number of employees say that cases to take spontaneous decisions about quitting the job, is quite frequent due to improper labour conditions. One of the interviewees talks about high mobility due to work load:

“We have to work hard and many employees can't endure such load. I have been [working] for 5 months already and am considered as old personnel because lots of employees quit jobs in a month and they just stay this one month to get paid.”

2. Drawbacks of labour agreements and the problem of inadequate remuneration

The research showed that concluding labour agreements with consultants takes place through individual agreements. In certain supermarkets, individual agreements are permanent while in other the agreements are renewed periodically. While talking about the agreement conditions, the interviewees highlight the problem of improper remuneration, irregular working hours, the lack or inefficiency of benefits related to work performance and social security guarantees. The problem is also the issue of imposing strict fines on the employees regulated by the internal regulation.

As the interviewees state, monthly salary for consultants in the supermarket chains ranges from 240 to 360 Gel, in certain supermarket chains the amount of a consultant's salary is 450 Gel as an exception. The participants of the research talk about workload saying that they work more than 40 hours per week in cases when 12 or 24-hour shifts can be several times in a week. One of the interviewees speaks about 54-hour working mode per week, when overtime work is remunerated by regular tariff. In some supermarkets, the employees in the night shift get the same salary as day-shift ones. One more problematic issue is the impossibility of using sick leave due to the drawbacks in the agreement.

Furthermore, the employees cannot use paid leaves, but in some cases the employees can use them after working for 6 months or a year. The research also revealed that employer companies cover the costs of consultants' health insurance. In certain cases the employees get regular medical examination.

In different supermarkets the duration and conditions of breaks varies. As the interviewees say in some cases the employer fully neglects the need for abovementioned, determines short and insufficient intervals for meals and smokers.

As for nourishment, the employees in certain supermarkets can use preferential prices on food products. In such cases individual costs vary from 2 to 5 Gel. In some of the supermarkets, the employer covers catering costs on a daily basis which amounts 2 Gel.

The employees in the supermarkets also highlight the severity of regulations establishing unfair system of penalties which reflects negatively on their monthly salary. At certain workplaces the consultants talk about the strictness of managers and the practice of discipline through monetary penalties.

It is noteworthy that supermarket chains provide consultants with uniforms but in certain cases the cost of uniforms is employees' individual responsibility.

While talking about unfair labour relations, the acute problem relates to expired products the cost of which the consultants have to cover.

“Yes, in this case it’s my fault that I missed to register expired product but it shouldn’t be like this. When the product is returned [to a supplier company], the employee shouldn’t be blamed for it. I was made to buy diabetic expired products of 15 Gel the ones the supplier company will change later. When we buy these expired products, we eat them as well and don’t throw away. Everybody does the same.” – says one of the interviewees.

Despite abovementioned circumstances, the interviewees from different workplaces consider that strict regulations do not define the fear of dismissal among the employees. The consultants participating in the research think that they have alternative employment possibilities and do not face unemployment. They exclude pressure as the ground for dismissal.

3. Labour conditions at workplace

While studying the labour right of the consultants working in the supermarket chains, the problem of work distribution due to shortage of staff was detected, and also the issue of consultants’ physical safety due to nonexistence of security services or the faults of their operations.

3.1. Shortage of labour force and the problem of labour distribution

The complexity of workload is caused by the shortage of labour force and labour distribution, due to which workers have to fulfill several obligations. However, the personnel does not have relevant skills, equipment and time for the latter.

The employees of one of the supermarket say that while working in one shift, due to lack of relevant labour force the consultants have to perform different duties. One of the employees states: *“We are cleaners, consultants and cashiers at the same time, we share work what is to be done.”*

The consultants in certain places consider that they are responsible for management of technical equipment, cleaning and preservation which is incompatible and disproportionate obligation. Certain supermarkets are provided with technical supervision services which control the functionality of machinery on a regular basis. However, in other cases when the machinery is out of order there is a need for technical inspection.

The interviewees emphasize the obligation of cleaning the refrigerators that are turned on for which they were not specially trained: *“I am a consultant and not a cleaner,”* says one of the interviewees while talking about the responsibility of cleaning refrigerators.

One of the risks related to health deterioration is the case when the consultants have to move heavy selling products manually and independently within the rooms without relevant equipment. One of the interviewees says:

“When I have to drag this heavy stuff it causes the pain in my kidneys and I can hardly breathe. It has become a serious problem. When I lift something heavy I have to take pain-killers otherwise I can’t breathe.” Another interviewee says: “There are no males on the staff. When there were security guards, they used to help us. The baskets are extremely heavy and you have to go up and down this horrible stairs 100 times per day.”

3.2. Malfunction of security system and safety of employees

The research showed that in certain places of employment the interviewees think that malfunction of security system in the supermarket chains and abolition of the positions responsible for physical security is unacceptable.

The interviewees consider that working under surveillance cameras is insufficient guarantee for night-shift employees in case of attack. In addition, in the working space the consultants are not allowed to carry phones due to which in case of emergency they have to remotely communicate only with the security service of the company. The above-mentioned fact excludes the possibility of calling the patrol police without involvement of security service. As the interviewees highlight, in certain supermarkets, monitoring service tries to solve the problem remotely and does not respond to problems instantly as it could have been in case of calling the patrol police.

One of the interviewee talks about working night shifts and the risks related to it: *“I was lucky enough to switch to day shift but as for those who work night shift, they are scared to death.”*

One of the interviewees talks about the probability of attack by the consumers:

“The motto here is that in every single situation, a consumer is always right. You have to communicate with a lot of irritated consumers but we have to stay calm. So far there have not been the cases when the consumers abuse us physically, but if it happens, you have to call the security service.”

In other supermarkets where security service is not provided, one of the interviewees talks about insecurity: *“You are afraid to speak up with consumers to defend yourself.”*

Summary of the employees' opinions:

The research showed that consultant's job is considered as inadequate due to the following factors:

- The remuneration of a full-time consultant is not sufficient to cover individual consumer expenditure fully and independently. The salary is seen as additional income for households;
- To combine work in the supermarket chain with higher education limits the possibility of gaining relevant qualifications due to shortage of time;
- Due to inappropriate labour conditions the employment is of temporary character, consultants arrive to spontaneous decisions to quit, and there is high mobility of workforce.

The consultants employed in the supermarket chains face the problems of **inappropriate labor conditions and inadequate remuneration**:

- Consultants are badly paid and working overtime is remunerated based on regular tariff. In certain supermarkets, the salary for night shift workers is not different from the remunerations of day shift employees;
- In certain places labour condition does not envisage paid leaves;
- In certain places breaks are totally neglected and is defined a short interval for meals or smokers;
- In certain cases, internal regulations sets strict penalties for the discipline purposes which reflects on the amount of monthly salary significantly.

The study of **labour conditions at workplaces revealed that**:

- The shortage of labour force causes the problem of work distribution that leads to combination of different obligations. However the personnel does not have relevant skills, equipment and time for the latter;
- In certain places malfunction of security systems and abolition of the positions responsible for safety, eliminates the possibilities of physical security of the employees.

Chapter VI.

Trade Unions

Given chapter concerns the issue of studying the possibilities of trade unions since the strength of unions is a precondition of protecting the rights of employees and their welfare. The research showed that at various workplaces resistance against employees' organizations is fairly high which a considerable challenge for trade unions and in many cases results in their weakness.

The purpose of this chapter is to discuss the possibilities of trade unions of persons employed in the heavy and light industry and service sectors for the purpose of improving labour rights of the employees.

The research is based on the interviews⁶ among the members of different unions at various studied workplaces. The interviewees reflect on the need and improvement possibilities of trade unions where they do not exist. Trade unions are not presented in service sector out of the studied workplaces in the frames of research. As for the light industry, the research revealed that in garment factories there are no trade unions. The employees of the textile factory do not have experience of cooperation with trade unions of relevant field in the Georgian Trade Unions Confederation on the central level.

Overall, the members of 5 different union and independent (non-member) respondents were interviewed from the fields where trade unions are not organized.

1. Labour Unions of the employees working in heavy industry

The research showed that trade unions at certain workplaces do not intend to resist employers for the purpose of improving of protection of labour rights and mostly are controlled by them. Other employees refer to such unions as "Yellow Trade Unions". None of the employees took part in the research who is the member of a "Yellow Trade Union". The data was collected among the members of alternative unions of "yellow trade unions".

The formation of trade unions independent from enterprise management at different workplaces has been an ongoing process since 2012. However, one of the main challenges for the above-mentioned unions is autonomous organization from the enterprise administration enabling the employees to unite based on independent initiatives and go against enterprise management.

⁶ See Chapter 1. subchapter 1.

1.1. So-called “yellow trade unions” and alternative unions of the employees

Given chapter highlights the state of affairs and challenges of trade unions, operating in the heavy industry sector. The problem of “yellow trade unions” and the possibilities of alternative trade unions are also highlighted in given chapter.

According to the interviewed persons, in the enterprises for extraction and processing minerals, and also in rail transport sector, there are a number of trade unions some of which are referred to as “yellow trade unions”. In this case the members of the union do not go against the management of an enterprise. The employees are not informed in advance about joining a “yellow trade union” but this happens automatically with the employment by the employer. Accordingly, the number of members of the “yellow trade union” equals to total number of employees at different workplaces.

The research revealed, that in those cases, where exist alternative trade unions to “yellow trade unions”, and if they are strong, the members of such unions refer to the “yellow” unions as ‘false’ and ‘criminal’. *“I was illegally registered in the trade union, I didn’t know about it at all. I was checked off and got very surprised.”* – says the interviewee about the case when he found out about joining the yellow trade union by checking off.

The employees taking part in the research are the members of the unions, which confront so-called “yellow trade unions”, the privileged members of which are suspected to collaborate with the administration of the company. According to the interviewees’ opinions, the members of these organizations are not properly informed about labour rights and their awareness level is low.

The members of alternative union consider that joining the union is the result of their independent attempt. *“We have our own opinions, our own thoughts,”* says one of the interviewees. While talking about awareness of own rights among employees another participant states:

“Thanks to these [alternative] trade unions, a lot of things have improved...it’s important for the trade union to get stronger. The people need to maintain the situation we have right now and the way of thinking.”

The participants of the research talk about certain achievements of the unions at different workplaces. They emphasize the increase of remuneration, the facts of reinstatement at work for illegally sacked people and or relevant compensation. They also talk about the changes of administrative management members due to negotiations. In one place of employment, as a result of efforts of trade unions, there has been an increase of 48 million in the state budget for the last

three years. In another trade union the success is related to fact that their agreement envisages different type of salary supplements: remuneration is 15% more for the employees here in case of working overtime per each hour. They get supplements for hard, hazardous and dangerous work and night shifts. They have been paid the thirteenth salary as supplement for the last three years.

While talking about the low rate of member increase of alternative unions, the interviewees highlight the fact that in many cases joining the trade union is a culminating point of individual response to acute manufacturing violations not forming massive solidarity. For instance, the interviewees admit that they apply to the unions only when in case of industrial injuries responses or social allowances by the employer turns out to be a false promise. In other cases the number of persons willing to take part in such contradictions for protection labour rights is low.

One of the challenges of increasing the number of members of alternative trade unions and its strengthening is the circumstance that practice of collective proceedings and protection of rights through legal actions is relatively new. The interviewees highlight the need for promotion of unions and strengthening of efforts by their members in this direction. The employees of different enterprises emphasize the lack of information necessary for using legal dispute mechanisms and human resources. *“It needs strengthening, reasonable actions, and people. You should have them.”* – says one of the interviewee about the need for strengthening of trade unions.

The interviewees also noted that in the past the dispute on labour rights between employers and employees grew into controversy on political ground. At one workplace, it is considered that the abovementioned problem has been solved and the union has more potential. *“In terms of labour relations, the relationship between an employee and employer is quite good and no politics. It used to be but not anymore.”*

It is noteworthy that alternative trade unions that have been founded since 2012 in different companies have different approach to Georgian Trade Unions Confederation. In certain cases, Georgian Trade Unions Confederation strengthens, assists the local unions through consultations and mobilization of employees. In separate cases, the members of alternative trade unions demarcate from trade unions.

1.2. Persecution of members of alternative trade union and resistance weakening circumstances

The following subchapters describe the challenges related to assembly of workers and freedom of unions. In the given chapters the issues concerning the cases of pressure against the trade unions by the employer and weakening or neutralizing the efforts of resistance.

1.2.1. Pressure on the members of alternative trade unions

“Labour and pre-contractual relations shall prohibit any type of discrimination due to race, skin colour, language, ethnicity or social status, nationality, origin, material status or position, place of residence, age, sex, sexual orientation, marital status, handicap, religious, public, political or other affiliation, including affiliation to trade unions, political or other opinions.”(Paragraph 3, Article 2, Labour Code of Georgia)

“The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” (Paragraph 2, Article 2, International Covenant on Economic, Social and Cultural Rights)

The research showed that the main obstacle of recruitment in alternative trade unions among employees is the fear of dismissal. The members of alternative trade unions face oppression by the management of the enterprise, while membership of “yellow trade union” ensures keeping the jobs and in special cases provision of informal social allowances.

The types of oppression against the members of alternative unions is different. In one enterprise the interviewees talk about precedents of gaining over the employees in “yellow trade unions” by force and bribery:

“As you are aware there are two kinds of trade unions. The second trade union belongs to administration. They try to gain over the employees, ‘I will forgive you this’, they concealed somebody’s crime, ‘join us and we won’t harm you’. And that employee thinks it is good.”

One of the interviewee highlights the discrimination precedents when assessing vocational exams against those who are not the members of “yellow trade unions”:

“Are you the member of trade union? Our trade union?’ then terrible things happen. They don’t fire you but you fail the exams and then you have to retake them.”

The participants of the research say that the possibilities and resistance of alternative trade unions are weakened by the fact that the possibility of keeping the jobs and social security with relevant financial resources is defined by loyalty towards “yellow trade union”. The cases of receiving allowances of different type informally and the interest of employment security guarantees by affiliating with “yellow trade union” is quite frequent among ordinary members.

“There are members of yellow trade unions with certain privileges... and the rest members are people who were threatened. I feel very sorry for them. They think that if they do something wrong, will be punished tomorrow, but I think that it is not the right way of thinking. The privileged ones are more active and are in confrontation and always in conflict with us [alternative trade union].”

1.2.2. Attempts to weaken and neutralize resistance by the employers

“Everyone shall have the right to form and to join public associations, including trade unions.” (Paragraph 1, Article 26, the Constitution of Georgia)

The research showed that the employers are actively involved in weakening of trade unions and neutralizing protests without solving problems. The research also highlighted the fact that intimidation, blackmail and oppression of employees often becomes the reason for weakening solidarity.

The interviewees often emphasize that alternative trade unions are weakened by misperceptions of administration towards them that excludes the cooperation possibilities. One employee says: *“They [management] see us [alternative trade union] as enemies, but we aren’t company’s enemies. We just want normal relations between employers and employees.”*

According to the participants of the research, for the purpose of weakening or neutralizing resistance among employees, the administration of enterprises oppress the workers by threatening to abolish the workplace or their dismissal. In different enterprises the topic of manipulation is high level of unemployment in regional cities and dependence on long or short-term bank loans. Different interviewees say:

“If you speak up for this [improvement of conditions], then you are the victim of aggression, so it’s better to keep quiet and go on working.”

“People are afraid to speak, some of them have bank loans, others have some other problems. That’s why they avoid conflicts with management.”

“[the employers says] that if we don’t like the job, we may quit. This is the only answer they have. ‘I’ll fire you’. It’s the intimidation policy.”

“We work and hope for better future. If there were some problems, we tried to solve them by ourselves.”

In one of the companies the employees talk about trade unions and the fair of political persecution against employees; resistance which was differently strong or weak in the times of different governments. In the past law enforcement agencies took part in neutralization process. “[..] Trade unions faced big problems in the time of previous government which persecuted, beat people and several activists were caught. They arrested people directly of demonstrations. Don’t you remember previous regime?” another interviewee says: “there were 80 of us [..] [at the workplace], were we were going to strike and special armed forces 10 times more than us turned up and did terrible things there.”

One of the interviewees recalls about forceful interruption of participation of employees in strike: “They kept people inside the enterprise, they didn’t let them out. People were calling telling they wanted to join the strike. We weren’t allowed to go inside.” The interviewees also recall the facts of bribery of active members of trade union in order to neutralize the protest: “There were cases to offer higher positions to them...”

The research showed that in certain cases, while strike which is the extreme form of dispute, the activity among employees is low that is the result of intimidation of employees. “They think that if [salary] increases for him, it’ll increase for me as well and prefer to stay at home,” says one of the employees about the lack of solidarity during strike. “If it’s a strike, we have to stand together, all of us, but it doesn’t happen,” adds another participant.

The research revealed that the possibilities of future resistance are weekend due the fact that labour disputes during strikes cannot meet the set goals or reached agreement are not fulfilled. In one of the enterprise, the employees achieved 7% increase of the salary at the expense of cancellation of bonus system. In other cases, failure to work due to strike caused cancellation of holidays. One of the interviewee speaks about the result of the strike:

“The government representatives came and promised us lots of things but all in vain...after those two strikes, the situation got even worse. That’s why workers avoid striking now.”

2. The possibilities of organizing employees and its restrictions in light industry and service sector

Employees and employers may form associations and/or join other associations without any preliminary permission. (Paragraph 1, Article 40^b Labour Code of Georgia)

“Any person shall have the right to create a trade union and to join it, in accordance with the Constitution of Georgia. (Paragraph 2, Article 2, Law of Georgia on Trade unions)

“A trade union may be established within any enterprise, institution, organisation and other place of work.” (Paragraph 3, Article 2, Law of Georgia on Trade Unions)

The States Parties to the present Covenant undertake to ensure: (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others; (Subparagraph (a) of Paragraph 1 of Article 8 of International Covenant on Economic, Social and Cultural Rights)

“Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation. (Freedom of Association and Protection of the Right to Organise Convention of International Labour organization, No. 87)

The persons employed in the field of light industry and service sector have different opinions about the need for trade unions.

The research revealed that in the abovementioned sectors of employment, in light industry and service sector, information about the efficiency of trade unions is not available. There are also cases, when being a member of a union is related to being a member of a political party. The research showed that there are not trade unions in aforesaid sectors and the employees do not have experience of cooperation with the Georgian Trade Unions Confederation.

The research showed that the sense of solidarity is low among the employees in the highlighted fields against demonstrations organized by trade unions in other fields (unlike the employees of heavy industry). However, a number of employees talk that there is opportunity of establishing solidarity between the employees of the same field in case of establishment of trade unions.

2.1. Precedents of resistance

The research showed that in the given sectors of employment there were cases of occasional and onetime resistance, however the above-mentioned experiences were not the basis for forming official unions or collective dispute.

In case of one garment factor, the interviewees speak about the case when employees managed to lay claim to the employers regarding delay of remuneration or the demand to reinstate the sacked employee at work. In the same fields the interviewees recall the precedents of laying claims to the administration on the improvement of labour conditions regarding heating of working space but the claim was not satisfied. In other case, the interviewee speaks about the precedent of dismissal of employee that caused the need for getting assistance from the Georgian Trade Unions Confederation. Even the latter did not serve to help cooperation between the employees and trade unions.

One of the interviewee, employed in the supermarket speaks about the case of consultant mobilization, when the delay of remuneration caused collective resistance which ended successfully but was not institutionalized at any stage. *“We said that it wasn’t worth [working] and [quit] but they didn’t want to close down the shop and later they paid us.”* – says the interviewee.

2.2. Restrictions of forming trade unions

When talking about the restrictions of forming trade unions, it was detected that in certain cases, the employees are skeptical about the need for forming trade unions. The employees also doubt that collective mobilization is available and it can be acceptable for their employers.

Regardless the fact that some employees think it is important to form and strengthen unions in their sectors, one of the interviewee employed in service sector says that there is a need for trade unions and protection rights due to high labour standard:

“I may not need defender of labour, mainly because I have more developed jobs, but if you ask, Georgia needs trade unions to focus on some issues.”

The persons employed in the supermarket consider that involvement in demonstrations is not a desirable activity. One interviewee states: *“I haven’t got time for protest... I wouldn’t bother myself by [trade union activities].”*

The interviewees employed in different fields talk about the precedents when through informal and individual negotiations with the managers, they solve the problems related to labour conditions and they do not see the need for collective mobilization.

However, one of the interviewees highlights the impossibility of solving problems through labour disputes and sees the need for collective mobilization: “[...] *The problem which exists should be solved jointly. My opinion only does not determine anything.*” The need for collective mobilization is detected when the resource of participation in labour dispute and employees’ motivation are low: “*I haven’t faced such situation so far... I haven’t got enough time to go to court.*” – says the employee from the garment factory. In addition, another interviewee doubts the possibility of resistance of labour exploitation based on independent efforts: “*manager gives us some benefits, but we also have regional manager, monitoring service and you can’t do anything with them.*” Another employee talks about the reasonability of individual resistance: “*What can a manager do, he is an employee himself.*” Another employee speaks about the exploitation and improper treatment by management: “*They [management weren’t respected and their aggression later was reflected on us. It’s true that they are not appreciated.*”

It is important to mention that while talking about the possibilities of trade unions for the employees in supermarket chains, one of the interviewees named high level of unemployment and high demand on the given positions as a main obstacle. “*There will always be first year students and always unemployed.*” Said one of the interviewees. Besides, high mobility among the places of work weakens the chances of forming a union. Where mobility is not detected, among the employees of light industry it was mentioned that their company will be against the formation of trade unions. “*Nobody is for the idea trade unions to enter the company,*” said another interviewee.

Summary of the employees’ opinions:

Observation of **trade unions in heavy industry** revealed that:

- So-called ‘yellow trade unions’ do not intend to resist against employers for the purpose of improvement labour rights and they are not independent from the enterprise management;
- Alternative trade unions, which have been formed since 2012 face oppression by the management of the enterprise, while membership of “yellow trade union” ensures keeping the jobs and in special cases provision with informal social allowances through bribery and patronage of the employees;

- The employers are actively involved in weakening of trade unions and neutralizing protests without solving problems. Intimidation, blackmail and oppression of employees often become the reason for weakening solidarity.

Observation of **possibilities and restrictions of organization of the employees in light industry and service sector**, revealed that:

- There are not trade unions in aforesaid sectors and the employees do not have experience of cooperation with the Georgian Trade Unions Confederation;
- High mobility in the places of work in the above-mentioned sectors weakens the possibilities of forming a union for which high level of unemployment, high demand on the workplaces and mobility is a real obstacle.

Conclusions

The research studied labour conditions and relations in different spheres of employment: heavy industry, light industry, railway transport and service. After having studied 13 different workplaces, the data about heavy industry and railway transport was separated from heavy industry and service sector. It should be mentioned that the research could not identify qualitative difference between private and state-owned workplaces in terms of labour conditions, labour social security guarantees or freedom of meetings and demonstrations. In the given employment fields the situation is equally acute concerning the adequacy of working environment or other labour conditions and taking repressive actions against organizing of employees.

In the mineral extraction and processing enterprises and railway transport sectors the interviewees talk about the acute need for safety and health protection, also inadequate regulation of labour relations and remuneration. In addition, at the workplaces where labour envisages the special needs for emergency medical care, protection of hygienic norms and meals, the interviewees repeatedly demand adequate infrastructure and service but without success. In the abovementioned sectors, for the workers employed at hard, hazardous and dangerous workplaces one of the most serious problems is the need for investigating labour accidents and fatal cases and adequate response. In addition, in spite of job stability and long-term working experience, labour social guarantees are poor in this sector of employment. The employees at hard, hazardous and dangerous workplaces indicate the need for social packages.

On the other hand, labour conditions in the light industry and service sectors do not give rise to the circumstances of the violation of labour rights as acutely as it occurs in the studied sectors of the heavy industry and transport. However, at different workplaces where working hours and labour allocation are not regulated and standardized as it is in the enterprises and railway transport sector, separation of duties among the employees, overtime labour intensity and inadequately strict penalties for the discipline purposes is a daunting challenge. High standards of labour rights are not provided only by the adequacy of working conditions and the fact that in some of the studied factories the practice of periodic inspection of labour rights by the international Employers is implemented.

Besides, one of the problematic issues in this field is part-time and precarious employment. The absolute majority of the interviewees are females whose remuneration is not the main source of livelihood for the households and represents the supplement only. They are frequently unemployed as well. In case of young employees, they try to combine the work with their studies, high mobility among the workplaces is quite often. Part-time and precarious employment result in the non-existence of long-term or permanent agreements which consequently excludes social guarantees related to employment in this sector.

The research revealed, that awareness of the employees about the state of affairs concerning labour rights differed significantly in the fields where trade unions can be seen from the sectors where there is lack of experience in this regard. In heavy industry and transport sector where the members of trade unions took part in the research, it turned out that the data about labour rights violation is systematically collected, there are cases of collective requirements and newly established labour inspection mechanism is also criticized. In light industry and service sector where data was collected through the interviews with individual employees at different workplaces, it was detected that awareness about their labour rights is low among the employees and almost in every case, the workers are not aware of existence of labour inspection mechanism.

In heavy industry and transport sector the research revealed positive dynamics of collective requirements by the employees on the one hand, but the trends of absolute negligence of these requirements are observed, on the other.

The possibilities of improving the state of affairs concerning labour rights protection in private or state sectors are restricted by the fact that alternative trade unions constantly experience oppression by the management. The employers are keen on weakening alternative trade unions and neutralizing the protest without solving problems. Intimidation, blackmail and oppression of the employees results in weakening alternative trade unions. During the research period, two participants were sacked. They believed that it was done in order to neutralize the protest in the enterprise as both of them were actively involved in trade union activities and strikes.

Unlike the abovementioned two sectors, the possibilities of organizing employees in the garment factories and supermarket chains are weak and there are no precedents of forming formal trade unions. In contrast with heavy industry and transport sector, unstable and precarious jobs together with the lack of long-term or permanent agreements, weaken the chances to establish trade unions formally in given sectors of employment. Additionally, in certain cases, inadequate labour conditions define employment temporality, spontaneous decisions to quit and high mobility among the workplaces.

While assessing the efficiency of labour inspection mechanism, the employees who are the members of trade unions emphasize the need for strengthening this mechanism and do not confirm the facts of improvement of labour conditions due to this mechanism. The information about inspection mechanism does not exist in the service and textile sector.

The research showed that for the purpose of improving labour rights standards, it is essential to study labour conditions for the employees at different workplaces and working on the issue of identifying a wide range of violations. Labour conditions at workplaces are not limited to the need for protection of safety and health and require the supervision of protection of legal status in all other directions highlighted in the research.

Part II
**The study of the mandate
and activities of the labour
inspection mechanism**

Chapter I.

Methodology

The research attempts to describe labour inspection mechanism and its assessment in the light of international obligations undertaken by Georgia and legal standards of given sector. For this purpose, the research analyzes national legal framework of the Department of the labour conditions inspection (hereinafter Inspection Department/Department), studies its authority, main characteristics of institutional framework and evaluates current model of inspection and its up-to-date experience.

In order to assess national legislation and practice, the research also highlights and analyzes labour rights standards given in legal documents recognized as binding and beyond recognition, labour administration systems developed by various countries and studies legal and practical dimensions in these models.

The research group provides the state with recommendations through the current legislative framework and practice of labour inspection mechanism, on the one hand, and joint analysis of experience of different countries and widely recognized minimum international standards, on the other, for the purpose of review of existing labour inspection system and ensuring its effective and adequate functioning.

During the working process the research group used the following methods:

- Research of national legal framework;
- Request for public information;
- Strategic proceedings;
- Working meetings and individual interviews;
- Research of international legal standards and practice of other countries.

1. Research of the national legal framework

The research group studied current legal framework of the Department of the labour conditions inspection, in particular, all legislative, sub-legislative normative acts or internal regulation defining legal base of department activities and setting objectives, scopes, mandate, authority and implementation forms of its activity.

2. Request for public information

In order to observe direct experience of data collection and labour condition inspection, the research group also used the mechanism of requesting for public information which envisages requesting information from and other relevant institutions if necessary. The main goal of requesting for information was to obtain data regarding department activity and its current practice.

3. Strategic litigations

In the framework of research, one of the mechanisms of observation of activities of the Department was strategic proceedings, which envisages to provide the Department with specific information concerning the labour rights violations and the request for inspection at the workplace. The research team was observing separate aspects of the activities of the Department through initiation of the abovementioned cases, which was a particularly important tool taking into consideration the fact, that access to some information was restricted.

4. Working meetings and individual interviews

During the research the team of researchers conducted a number of individual interviews and working meetings. The aim was to obtain information about inspection mechanism mandate and activity and opinions from different actors and experts. Consequently, the representatives of relevant state agencies (6 meetings), trade unions (5 meetings), different employers' association (5 meetings), local and international organizations (3 meetings), Public Defender of Georgia (2 meetings) and individual experts (2 meetings) took part in the meetings held in the framework of the research. The purpose of the working meetings and individual interviews was also to listen to the opinions of different actors, especially the visions of social partners regarding transformation opportunities and perspectives of inspection mechanism.

5. Research of international legal standards and practices established in other countries

The research team studied international legal standards in the field of labour rights and the obligations undertaken by Georgia regarding the improvement of labour policy and formation of inspection mechanism of efficient labour. In particular, relevant conventions by International Labour Organization (ILO) were processed, as well as International Covenant on Economic, Social and Cultural Rights, the European Social Charter, and the obligations undertaken by Georgia in the framework of international agreements.

In addition, the research group studied the experience of different countries in terms of legal, institutional and administrative grounds of labour inspection system mandate and activity. The aim of studying experience of different countries was not to research the best practice, but describe and show the experience of labour inspection mechanism and its specific characteristics among the states with different historical, political, economic and social context.

For this purpose research identified as the object of the study the countries with developed and so-called developing economy and their labour inspection mechanisms. The research selected Kazakhstan as the example of developing economy. Great Britain is one of the high-income countries (by calculating 12.476 \$ and more per capita) as the country with strong liberal market economy. Among developed economies Poland the member state of former Socialistic bloc from central Europe was also selected. Additionally, Greece was chosen as the object of the study as developed but with the weakest liberal democracy by economic indicators in the EU.

The research examines the practice of the republic of Kazakhstan, as the country with one of the fastest growing GDP among the members of the Commonwealth of Independent States. The republic of Kazakhstan is the country with a new market economy with high economic growth in 2003-2005 (average 9.5%) which was significantly conditioned by the actions aimed at liberalizing the economy along with investment growth in oil and gas industry¹. The republic of Kazakhstan was chosen the object of the study because in the recent past the country adopted the Law on Social Partnership aiming at developing social security system².

Poland has a long history of fighting for labour rights. It has been a member of International Labour Organization (ILO) since 1919 and the trade unions made significant contributions in the development of the country's democracy. Additionally, Poland's experience has become considerable since in the member state of former Socialistic bloc the achievements of self-organized trade unions resulted in great support from the West in terms of transformation of economy and labour market and also becoming the EU member state in 2004. Presently, negative social effects accompanying globalization and market liberalization significantly determines the priority of fighting for labour rights in Poland.³

Greece became the object of the research as well, as it is one of the oldest and developed countries, but at present it is economically a peripheral country in the EU. One of the indicators of economic development is the fact that 70 % of employees work in service sector. However, following the crisis in 2007-2009, the level of unemployment reached 25% which can be the precondition of

1 Decent Work Country Programme in the Republic of Kazakhstan, International Labor Office, (2007-2009). Available: <http://www.ilo.org/public/english/bureau/program/dwcp/download/kazakhstan.pdf>. Last seen: 15.12.2016.

2 Ibid.

3 http://www.ilo.org/budapest/countries-covered/poland/WCMS_476068/lang--en/index.htm; Last seen: 15.12.2016. http://www.ilo.org/budapest/countries-covered/poland/WCMS_476068/lang--en/index.htm. Last seen: 15.12.2016.

deteriorating of labour standards. This was the reason why the study of current labour inspection mechanism in such socio-economic environment became interesting for the research.

The British model was also determined as the subject of the study as far as the country started to care for the welfare of population in the late 19th and early 20th centuries by not only supporting households below the extreme poverty line but improving labour conditions as well. In Britain there is a significant experience regarding the regulation of labour relations among the employees, employers and trade unions. Due to a lasting tradition of institutional system of labour administration, it has become interesting to study a national mechanism responsible for supervising the labour standard protection.

6. Limitations of the Research

Restricted access to information related to the activities of the labour inspection mechanism made it impossible to fully and thoroughly evaluate practices established within the mechanism. Therefore, during the analysis of the mechanism, the research was based on studying of the national legislative framework, and while assessing the experience/practice of the object of the research and due to limited access to information, the research group used different tools which allows for at least partial assessment of the state of affairs within the labor inspection.

This part of the research comprises 4 chapters. The first chapter describes the research methodology. The second chapter highlights main legal basis of the activity of the Department of labour conditions inspection and international obligations of Georgia. The third chapters deals with practical analysis of goals, scope of work and main obligations of the inspection Department and reviews international legal standards and experience of different countries in this regard. The fourth chapter emphasizes institutional basis of the Department of labour conditions inspection activity, international legal standards and institutional models in this respect in the countries being researched. The final part summarizes the relevance of mandate and activity of the Department of labour conditions inspection towards international legal standards and the practice of different countries.

Both parts of the research are followed by the recommendations for the state based on the results of legal and qualitative research and aim at transforming and strengthening of the labour conditions inspection mechanism from the perspective of adequate protection of labour rights.

Chapter II.

The main legal basis of the labour inspection mechanism (review of national and international legal framework)

Given chapter describes international legal framework which obliges Georgia to establish efficient labour inspection mechanism and sets adequate legal standard on the one hand and examine the legal regulations set by the national legislation which defines the operation of the Department of labour condition inspection, on the other.

1. Review of international obligations of Georgia concerning the labour inspection mechanism

The importance of labour inspection system as one of the mechanisms of protection labour rights is recognized and reinforced by a number of international acts and Georgia recognizes the majority of them as binding. Accordingly, in terms of formation of labour inspection mechanism, Georgia has undertaken a number of international obligations based on all signed acts and agreements.

Out of international legal acts in labour-legal sphere, ILO conventions ratified by Georgia are particularly important, as well as International Covenant on Economic, Social and Cultural Rights, and the European Social Charter. Besides, Georgia has undertaken numerous contractual obligations among which the Association Agreement between European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, is particularly important⁴.

⁴ Visa liberalization Action Plan for Georgia and General System of Preferences (GSP+) envisage considerable obligations.

Obligations of Georgia under ILO conventions. Georgia has ratified fundamental conventions of ILO regulating the issues related to holidays with pay, social policy, forced labour and its abolition, equal remuneration, minimum age and child labour.⁵ However, among the conventions of ILO ratified by Georgia there are no basic conventions related to labour inspection defining the mandate and standards of the inspection⁶.

ILO assessed labour inspection system of Georgia in 2016.⁷ According to the assessment, despite the fact that Georgia has not ratified ILO Conventions related to labour inspection, the proper execution of obligations of already ratified conventions requires the existence of adequate and effective execution mechanisms which at the same time envisages the formation of efficient model of labour inspection.⁸

Georgia has also ratified the International Covenant on Economic, Social and Cultural Rights⁹, which first of all sets rights of labour and free choice of employment, and imposes obligations to take relevant measures to protect these rights.¹⁰ Therefore, fair wages and equal remuneration for work, Safe and healthy working conditions, equal opportunity for everyone to be promoted, rest, leisure and reasonable limitation of working hours and periodic holidays with pay are guaranteed by the Covenant.¹¹ When defining the Covenant, the Committee of Economic, Social and Cultural Rights states that member states shall establish functional labour inspection for the purpose of fair protection of all aspects of labour conditions by participation and engagement of social partners.¹²

5 Conventions ratified by Georgia: C29 - Forced Labour Convention, 1930 (No. 29); C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98); C100 - Equal Remuneration Convention, 1951 (No. 100); C105 - Abolition of Forced Labour Convention, 1957 (No. 105); C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111); C138 - Minimum Age Convention, 1973 (No. 138); C182 - Worst Forms of Child Labour Convention, 1999 (No. 182); Employment Policy Convention, 1964 (No. 122); C052 - Holidays with Pay Convention, 1936 (No. 52); C088 - Employment Service Convention, 1948 (No. 88); C117 - Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117); C142 - Human Resources Development Convention, 1975 (No. 142); C151 - Labour Relations (Public Service) Convention, 1978 (No. 151); C163 - Seafarers' Welfare Convention, 1987 (No. 163); C181 - Private Employment Agencies Convention, 1997 (No. 181); C185 - Seafarers' Identity Documents Convention (Revised), 2003 (No. 185) - 03 Feb 2015.

6 Labour Inspection Convention, 1947 (No. 81), Labour Inspection (Agriculture) Convention, 1969 (No. 129) and Labour Administration Convention, 1978 (No. 150).

7 PROGRESS ASSESSMENT OF THE LABOUR INSPECTION SYSTEM IN THE REPUBLIC OF GEORGIA (2016).

8 PROGRESS ASSESSMENT OF THE LABOUR INSPECTION SYSTEM IN THE REPUBLIC OF GEORGIA (2016); Chapter II. International Labour Standards; pg.3.

9 International Covenant on Economic, Social and Cultural Rights; <https://matsne.gov.ge/ka/document/view/1483577>. Last seen: 09.12.2016.

10 International Covenant on Economic, Social and Cultural Rights; Article 6.1.

11 International Covenant on Economic, Social and Cultural Rights; Article 7.

12 General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights); Para. 54.

The European Social Charter is an important document among the international acts ratified and recognized as obligatory by Georgia and labour rights within its frames.¹³ Unfortunately, Georgia has not ratified any of the Articles of the Charter, including Article 3 which sets the rights to safe and healthy working conditions. However, the recognized norms ratified by Georgia are as follows: the rights to a fair remuneration, the right to organize, the right of children and young persons to protection, the right of employed women to protection of maternity and other employment guarantees.¹⁴ It is important that the Charter directly indicates the obligations of member states to “maintain a system of labour inspection appropriate to national conditions.”¹⁵

Besides above mentioned binding international legal acts, which form the international legal system of protection and guarantee of labour rights, Georgia undertakes obligations of formation labour policy relevant to international standards including efficient labour inspection in the frames of numerous international agreements. In this regard, the Association Agreement¹⁶ is an important framework document which together with other important components defines cooperation format for Georgia regarding decent work, and ensuring health and safety in the workplaces¹⁷. EU-Georgia Association Agreement and the Association Agenda¹⁸ 2014-2016 sets the obligations for Georgia to create a mechanism with adequate capacities for the inspections of working conditions in line with International Labour Organization (ILO) standards.¹⁹

According to the Association Agenda, agreed by the European Union and Georgia, Georgia has obligation to prepare for the implementation of the EU *acquis* in the area of labour as mentioned in relevant annexes of the envisaged Association Agreement²⁰. The annexes list up to 40 EU Directives in the area of health and safety at work, labour law and working conditions, and gender equality and antidiscrimination gradual mandatory reflection of which in the Georgian legislation shall be implemented in the period of 4 to 9 years.²¹

13 The European Social Charter paragraphs ratified by Georgia: Paragraphs 1, 2, 3, 4 of Article 1; Paragraphs 1, 2, 5, 7 of Article 2; Paragraphs 2, 3, 4 of Article 4; Paragraph 1 of Article 5; Paragraphs 1, 2, 3, 4 of Article 6; Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 of Article 7; Paragraphs 3, 4, 5 of Article 8; Paragraphs 2, 4 of Article 10; Paragraphs 1, 2, 3 of Article 11; Paragraphs 1, 3 of Article 12; Paragraphs 1, 2 of Article 14; Paragraph 3 of Article 15; Paragraph 1 of Article 17; Paragraphs 1, 2, 3, 4 of Article 18; Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 of Article 19; Paragraph 1 of Article 20; Paragraphs 1, 2 of Article 26; Paragraphs 1, 2, 3 of Article 27; Paragraph 1 of Article 29.

14 The European Social Charter; <https://matsne.gov.ge/ka/document/view/1392164>. Last seen: 09.12.2016.

15 The European Social Charter, Paragraph 4, Article A, Part iii.

16 The Association Agreement was signed on 27 June, 2014. The Parliament of Georgia ratified it on 17 July, 2014. The document entered into force on 1 July, 2016.

17 Title VI of the Association Agreement - OTHER COOPERATION POLICIES; Chapter – 14, Employment, social policy and equal opportunities, Articles 348-354.

18 2016 National Action Plan for the Implementation of the Association Agreement between Georgia and the EU was approved by the Decree №382 of the Government of Georgia 7 March 2016: <https://matsne.gov.ge/ka/document/view/3222307> (Annex 1), Last seen: 09.12.2016.

19 Association Agenda between the European Union and Georgia, Paragraph 176.1.

20 Ibid.

21 Annex XXX of The Association Agreement.

The reviewed international legal framework indicates the real obligation of Georgia to ensure strengthening of labour material standards at the national level of the one part and carry out supervision on their implementation and protection in line with ILO standards through relevant, adequate and effective labour administration system, of the other part, the essential part of which is labour inspection mechanism.

2. The Main Legal Framework of Functioning of the Department of Inspection Labour Conditions (Analysis of Georgian Legislation)

In 2006 after abolition of labour inspection, none of the governmental bodies performed the authority of labour condition inspection apart from specific institutions which had limited competencies concerning labour security and health control²². In 2015 the Department of Inspection of Labour Conditions was formed in the Ministry of Labour, Health and Social Affairs of Georgia, which was preceded by the approval of state program of labour condition monitoring²³ preceding the approval of state program of labour condition monitoring.

The main function of the Department of Inspection of Labour Conditions is state supervision of labour conditions which envisages the authority to supervise the inspection of labour security and labour conditions.²⁴ The statute defines the mandate of the Department to carry out inspection without giving prior notice in the workplace and use sanction mechanism if necessary.²⁵ However, the norms were immediately suspended and the Department cannot exercise this authority yet.²⁶

Consequently, the Department of Inspection of Labour Conditions does not act in the frames of the statute.²⁷ The prevention of forced labour and labour exploitation and the Department's authority to respond to such cases is an exception when the Department has to inspect specific person in case of forced labour or labour exploitation risks which became the part of the current mandate of the Department later.²⁸ As a result, the Department acts in line with the statute in terms of preventing and re-

22 See Chapter IV. The review of institutional framework of labour inspection in the light of international standards and national legislation.

23 Order N01-10/m on Approving the Statute of the structural subdivisions of the Ministry of Labour, Health and Social Affairs of Georgia, April 21, 2015 <https://matsne.gov.ge/ka/document/view/2817403> ; Last Seen: 24.10.2016. Resolution #38 on Approving the state program of labour condition monitoring, February 5, 2015, <https://matsne.gov.ge/ka/document/view/2719707> , Last seen: 24.10.2016.

24 Order N01-10/m on Approving the Statute of the structural subdivisions of the Ministry of Labour, Health and Social Affairs of Georgia, April 21, 2015 <https://matsne.gov.ge/ka/document/view/2817403> ; Last Seen: 24.10.2016.

25 Ibid.

26 Ibid. Article.

27 Ibid.

28 Resolution # 112 of the Government of Georgia on State Rules of Supervision for preventing and reacting to the forced labour and labour exploitation cases, March 7, 2016. <https://matsne.gov.ge/ka/document/view/3215791>; Last seen: 24.10.2016. Law of Georgia on Control of Entrepreneurial Activity, Article 2.1, b, <https://matsne.gov.ge/ka/document/view/15364>, last seen: 24.10.2016.

acting to the forced labour and labour exploitation cases. As for exercising other authorities envisaged by the statute with legal basis, the Department does not carry out in practice.²⁹

Accordingly, at present, the main activity of the Department of Inspection of Labour Conditions is not connected to the state supervision function set by the Statute but performing the state program of labour condition inspection which covers voluntary monitoring on labour security issues for the purpose of raising employees' awareness.³⁰

The goal of the state program is narrow taking into account the improvement component of forming safe and healthy working environment by the employer³¹. The program considers the preventive measures by raising awareness, informing and consulting of the employers. The state program of labour condition monitoring mandatorily envisages the prior consent form the employer in order to carry our monitoring and the competence only applies to inspection of safe working environment and does not concern the field of labour rights.³² The Department of the labour condition inspection confirms in correspondence that in fact it implements the state program and its competence is limited to the program implementation.³³

Therefore, current Department of Inspection of Labour Conditions inspection cannot be considered as the mechanism of state supervision of labour conditions. Despite the fact that the Department is established as a supervisory body of labour conditions, its activity is voluntary monitoring in the frames of the state program and does not have legal tools of relevant state supervision.

2.1. Actual work of the Department of Inspection of Labour Conditions

From July of 2015 to October of 2016 the Department of Inspection of Labour Conditions with the preliminary consent obtained from the companies has conducted inspection of 161 companies (215 units), among which 148 private companies, 4 - were legal entities of public law, and 9 state owned companies.³⁴ In the assessment report provided by ILO about the number of inspected companies in 2015(78 companies were inspected, 58 were repeatedly monitored), it is highlighted that considering the total number of operating companies which amounts 161 409, the inspection in 2015 covered only 0.07% of total number of companies.³⁵

29 See Chapter III. The goals of labour inspection mechanism, scope of work and authorities.

30 Correspondence N01/30973, April 18, 2016. the Ministry of Labour, Health and Social Affairs of Georgia,

31 Resolution #19 of the Government of Georgia on Approving the state program for the year of 2016 of labour condition inspection, Article 1.1 <https://matsne.gov.ge/ka/document/view/3165494> ; Last seen 24.10.2016.

32 Ibid.

33 Correspondence N01/30973, April 18, 2016. The Ministry of Labour, Health and Social Affairs of Georgia.

34 Correspondence N01/81841, November 3, 2016. The Ministry of Labour, Health and Social Affairs of Georgia.

35 Progress Assessment of the Labour Inspection System in the Republic of Georgia (2016), pg.15.

70 companies were inspected upon initiative of the Department of Inspection of Labour Conditions, 37 were inspected upon the employer's initiative and 54 companies were inspected on the basis of the motion of employers' association.³⁶

In 2016 the most frequent violations detected in the inspected companies were as follows: nonexistence of firefighting system, failure to comply with electrical safety, nonexistence of individual protection means, malfunction of collective security system, failure to comply with microclimate and the lack of the person responsible for labour security.³⁷

From April to September 2016, the Department prepared 816 recommendations.³⁸ Based on the results obtained through repeated inspection by the Department of labour condition inspection after some time, from July 2015 to July 2016, out of 542 violation cases 150 were eliminated.³⁹

In the process of implementing the mandate on preventing and reacting to the forced labour and labour exploitation cases, target groups mainly were private companies. According to the information provided by the Department, 94 companies were inspected in total for the purpose of preventing and reacting to the forced labour and labour exploitation cases. The Department used unplanned reacting mechanism in 7 cases only (based on the notification from hotline service), and in the rest of the cases, the process was conducted within the scheduled inspection.⁴⁰

According to the information of the Department for the purpose of preventing and reacting to the forced labour and labour exploitation cases where state supervision was carried out, due to the possible signs of forced labour and labour exploitation, only one case was submitted to investigative agencies for adequate response.⁴¹

36 Correspondence N01/81841, November 3, 2016. The Ministry of Labour, Health and Social Affairs of Georgia.

37 Correspondence N01/81842, November 3, 2016. The Ministry of Labour, Health and Social Affairs of Georgia.

38 Ibid.

39 Ibid. Annex #4.

40 Correspondence N01/81843, November 3, 2016. The Ministry of Labour, Health and Social Affairs of Georgia.

41 Ibid.

Chapter III.

The aims of the labour inspection mechanisms, sphere of action and authority

The objective of this chapter is to highlight the major international legal standards defining the aims of the labour inspection mechanisms, sphere of action and authority. Therefore, in this chapter is reviewed the scope of the activity of the labour inspectorate, goals and forms, based on ILO Convention⁴² or authorise interpretations, International Covenant on Economic, Social and Cultural Rights and established standards by the respective provisions of the European Social Charter that jointly create internationally accepted labour inspectorate system features. Correspondingly, the comparative analysis of each studied issue is presented through cases in the legislation and experience of the studied countries.

This chapter will research the Labour Conditions Inspection Department functioning in Georgia as a major state supervision agency goals and scope of activities in the labour conditions. It will also review and analyse Labour Conditions Inspection Department' scope of activities, major forms and tools for implementation of authority.

1. The aims of the labour inspection mechanisms, sphere of action and authority implementation forms in the light of the international standards

1.1. Sections and areas to investigate labour inspection mechanisms

The standards established in regards to labour inspection by the ILO clearly define the aims of the inspection mechanisms and the major directions, enforcement of which is the priority of the mechanism. More importantly, the role and functions defined for the inspection mechanisms by ILO Convention are not exhaustive and permit the expansion of the basic mandate with condition, that such growth of the scope would not cause failure or improper performance of the inspection activities and its primary functions.⁴³

42 C081 - Labour Inspection Convention, 1947; C129 – Labour Inspection (Agriculture) Convention, 1969; C150 – Labour Administration Convention, 1978.

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

Therefore, in accordance with the accepted international standards, the inspection mechanism mandate in the national context has to comply with the major scopes defined by the ILO, which does not exclude the mobility during the development process. For the purpose of adequate reaction on the existing new risk-factors and challenges, based on above-mentioned there may be necessity for the modification of the labour inspection mechanism functions.⁴⁴ In this type of scopes, the ILO particularly highlights and gives a special attention to the child labour⁴⁵, labour migration⁴⁶, forced labour⁴⁷ and discrimination prohibition issues⁴⁸, and the AIDS spread prevention in the workplace policy⁴⁹. In parallel with multiple experience of labour inspection mandate expansion in diverse scopes there are areas, which are unconditionally defined by the respective ILO Conventions as the labour inspection major and priority investigation areas.

1.1.1. Labour conditions, including occupational health and safety protection supervision

The major mandate of the labour inspection is the supervision of the labour conditions and implementation of the occupational safety regulatory norms⁵⁰. Term “labour conditions” under the ILO definition means work hours, salary, safety, health, social welfare, child/youth labour and other issues related to the labour right realisation⁵¹. Internationally accepted standards in the labour inspection area clearly state that certain labour conditions and protection of the workers’ safety and health are inseparable components, where the supervision of the full range must be the authority of the labour inspection.

In the corresponding Convention, the labour inspection respective mandate by ILO foresees investigation of the workers’ health and safety on the workplace and other such issues, as: health and safety management on the workplace, risk analysis, industrial accidents and occupational diseases, the threat posed by the chemical substances, equipment safety, dangerous works, radiation protection, environment protection, “new threats” – stress, violence, sexual harassment as well as safe products and other.⁵²

44 International Labour Conference, 100th Session, 2011; Labour Administration and labour inspection; fifth item on the agenda; para.276-277.

45 Committee on Employment and Social Policy, Third item on the agenda; Strategies and Practice For Labour Inspection; para. 31-32.

46 Ibid.para. 25.

47 Ibid.para. 30.

48 International Labour Conference, 100th Session, 2011; Labour Administration and labour inspection; fifth item on the agenda; para. 255.

49 Ibid. 273.

50 Labour Inspection Convention No.81; Art. 3.1

51 Labour Inspection (Agriculture) Convention No.129; Art. 6.1.

52 Committee on Employment and Social Policy, Third item on the agenda; Strategies and Practice For Labour Inspection; para. 19, 23-24.

The major function of the labour inspection - the labour condition, workers' fundamental right or major right protection control⁵³ also includes such issues related to the major rights, as: freedom of association, work contract termination grounds and social security of the workers.⁵⁴ The promotion of the workers' freedom of association in some countries includes the professional union registration, which means confirmation of the foundation documentation legality and other.⁵⁵ Aside from professional unions, in some countries the above-mentioned also may foresee authority implementation control by the employers association in accordance with the law.⁵⁶

1.1.2. Labour inspection mandate on public and private employment sectors

The international standards set out by ILO do not directly point out the criteria for the employment sector identification, which must be under the authority of the labour inspection, but at same time the existing standards imply distribution of the inspection mandate on any labour relations, where protection of the workers' labour conditions and workers' safety on workplace can be examined by the inspection.⁵⁷ Also, the legislation on labour law and enforcement mechanisms must be equally applicable on all workers and workplaces. It has to equally imply on workers from industry, commercial and public employment sectors.⁵⁸

1.1.3 Distribution of the labour inspection mandate on the workers of informal economy and self-employed

Conventions in the labour inspection field, which establish major standards in it, do not exclude any workers from the scope of activity and among recipients of the labour inspection. Consequently, the scope of activity applies to all type of workers, including irregular.⁵⁹

It has to be highlighted that the agricultural sector is distinguished due to the existing informal labour relations, but the international standards effective in the labour inspection field equally imply to all category of workers, despite the labour contract type, form and duration.⁶⁰

53 International Labour Conference, 100th Session, 2011; Labour Administration and labour inspection; fifth item on the agenda; para.250.

54 Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference 95th Session, 2006; Para. 46.

55 Ibid. Para. 79.

56 Ibid. Para. 80.

57 Ibid. Para.21.

58 International Labour Standards and Guiding Principles on Labour Administration and Labour Inspection; ILO, Geneva 2012; para.17; pg. 175.

59 Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference 95th Session, 2006, para. 77.

60 Labour Inspection (Agriculture) Convention No.129; Art. 4.

In its resolution, for determination of the informal economy context, ILO marks out two fields/sectors⁶¹: fields, which are fully unregulated by legislation and fields, where the general legislation applies, but it is not implemented and has only formal side. In case of the first type employees, the inspectors might not have even a formal mandate to conduct investigation, where as in the second case there is formal authority, which is limited and cannot be implemented fully. Therefore, the challenges arise in the labour inspection field in terms of relationships' identification, which falls under control area of the labour inspector. In this regard, the ILO recommendations⁶² are important, which define standard for application of the labour-legal regulations on informal sector and it implies to all cases, where the labour-legal relations exist.⁶³ According to ILO, it is also important to imply the labour inspection mandate distribution in the sectors, where the workers are not "hired personnel".⁶⁴

Correspondingly, in accordance with the standards established by the ILO, the labour inspection mandate and its authority implies on workers employed in not only formal, but also informal economic sectors.

Among the challenges in the labour inspection, the application of its functions to the sectors has an important role, where the unpaid labour activity is observed.⁶⁵ In accordance with the standard, the labour inspection mechanism mandate has to be implied to the self-employed type workers.⁶⁶

1.1.4. Experience of the studied countries

In the studied countries, protection of the workers' health and safety is unconditional mandate of the labour inspection agencies, but at the same time the mandate is not limited to this issues and implies to a wider range of labour rights. For example, in Greece the existing labour inspection model aims to protect workers' labour rights, health and safety.⁶⁷ Apart from it, the labour inspection is in charge of workers social security, employment law and labour law enforcement

61 "Resolution concerning decent work and the informal economy", adopted at the General Conference of the ILO,90th Session, 2002.

62 Employment Relationship Recommendation, 2006 (N198).

63 Committee on Employment and Social Policy, Third item on the agenda; Strategies and Practice For Labour Inspection; para. 19, 23-24.

64 Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference 95th Session, 2006,para. 373.

65 International Labour Conference, 100th Session, 2011; Labour Administration and labour inspection; fifth item on the agenda; para.259.

66 Labour Inspection: What it is and what it does; A guide for workers; What is the purpose of labour inspection service?!.pg. 14.

67 Scope of Labour Inspection; available: http://www.ilo.org/labadmin/info/WCMS_115425/lang--en/index.htm. last access: 14.12.2016.

control.⁶⁸ In Kazakhstan, according to the law, the function of the labour inspection is to control performance of any provision in the labour-legal relations⁶⁹. In case of Poland, the functions of the labour inspection supervision are all issues under the existing regulations and labour relations on safety and health of the employees on the workplace, working hours, vacations, working conditions for parents, also, issues on employment of the persons with disabilities and youth.⁷⁰ In the UK, the labour inspection system is a unity of the different entities, where the health and safety implementing body⁷¹ directly focuses on the workers' health and safety protection. Despite that, there are many governmental entities with scope of activity to audit the performance of the employment centres and thus subordinate activities of the agencies and employers in the industrial sector in accordance with the labour rights. Also, exploitation, working hour's regulation and control on protecting the minimum wage determined by the law.⁷²

In regards to the workers categories and sectors with labour inspection authority applied, in UK the inspection imply to the workers employed in the private sector.⁷³ Opposite to that, in Greece⁷⁴ and Kazakhstan⁷⁵ the scope of activity of the labour inspectorate is both public and private sectors, as for the model existing in Poland, the labour inspectorate addresses any type of employee and employer, enterprise, including self-employed and foreign workers.⁷⁶ For the purpose of exposing "undeclared" labour it is planned to increase the authority of the labour inspectorate of the Kazakhstan.⁷⁷

1.2. The aims, authority and functions of the labour inspection mechanisms

The standards established by the ILO on the major functions of the labour inspectorate include protection of the labour-legal relations regulatory legislation, its supervision and monitoring for elimination of violation, avoidance of future accidents and prevention of the risk for the workers' life and health. Therefore, the inspectorate must have both preventive and reactive (existing violation elimination) goals, which it performance through diverse mechanisms.

68 A mapping report on Labour Inspection Services in 15 European countries; 2012.Main tasks and issues; Pg. 47.

69 Scope of labour inspection. available: http://www.ilo.org/labadmin/info/WCMS_156049/lang--en/index.htm. last access: 14.12.2016.

70 A mapping report on Labour Inspection Services in 15 European countries; 2012.Pg.61.

71 Health and Safety Executive (HSE).

72 A mapping report on Labour Inspection Services in 15 European countries; 2012. Pg. 82

73 Same. An overview of the Labour Inspectorate in the United Kingdom; 14.1. Legal framework. Pg.82.

74 A mapping report on Labour Inspection Services in 15 European countries; 2012.Main tasks and issues; Pg. 47.

75 Scope of labour inspection. available: http://www.ilo.org/labadmin/info/WCMS_156049/lang--en/index.htm. last access:14.12.2016.

76 A mapping report on Labour Inspection Services in 15 European countries; 2012.Pg.60.

77 Department(s) responsible for Labour Inspection. available: http://www.ilo.org/labadmin/info/WCMS_156049/lang--en/index.htm. last access:14.12.2016.

The preventive labour inspection mechanisms operates based on the determined efforts consistent system, which provides prevention of the industrial accidents, occupational diseases development, labour disputes, workers' unfair treatment and other violations. In practise, the preventive aim of the labour inspectorate is a unity of proactive and reactive actions.⁷⁸ As for the reactive aims, the latter includes for elimination of the identified inconsistency unity of the results of the already happened accidents and reciprocal actions of the labour inspectorate.

1.2.1 Supervisory authority

The principal function of the labour inspectorate is control and monitoring of the working conditions,⁷⁹ which is designated to achieve decent implementation of the labour rights and adequate protection of the working conditions.⁸⁰ Primary function of any labour inspectorate model is assumed to be the supervision of the labour-legal norms implementation⁸¹ and safeguard of the workers' health and security.⁸²

Preventive and reactive mechanisms of the inspectorate

Types of sanctions

For the purpose of subordination of the labour conditions and labour relations regulation with the legal requirements by the labour inspectorate, it is essential that inspectorate together with issuing consultations and recommendations to the respective parties (which encourages obedience to the legal system), has strong and effective sanction authority on violators of the legislation requirements that it uses primarily for the preventive reasons.⁸³ The importance of mentioned authority is recognized by the respective Convention of ILO, which envisions adequate sanctions that can be effectively implemented on the violators of the legislative requirements and also on the individuals, who resist the inspectors.⁸⁴ There are various sanctions and sanction forms models in the national legislative systems. The present chapter studies major forms of sanctioning, existing selection and calculation models, and their effect.

78 Labour Inspection: What it is and what it does; A guide for workers; pg. 14.

79 International Labour Conference, 100th Session, 2011; Labour Administration and labour inspection; fifth item on the agenda; para.250.

80 Labour Inspection: What it is and what it does; A guide for workers; pg. 14.

81 Ibid. pg. 14.

82 Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference 95th Session, 2006.Para.105.

83 Ibid. Para. 279.

84 ILO Convention No. 81; Labour Inspection Convention, 1947. Art.18.

Considering the international standards and experience, the use of the labour inspection supervision authority and sanction system has primary preventive aim. The labour inspection activity is not meant for punishing approaches. Therefore, prevention of the labour rights violation and respective methods of accomplishment present inspectorate's major forms of activity that must be achieved by enforceable sanction systems.

Based on the study of existing labour inspectorate models in the world's different countries, ILO distinguishes several type of sanctions, which are classically recognized sanctioning forms and serve both preventive and reactive goals. Among them is meant: warning, note on elimination of the different violations, monetary penalty, enterprise activity suspension, license cancellation, enterprise activity termination, civil and criminal sanctions. It is important, that ILO describes sanctioning forms in this exact sequence.⁸⁵

Towards the violators of the legislation, ILO considers important to implement and pays particular attention to realisation of such measures, as warning or issuing notice on elimination of the detected violation. The major conventions in the labour inspectorate field unambiguously mark out them as an important form of the further responsive reaction during enterprise investigation. The warning is a form of sanction, which must be applied for the minor violations.⁸⁶ Exactly due to this, the requirement of the convention does not strictly and thoroughly consider violations on which warning as a sanctioning form must applicable, but gives the labour inspectorate a chance to make a respective decision, evaluate the nature of the violation and its significance, which means that decision-making on warning and other cooperatively significant sanctions is assumed to be their discretional authority.⁸⁷

In the majority of the countries, for the labour inspectors the monetary penalty is a one of the tools for ensuring obedience to the labour legislation and rectification of the existing violation. Most countries' legislation specifies the violations, in case of which the monetary penalties or other type of sanctions are provided.⁸⁸

In the event of the significant violations concerning workers' safety and health issues, usually are used two forms of sanctions, such as working process/enterprise suspension and also, note

85 ILO, Labour Inspection Sanctions: Law and practice of national labour inspection systems; The nature and scope of labour inspection sanctions; Pg. 6. Available: http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication/wcms_213143.pdf. last access: 09.12.2016.

86 Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference 95th Session, 2006, Para. 282.

87 ILO; Labour Inspection Convention N81; Art.17(2).

88 ILO, Labour Inspection Sanctions: Law and practice of national labour inspection systems; Main categories of sanctions: Monetary sanctions (fines). Pg. 14. available: http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication/wcms_213143.pdf. last access: 09.12.2016.

on elimination and rectification of the concrete violation.⁸⁹ ILO's both main conventions on the labour inspectorate field highlight the authority of the inspector to take instant actions when in the result of the investigation are detected defects and malfunction/disparity from the plan, used materials or working process causes risk to the life and health of the workers.⁹⁰ According to ILO, for disobedience towards the requirements of regulatory legislation on the safety and health at the workplace in the majority of the countries the main form of sanctioning is working process suspension, termination of the enterprise activity or cancellation/ revoke of the employer's activity license.⁹¹

The risk of harm infliction to the safety and health of the workers can be a result of employer's violation of the requirements prescribed in the law, but it is possible that the risk of harm infliction may be caused not by the violation of the certain obligations by the employer. In this case the priority is health and safety of the workers and therefore, for this event ILO considers a mechanism, which can include suspension of activity as well as shutdown of the enterprise based on seriousness of the danger and not the faultiness of the employer.⁹²

It is important to consider that according to ILO, together with the classic sanction forms, the non-classic, alternative, sanctions are tools and means of not less power for the labour inspectors. In the legislation of the various countries, this type of sanctions are novelty. Among this type of sanctions, for example, ILO names online (electronic) publication of employer's identity, who violated obligations imposed by the law.⁹³ Also, the administrative payment, which may affect concrete employers/enterprise's interests or possibilities, can be considered as such type of sanction. This type of sanction may include: termination of benefits from the Government, restriction on participation in the State auction or tender to the enterprise and other.⁹⁴

Each State individually defines the scheme, which shape the sanctioning model in the labour inspectorate field, nevertheless ILO indicates the necessity of the sanctioning system, which is vitally important for existence of the rectified and effective labour inspectorate.

89 Ibid. Pg. 5.

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

91 ILO, Labour Inspection Sanctions: Law and practice of national labour inspection systems; Main categories of sanctions: Work stoppages. Pg. 25. available: http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication/wcms_213143.pdf. last access: 09.12.2016.

92 Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference 95th Session, 2006. Para. 107.

93 ILO, Labour Inspection Sanctions: Law and practice of national labour inspection systems; Proactive and innovative approaches to sanctions. Pg. 36. available: http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication/wcms_213143.pdf. last access: 09.12.2016.

94 Ibid. Pg. 37.

Criteria for sanctioning form selection

Referring to the respective articles of the major conventions effective in the labour inspectorate filed, ILO considers provision of some kind of discretion to the labour inspectors during selection of the sanctioning form for the violation. However, this kind of discretion implies on the ability of the labour inspector to evaluate and differentiate serious and repeated intentional disobedience, harsh negligence or obvious malicious intent from less serious or unintentional actions. This kind of unintentional events may be a result of incorrect interpretation of the respective legal regulation by the employer.⁹⁵ Therefore, the labour inspector must have a certain discretion to implement respective sanctioning form on concrete employer for the existing violation.

For the effectiveness of the system it is essential that sanctions, provided by the inspectors, for the identified violations are convincing, so that the employer can understand what will be the possible outcomes for the legislation violation. In addition, it is important that the provided sanctions are determined proportionally, in accordance with the quality and nature of the violation.⁹⁶ In regards to the fine application, ILO outlines, that the primary aim is protection of the superiority of the law and provision of obedience of the obligations prescribed by the law and it must not be used as a tool for labour inspectorate's subsidisation/financial assurance.⁹⁷

Often, the issue of the sanction selection differs according to the legislation of respective countries. In some countries, the labour inspectors have authority to select from different types of sanctions, whereas in other countries the inspectors do not have such discretion.⁹⁸

ILO states that, usually, repeat of the concrete violation by the employer is considered as an aggravating circumstance, which in accordance with many countries' legislation constitutes the basis to double or triple the fine or even to impose criminal liability to the violator.⁹⁹

Generally, more severe sanction are imposed on the category of employers, who resist and hinder the labour inspectors in performance of their functions.¹⁰⁰ ILO indicates that sanction application is not determined by the sequence or gradation from mild to moderate severity, but by the nature of violation. In particular, when there is serious violation or immediate threat to the health of the workers, the

95 Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference 95th Session, 2006, para. 282

96 Ibid.

97 ILO, Labour Inspection Sanctions: Law and practice of national labour inspection systems; Main categories of sanctions: Monetary sanctions (fines). Pg.17. available: http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication/wcms_213143.pdf. last access: 09.12.2016

98 Ibid. Pg. 19.

99 Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference 95th Session, 2006, para. 302.

100 Ibid. Para. 294.

inspector must have authority to use respective severe sanctions. At the same time, it is not necessary to impose only on type of sanction for the violation, but the sanction can be supplemental.¹⁰¹

Admission on the workplace without permission

The proper implementation and effectiveness of the supervisory function by the labour inspectorate depends on the inspection process and its flow. Therefore, the existence of rectified inspection requires provision of the standards, established by the international legal acts, and maintenance of the full inspection process flow.

The major ILO conventions on the labour inspectorate envision the authority of the labour inspectors without any prior notification and approval from the employer to conduct investigation on the workplace at any time of the day with freedom of actions at condition that the interference into the work process will not be exceed than necessary for the effective inspection.¹⁰²

The international standards provide special exception on the labour inspection in the agricultural sector that gives the inspectors authority without any obstacles to enter the area under the management of a certain employer, nevertheless it does not apply to the private houses, where resident the individuals employed in the agricultural sector with their families. The only exception is the written permission of the individual or power granted by the relevant authority.¹⁰³

The unpermitted visit is highly important in cases, when there is a threat of violation concealment by the employer – temporary change of the regular working conditions, avoidance of the witness presence on the place or by any action, which can make inspection impossible.¹⁰⁴

Planned and unplanned inspections

One way of implementing the labour inspection supervisory function is planned/periodical inspections. This kind of inspection, apart from for the exemptions provisioned by the country law, must be conducted unexpectedly, without any prior notification of the employer. The aim of planned inspection is full examination of the enterprise or any other workplace, observation and

101 ILO, Labour Inspection Sanctions: Law and practice of national labour inspection systems; The nature and scope of labour inspection sanctions. Pg. 6. available: http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication/wcms_213143.pdf. last access: 09.12.2016.

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

103 Ibid.

104 Ibid.para. 263.

investigation of the workplace for the legal requirement compliance. Therefore, this type of the inspection must be comprehensive.¹⁰⁵

ILO conventions¹⁰⁶ declare, that inspections on the workplace must be conducted with the frequency, which ensures effective implementation of the legal regulations. In the agricultural sector, the inspectorate is one of the tools to examine the compliance of the living conditions for the employers and their families with the established standards.¹⁰⁷

Usually, the planned inspection of the workplace is conducted annually by the inspection with respective administrative resources in accordance with selected criteria, which are not conditioned by any requirements or complains. Apart from planned/periodic inspections, the inspectorate can be caused by various problems identified in the different sectors that are related to labour issues.¹⁰⁸

In some cases, the inspection is conducted based on respected requirements and the labour inspectors have to survey issues regarding implementation of the legal norms, dangerous environment and labour union rights. Anyway, this type of inspection has to be conducted in the same way as planned inspection. Also, the obligation of the source confidentiality and protection must be secured.¹⁰⁹

Another form of inspection is emergency inspection. This type of inspection is caused by the events, which require the labour inspector to be present at the workplace without any delay and lateness (example: accident on the workplace). The above-mentioned requires the immediate investigation of the factual and legal situation. In such events, the inspectorate is authorized to: identify the cause of the accident; evaluate the issue of responsibility and provide recommendation on respective measures to be conducted in order to eliminate the possibility of repetitive accident.¹¹⁰

1.2.2. Consulting Authority

One of the authorities of the labour inspectorate is to provide information and recommendations to the employers and workers on issues, which are essential for compliance with the requirements of the legal norms.¹¹¹ The ILO recommends foundation of the negotiations, consultation

105 Labour Inspection: What it is and what it does; A guide for workers; pg. 26.

106 ILO Convention No. 81.Art. 16.ILO Convention No. 129; Art. 21.

107 Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference 95th Session, 2006, Para. 258.

108 Ibid,para. 259.

109 Labour Inspection: What it is and what it does; A guide for workers; pg. 26.

110 Ibid.pg. 26.

111 ILO Convention No. 81; Labour Inspection Convention, 1947. Art. 14(1(b)).

or collaboration work idea and their practical enforcement.¹¹² The requirement of the established international standards in the labour inspectorate field is provision of the information on the important issues to the employers and workers.¹¹³

1.2.3. Awareness raising function

In accordance with the standards and recommendations set by ILO, apart from provision of the information or advices to the employers and workers, conduction of the educational activities in respective fields is assumed as another important function of the labour inspectorate, which means informing of the different groups of the society on applicable laws and established standards that as a result has violation prevention function.¹¹⁴

1.2.4. Authority on improvement of the legal framework

Additionally, ILO acknowledges as an important function of the labour inspectorate to exchange with the relevant governmental bodies information on its activities, practical experience or problems identified through evaluation for promotion of the legislation development and permanent improvement of the legal framework, which aims to include the social, physical and psychological occupational risk-factors in the legislation.¹¹⁵

1.2.5. Experience of the studied countries

The survey of the studied countries demonstrates that despite the differences of the labour inspectorate institutional models, all of them have preventive and reactive goals. During the supervision, the legislation of each studied country grants the inspection authority to sanction for violations, which has a preventive and reactive goal. For example, in the UK the labour inspectorate is enforced to inform about violation rectification and at the same time to define a respective timeline for violation rectification, failure of which can be a cause for severe sanctioning. The inspectors are entitled to issue restricting acts to cease actions that are assumed to contain specific danger.¹¹⁶ If the violation is identified, in Greece the inspectors give 5 day term to the violator in order to submit documentation with personal statement in regards to the above-mentioned violation. If the inspectors consider the documentation

112 International Labour Standards and Guiding Principles on Labour Inspection; ILO, Geneva 2012; para.23, pg 187.

113 Labour Inspection: What it is and what it does; A guide for workers; pg. 14.

114 R133; Recommendation concerning Labour Inspection in Agriculture.Para.14(1).

115 Labour Inspection: What it is and what it does; A guide for workers; pg. 14.

116 Sanction and administrative processes.available: http://www.ilo.org/labadmin/info/WCMS_112675/lang--en/index.htm. last access: 09.12.2016.

unconvincing, they have authority to use concrete sanction on the violator, which may include fine from 500 up to 50 000 Euro based on the seriousness of the violation and the size of the enterprise. The legislation itself does not determine the exact amount of the fine and consequently the inspectors with approval of the superior make a decision on this matter. In Kazakhstan, the labour inspectorate is authorized to: impose administrative sanctions on the employer, also to suspend the labour process at the workplace, restrict unsuitable personnel safety tools, and stop the workers who do not comply with the health and safety standards and in case of disobedience address the law enforcement and judicial authorities.¹¹⁷ In Poland, the labour inspectors have authority to determine concrete deadline for elimination of the detected violation and to issue orders on suspension or termination of the work process. Furthermore, to issue suspension on the operation of the equipment, which contains danger for the health and safety of the workers. In addition, they have authority to investigate the accidents on the workplaces and to write out the penalty.¹¹⁸

As for the investigation in the enterprise, the labour inspectorates usually have free access to the enterprises.¹¹⁹ In all studied countries, the labour inspectorates have authority to perform the supervisory function both during planned and unplanned inspections. For instance, in Kazakhstan the visits of the labour inspectorates can be both planned and unplanned, which is performed based on complains from the physical persons, legal entities or governmental bodies. Despite that, the legislation of Kazakhstan does not permit the labour inspection investigation based on anonymous notice¹²⁰ and nor the labour inspection of the concrete enterprise based on personal initiative.¹²¹ The UK labour inspectorate works based on annual plan, which is elaborated as a result of the respective consultations.¹²² First of all, the labour inspectorate implements its functions through proactive inspection, together with reacting to the accidents and complains.¹²³

In the performance of the labour inspectorates of the studied countries, the important role is given to the preventive goals and awareness raising as of the society, also of the employers and workers. In Kazakhstan, the labour inspectorate implements preventive function through informing employers and workers on labour safety matters. Additionally, the inspectorate uses the media for spreading information on labour rights, including health and safety related issues.¹²⁴ The labour inspectorate of the UK assigns significant role to the provision of the respective consultations based on request from

117 available: http://www.ilo.org/labadmin/info/WCMS_156049/lang--en/index.htm (Sanction and administrative processes). Last access: 09.12.2016.

118 A mapping report on Labour Inspection Services in 15 European countries; 2012.Pg.63.

119 Types of visits. available: http://www.ilo.org/labadmin/info/WCMS_115425/lang--en/index.htm.. last access: 09.12.2016. A mapping report on Labour Inspection Services in 15 European countries; Labour Inspector's rights during inspection; 2012.Pg. 62.

120 Types of visits. Available: http://www.ilo.org/labadmin/info/WCMS_156049/lang--en/index.htm. last access: 09.12.2016.

121 Ibid. Programming.

122 Ibid. Programming and communication.

123 Ibid. Types of visits.

124 Ibid. Role of preventive measures.

the society, employer or workers. The national hotline also provides information on health and safety issues.¹²⁵ In Greece, the labour inspectors give to the society information or advice on existing problems on the workplace. It is within their competence to provide consultation to the individuals, who had a case of this problem arise on the workplace. The information is also available through electronic devices and hotlines. During the inspection, they also provide the employers and workers with guideline documentation.¹²⁶ In Poland the labour inspectorate aims to prevent the threats at the workplace and also provision of the information and advices on labour rights issues.¹²⁷

1.3. Inspection methods and procedural mechanisms

Significant part of the inspection and tool for its function's implementation is labour inspectorate visit and examination of the workplace. The inspectors visit happens in the places, where the work process and labour relations are actually performed. Specifically, in the enterprises, concrete facilities and offices.¹²⁸ In the this chapter will be reviewed important standards and material requirements set by ILO for conduction of the inspection, which ensure effective investigation and examination of the specific workplace.

Workplace entrance procedures: confirmation of the authority

During the workplace visit, the inspectors each time confirm their authority to the employer or the respective representative.¹²⁹ The issue of identity and authority confirmation is also highlighted in the ILO conventions¹³⁰, which envisions granting specific rights during the inspection process to the inspectors after presentation of the respective authorization, verification documents.¹³¹

Interviews, sample collection, access to documentation and other

ILO defines the tools for direct use during the examination.¹³² This type of mechanism is presented through observation of the workplace, examination of the documentation and records and preparation of the statement based on them, which includes the authority of the labour inspectors to check all doc-

125 Ibid. Role of preventive measures.

126 Ibid. Role of preventive measures.

127 A mapping report on Labour Inspection Services in 15 European countries; 2012. Pg.61

128 Labour Inspection: What it is and what it does; A guide for workers; pg. 26.

129 Labour Inspection: What it is and what it does; A guide for workers; pg. 26.

130 ILO Labour Inspection Convention No. 81; 1947; Art.12(1).

131 ILO convention No. 81; Labour Inspection Convention, 1947; Art.12(1).

132 Ibid. Art12, para.1(c).

umentation within the obligations implied by the law and clarify whether they are in compliance with the law requirements.¹³³ The inspectors also must have authority to examine documents where are outlined individual labour conditions, working hours, information on safety equipment condition or other matters. In case, if the workers do not speak in local language, it is necessary to ensure their communication with the inspectors in understandable language.¹³⁴ In the workplaces, where the workers' representation exists, it is preferable and recommended to have an interview with the inspectors.¹³⁵

The inspection procedure also includes sample collection of the materials, items and substances. The ILO directly indicates, that sample collection authority is one of the important methods in the labour inspectorate.¹³⁶ The committee mentions that apart from sample processing if required, it is significant to examine the condition and location of the sample extraction. The sample processing must be conducted using respective specific or special equipment and knowledge.¹³⁷

The interview is another key function. For the purpose of labour inspectorate function implementation and in case of necessity, the standards outline labour inspectors' rights to conduct interviews with individuals, worker personnel.¹³⁸ In the agricultural field, the inspector has a permission to interview not only the worker, but any other individual, whose testimony may be of importance for the inspector. The inspectors have an authority on confidential interview conduction to ensure the highest chance of spontaneous responds and reliability and therefore the decision on this type of interview must be done individually by the inspector based on the research issue.¹³⁹

Inspection volume

The visits are organized by the inspectors themselves and therefore they decide the scope and other details of the inspection. This kind of inspection includes survey of all authorized issues on the workplace and possibility of narrowly focused matters investigation. According to the general rule, for effective usage of time and financial resources, the inspectors have authority to switch to the full scale inspection at any moment of inspection, which means opportunity to expand the list of issues to be investigated. Consequently, the inspectors examine any type of equipment, sanitary conditions, social service guarantee issues and etc.¹⁴⁰

133 Ibid.Art.12, para. 1(c(ii)).

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

135 Labour Inspection: What it is and what it does; A guide for workers; pg. 26.

136 ILO Convention No.81; Labour Inspection Convention. 1947; Art.12, para. 1(c(iv)).

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

138 ILO convention No. 81; Labour Inspection Convention, 1947; Art.12(1).

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

140 Labour Inspection: What it is and what it does; A guide for workers; pg. 27.

Inspection duration

Unhindered inspection and freedom of visit to the workplace under inspection means the authority of the inspector to conduct the inspection during any time of night and day. At the same time, the major request towards the inspection is not to intervene or suspend the working process. For instance, speaking of technical equipment examination, it is permitted to do it at night, so to ensure that it is not in the non-working condition. Simultaneously, certain violation' specifics must be considered, such as illegal night work. Usually, this type of inspection is done at day time, but specifically for the purpose of revealing illegal labour the inspection can be done during non-working hours. The committee highlights, that it is up to the inspectors to define the exact time for the effective investigation conduction. It has to be mentioned, that in compliance with the ILO recommendations in the agricultural sector by the Convention N129 the investigation at night time is limited only to the issues that cannot be effectively controlled during the day time.¹⁴¹

Summoning, further evidence presentation and repetitive examination

In the end of the inspection, the inspectors are obliged to share information on the completed investigation with the employer, usually in a written form. The majority of the legislations include the obligation of keeping the register by the enterprises, where all information on the inspections must be inputted.¹⁴²

The inspectors are authorized to prepare the official report on the inspection. Usually, the inspectors conduct repetitive visit in a short period of time in order to check how did employers consider their suggestions and advices and what respective measure were implemented. The employers are also obliged, in case of request by the inspectorate, to submit evidence of their actions on the recommendation issued by the inspectors.¹⁴³

1.3.1. Experience of the studied countries

In Greece and Poland, the labour inspectorate have access to the workplace during any time of day and night, without limitation of the period.¹⁴⁴ As for the repetitive visits, in Kazakhstan the labour inspectorate repetitive visits for examination of the violation rectification by the employer

141 Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference 95th Session, 2006, para. 270.

142 Labour Inspection: What it is and what it does; A guide for workers; pg. 27.

143 Ibid.

144 Types of visits. available: http://www.ilo.org/labadmin/info/WCMS_115425/lang--en/index.htm. last access: 14.12.2016. A mapping report on Labour Inspection Services in 15 European countries; Labour Inspector's rights during inspection; 2012. Pg. 62

are very rare.¹⁴⁵ In Greece, the inspection is always conducted by two inspectors, except for the regional offices with lack of staff.

In Poland, the inspectors have authority to investigate the buildings, also separate rooms, workplace, machinery and other equipment, receive written and oral explanation from the employers and workers, documentation and reports issued by other entities. In addition, they are authorized to record the inspection process, check the private documentation of the workers and etc.¹⁴⁶

1.4. Transparency of the labour inspectorate

The international standards on the information publicity in the labour inspectorate field has certain restrictions and ensures the confidentiality for the complaint or statement source that initiates the inspection¹⁴⁷ and also, industrial and commercial secret protection by the inspectors, even after the resignation. Moreover, the inspectors are required to keep confidentiality on information about the working process obtained during performance of their authority.¹⁴⁸ None of the relevant conventions envisions additional requirements on providing confidentiality about the inspection process and outcomes.

Major findings

In the light of international standards and other countries' experience, observation on the inspection mechanism aims, main scope of activity and forms of authority implementation, the following findings were made:

- The ILO standards clearly determines that the authority of the labour inspectorate should be extended on the full range of labour rights, such as labour conditions, workers' health, safety and other issues; The experience of the studied countries indicates the diversity of the labour inspectorates activity field and it covers all aspects of the labour rights;
- The reviewed conventions or relevant ILO statements specify that the labour inspectorate authority must be extended on all workers and workplace, both in the public and private sectors, and also on informal economic sector and self-employed individuals; the practice of majority studied countries demonstrates that the labour inspectorate mandates include any type of workers, despite their employment area or sector;

145 Types of visits. Available: http://www.ilo.org/labadmin/info/WCMS_156049/lang--en/index.htm. last access: 14.12.2016.

146 A mapping report on Labour Inspection Services in 15 European countries; 2012. Pg.63

147 C081 - Labour Inspection Convention, 1947 (No. 81), art. 15(c)

148 Ibid.art. 15 (b)

- In accordance with the standards established by ILO, the labour inspectorates under the authority of supervision must have both preventive and reactive functions; the studied countries experience is similar;
- For the effective functioning of the labour inspectorate, the ILO determines obligatory sanction mechanism and ways for its implementation, however the types and forms of the sanctions are not strictly defined and regulated. Consecutively, each country can make its own decision on mentioned issue; all studied countries' existing labour inspectorate model includes sanction system;
- Throughout various countries' labour inspectorate frameworks, the most common and accepted sanctions are: warning, notice on rectification of the different types of violation; monetary penalty; suspension of the enterprise activity; cancellation of the license; termination of the enterprise activity; civil and criminal sanctions;
- The ILO conventions in the labour inspectorate field provides discretion for decision-making on the relevant form of sanctioning for specific violations; in addition, while imposing the sanction, the ILO requires consideration of the seriousness and nature of the violation and final decision-making on sanctioning based on the above-mentioned;
- In accordance with the ILO standards, the labour inspectorate must have authority to investigate the enterprise without any prior notification or approval of the employer, at any time of day, not to intervene in the working process;
- ILO considers the necessity and frequency of labour inspectorate visits, which is necessary for due fulfilment of the labour inspectorate functions based on selected criteria. The purpose for conducting inspection, according to ILO, can be request and emergency necessity for the inspection;
- The ILO recommendations specifically indicate the labour inspectorate functions of consulting the employers and works on labour legal issues, implementation of the educational events for society's awareness rising and participation in the labour law legislative activities;
- ILO determined main mechanisms for labour inspectorate visits conduction and among them mentions interview with workers, summoning, observation of the workplace, check of any type of documentation, also materials, items and substations sample collection/ extraction; Moreover, the inspectors independently make decision on volume and scope of the inspection in each case.

2. Goals, Scope of Work and Powers of the Labour Conditions Inspection Department (Analysis of Georgian Legislation and Inspection Department Practice)

2.1. Scope of Work of Labour Conditions Inspection Department and Range of Subjects

An important component for the full-fledged operation of the Labour Conditions Inspection Department is its scope of work and range of persons subject to inspection. Adequacy of the inspection, as the supervision mechanism in the hands of the State, is largely determined by the scope of its area of operation. The present chapter reviews the scope of operation of the Inspection Department and the range of subjects over which the supervision is applied.

2.1.1. Fields subject to inspection

The Inspection Department regulations define the powers of the Department to inspect the employees' working conditions, implementation and operation of labour safety mechanisms, production safety rules, as well as the level of compliance with the obligations related to labour and health safety¹⁴⁹. Inspection Department, under its regulations, is also authorized to take relevant measures in cases of detection of forced labour, labour exploitation and discrimination.¹⁵⁰

Despite more or less broad area of operation defined in the regulations, the Inspection Department does not operate within the mandate given by its regulations, since, under these regulations, those legal provisions are suspended, which give the body the State supervision authority for the part of the above spheres, which includes the inspection of safety and work conditions at the workplace, inspection of compliance with labour laws at the workplace and the authority to investigate and document accidents.¹⁵¹

The exception in the limitation of the mandate, and therefore the operational sphere of inspection, is the State supervision for the purposes of prevention and response to forced labour and labour exploitation in labour relations.¹⁵² Under the legislation in force, the Department remains authorized to examine, document and provide recommendations on the cases of discrimination

149 Order N01-10/6 of the Minister of Labour, Health and Social Affairs of Georgia, 21 April 2015, "On Approval of the Regulations of Structural Sub-divisions of the Ministry of Labour, Health and Social Affairs of Georgia", Article 2.1.a, available at: <https://matsne.gov.ge/ka/document/view/2817403>; Last accessed at 24.10.2016

150 Ibid, Article 2.1b, and 2.1.c.

151 Ibid, Article 7.

152 Ordinance N112 of the Government of Georgia, 7 March 2016, "On Approval of the Rule of Implementation of State Supervision on Prevention and Response to Forced Labour and Labour Exploitation", Article 1.1.; Available at: <https://matsne.gov.ge/ka/document/view/3215791> Last Accessed: 24.10.2016.

and its causes.¹⁵³ However, it is noteworthy that specific form of litigation is required for detecting and examining cases of discrimination and the legislation does not provide for such specific rule. In addition, under the experience of the Department, even though its powers are not suspended in this direction (in contrast to a range of powers), throughout its existence the body has never applied its competence to establish the fact of discrimination.¹⁵⁴ It must be noted that the relationship of the Inspection Department to the Equality Department of the Public Defender, which is the national mechanism to combat discrimination, is not clear.

Apart for the regulations, the State Program for Labour Inspection defines the spheres of operation of the Inspection Department, in the framework of which the area of operation of the Department relates to the inspection of safe working environment only, as it aims to promote providing safe and healthy working environment for the employer and does not apply to the other spheres of labour rights.¹⁵⁵ In addition, in this part the inspection does not aim for conducting State supervision, but for raising awareness of employers and promoting them to provide safe and healthy work environment.

Accordingly, the Inspection Department, by law and in fact, observes the limited spheres defined by the State program, which only includes the examination of the working environment and for the purposes of State supervision, the mandate of the Inspection Department covers detection and examination of cases of forced labour, labour exploitation and discrimination. The area of operation of the Inspection Department is considerably limited and is in contravention to the experience of a number of countries and of international standards, which envisage the inspection of the full spectrum of labour rights as the mandate and sphere of operation of the Inspection Department.

2.1.2. Range of Subjects under Supervision

For the analysis of the work of the Inspection Department, it is also important to characterize the subjects that are concerned with the work of the Department. The regulations of the Department does not specify the subjects that are under its supervision. However, the subjects under supervision are listed by the State Program on Labour Inspection, as well as by the Rule of Implementation of State Supervision on Prevention and Response to Forced Labour and Labour Exploitation.

153 Order N01-10/6 of the Minister of Labour, Health and Social Affairs of Georgia, 21 April 2015, "On Approval of the Regulations of Structural Sub-divisions of the Ministry of Labour, Health and Social Affairs of Georgia", Article 2.1.c, available at: <https://matsne.gov.ge/ka/document/view/2817403> Last accessed at: 24.10.2016.

154 Interview with Levan Zhorzholiani, the Head of the Labour Inspection Department at the Ministry of Labour, Health and Social Affairs of Georgia, 12.12.2016.

155 Ordinance of the Government of Georgia N19, 18 January 2016, "On Approving 2016 State Program on Labour Inspection", Article 1.1. Available at: <https://matsne.gov.ge/ka/document/view/3165494> ; Last accessed: 24.10.2016.

The target group of the State Program of Labour Inspection are employers, “who consented to and/or expressed interest in getting involved in the program and employees who work with these employers.”¹⁵⁶ The head of the Department explains that for the subjects to get involved in the State Program it is necessary to have two parties of the agreement – employer and employee.¹⁵⁷

For the purposes of preventing and responding to forced labour and labour exploitation the mandate of the Inspection Department applies to private and public enterprises and organizations, as well as the ones created by shared participation of autonomous republics and local self-governments.¹⁵⁸

Despite the above provisions, the legislation leaves certain ambiguities regarding the range of the subjects of inspection, which is also referred to by the ILO evaluation document.¹⁵⁹ At the same time, it is not clear whether the operation of the Department extends to other state organs. Under the legislation, self-employed individuals and the ones employed in informal sectors remain beyond the conditions of inspection, towards whom the labour inspection powers must also be applied according to the relevant ILO conventions and recommendations.

2.2. Objectives, Powers and Forms of Response of the Inspection Department

The regulations of the Department and State Program on Labour Inspection define the objectives, powers, rule of operation and forms of response of the Inspection Department. The aim of this sub-chapter is to analyze the objectives and powers of the Inspection Department based on the existing legal regulations and the legally recognized forms of their execution.

The aim of the creation of the Inspection Department is to conduct the state supervision of the protection of labour rights in places of employment.¹⁶⁰ On the other hand, the Government Program on Labour Inspection aims for empowering employers to create safe and healthy working environment.¹⁶¹

156 Ibid, Art. 2.1.

157 Interview with Levan Zhorzholiani, the Head of the Labour Inspection Department at the Ministry of Labour, Health and Social Affairs of Georgia, 12.12.2016.

158 Ordinance N112 of the Government of Georgia, 7 March 2016, “On Approval of the Rule of Implementation of State Supervision on Prevention and Response to Forced Labour and Labour Exploitation”, Article 1.1.; Available at: <https://matsne.gov.ge/ka/document/view/3215791> Last Accessed: 24.10.2016.

159 Progress Assessment of the Labour Inspection System in the Republic of Georgia (2016). International Labour Organization (ILO). Conclusions and Recommendations. Scope of application. p. 17.

160 Order N01-10/ of the Minister of Labour, Health and Social Affairs of Georgia, 21 April 2015, “On Approval of the Regulations of Structural Sub-divisions of the Ministry of Labour, Health and Social Affairs of Georgia”, Article 2.1.a.a, available at: <https://matsne.gov.ge/ka/document/view/2817403>; Last accessed at 24.10.2016

161 Ordinance of the Government of Georgia N19, 18 January 2016, “On Approving 2016 State Program on Labour Inspection”, Article 1.1. Available at: <https://matsne.gov.ge/ka/document/view/3165494>; Last accessed: 24.10.2016.

Despite the declared objective of the existence of the Inspection Department, research shows that the Department is unable to carry out the essential part of its powers endowed under the regulations, as in this part the mandate of the Department is suspended and is only limited to responding to the cases of forced labour, labour exploitation and discrimination.¹⁶² In addition, the Department is not authorized to conduct the inspection based on relevant applications and risk-assessment and also lacks the opportunity to obtain the documents necessary for inspection.¹⁶³

The Inspection Department conducts its major de facto work in the framework of the state program on labour inspection, which focuses on preventing labour safety violations through consulting employers and employees and awareness raising.¹⁶⁴

Therefore, as of today, it is impossible to view the Department as the supervisory body over the protection of labour rights, as its mandate is extremely curtailed and is only limited to awareness raising and consulting employers. This, in turn, contradicts the ILO-defined basic objective of the existence of labour inspection, which for the foremost is demonstrated in its supervisory function.

The same is confirmed by the ILO report on the assessment of the Inspection Department, according to which the vision of the Department, regardless its name, does not respond to the general idea of “inspection”, as it is mainly focused on drafting legislation and recommendations and on giving advice. The connection to the idea of inspection is determined by the ability to hear applications/complaints.¹⁶⁵

2.2.1. The Function of Consulting and Awareness Raising of the Inspection Department

The major activity of the Inspection Department is the execution of the State Program and, therefore, consulting the subjects of labour relations, their empowerment and awareness raising.

The main objective of the State Program of Labour Inspection is “to help the employer to create safe and healthy working environment.”¹⁶⁶ To achieve this goal the objective of the Program is to prevent the violation of labour safety, to raise awareness of employers and employees on detected

162 Ordinance N112 of the Government of Georgia, 7 March 2016, “On Approval of the Rule of Implementation of State Supervision on Prevention and Response to Forced Labour and Labour Exploitation”; Available at: <https://matsne.gov.ge/ka/document/view/3215791> Last Accessed: 24.10.2016.

163 Order N01-10/6 of the Minister of Labour, Health and Social Affairs of Georgia, 21 April 2015, “On Approval of the Regulations of Structural Sub-divisions of the Ministry of Labour, Health and Social Affairs of Georgia”, Article 7, available at: <https://matsne.gov.ge/ka/document/view/2817403>; Last accessed at 24.10.2016

164 Letter of the Minister of Labour, Health and Social Affairs of Georgia N01/30973, dated 18 April 2016.

165 Progress Assessment of the Labour Inspection System in the Republic of Georgia (2016). International Labour Organization (ILO). The Labour Inspection Function. p. 7.

166 Ordinance of the Government of Georgia N19, 18 January 2016, “On Approving 2016 State Program on Labour Inspection”, Article 1.1. Available at: <https://matsne.gov.ge/ka/document/view/3165494> ; Last accessed: 24.10.2016.

violations through informing and consulting and for the purposes of prevention of forced labour, raising awareness of employers and employees about the threats of human trafficking.¹⁶⁷

The Department is authorized to provide a written recommendation to the head of the organization for eradicating detected violations,¹⁶⁸ as well as to the management of the organization – on making changes to the technological process or in machine tools, industrial machinery and in construction of other equipment, which does not comply with the norms of labour safety.¹⁶⁹

Requirement of the Prior Consent of Employer on Inspection

On the basis of the Government Program on Labour Inspection, consent of the employer is required for the inspection of enterprise/organization. Otherwise it is impossible to involve the employer in the program.¹⁷⁰ Apart from the prior consent, during the inspection in the framework of the State Program on Labour Inspection, the Department gives prior notice to the employer about the date of the upcoming inspection.¹⁷¹

Accordingly, while carrying out the State Program for Labour Inspection, which is the major part of the activities of the Department, there is no mechanism for unconditional access to the work place, which makes it impossible to conduct adequate inspection and reduces the possibility to reveal violations to the maximum extent. Limitations in the access to the work place also contradicts the international standards set by ILO, which includes the powers of the inspectors to inspect the place of employment at any time of the day or night without the prior consent. The ILO evaluation document also refers to the necessity of the mandate of access the work place without the consent of the employer.¹⁷²

Non-binding Character of Recommendations of the Inspection Department

The State Program of Labour Inspection envisages non-binding recommendations as the only mechanism for responding to violations,¹⁷³ which excludes ensuring their execution. The Pro-

167 Ibid, Art. 2.

168 Order N01-10/6 of the Minister of Labour, Health and Social Affairs of Georgia, 21 April 2015, “On Approval of the Regulations of Structural Sub-divisions of the Ministry of Labour, Health and Social Affairs of Georgia”, Article 2.2.c. available at: <https://matsne.gov.ge/ka/document/view/2817403>; Last accessed at 24.10.2016

169 Ibid, Art. 2.2.d.

170 Ordinance of the Government of Georgia N19, 18 January 2016, “On Approving 2016 State Program on Labour Inspection”, Article 2.1. Available at: <https://matsne.gov.ge/ka/document/view/3165494>; Last accessed: 24.10.2016.

171 Ibid, Article 2.5

172 Progress Assessment of the Labour Inspection System in the Republic of Georgia (2016). International Labour Organization (ILO). Powers of Labour Inspectors. p. 18.

173 Ordinance of the Government of Georgia N19, 18 January 2016, “On Approving 2016 State Program on Labour Inspection”, Article 3. b. Available at: <https://matsne.gov.ge/ka/document/view/3165494>; Last accessed: 24.10.2016.

gram does not envisage the obligation of the employer to provide information on accepting or rejecting the recommendation and on providing the reasoning for rejecting the recommendation,

Accordingly, the legislation in force completely ignores the standard set by the relevant ILO conventions – the obligation of the State to have relevant system of imposing sanctions, which envisages the forms of sanctions, determines the criteria for their application and ensures their enforceability. Today the Department is not authorized to apply remark, warning, setting the time limit for restoring the violation, fines, full or partial suspension of the operation of the enterprise, or the mechanisms recognized by international standards and the experiences of different countries. The assessment document of the ILO mentions that it is impossible to have fully efficient labour inspection without the relevant mechanism of imposing fines. In addition, the ILO recommends the State to envisage the relevant system of imposing fines in the national legislation for the violation of labour laws, which must also be effectively enforceable.¹⁷⁴

2.2.2. Supervisory Function of the Inspection Department

According to the international standards and experiences of numerous states, the main purpose and powers of the Labour Inspection is the supervision of the labour conditions. Despite this, only a small portion of the mandate of the Inspection Department includes supervisory activities.

The Inspection Department is authorized to inspect places of work, work conditions, compatibility with safety standards, to ¹⁷⁵observe the safety of production at the place of employment, and examine the rules of protection of labour and health safety by the employer only in theory. In reality the supervisory authority of the Department only extends to responding to forced labour and labour exploitation cases.¹⁷⁶ For this part, the Department is authorized to enter the place of employment without the consent of the employer, to conduct the inspection and in case of detecting forced labour or lab or exploitation to inform the relevant bodies immediately.¹⁷⁷

Despite the fact that uncovering the cases of forced labour and labour exploitation constitutes the only supervision power of the Department, which is possible without the consent of the employer, the mandate of the Department in this part is quite weak.

174 Progress Assessment of the Labour Inspection System in the Republic of Georgia (2016). Internation Labour Organization (ILO). The System of Sanctions. p. 18.

175 Order N01-10/6 of the Minister of Labour, Health and Social Affairs of Georgia, 21 April 2015, “On Approval of the Regulations of Structural Sub-divisions of the Ministry of Labour, Health and Social Affairs of Georgia”, Article 2.1.a.a. available at: <https://matsne.gov.ge/ka/document/view/2817403>; Last accessed at 24.10.2016

176 Ordinance N112 of the Government of Georgia, 7 March 2016, “On Approval of the Rule of Implementation of State Supervision on Prevention and Response to Forced Labour and Labour Exploitation”, available at: <https://matsne.gov.ge/ka/document/view/3215791> Last Accessed: 24.10.2016.

177 Ibid, Art. 4.f.

The only form of efficient response of the Department can be providing information to relevant bodies about the inspection of signs of the crime of trafficking and the form of the response of the Department can be providing the recommendation only.¹⁷⁸ Even in the case when immediate threat to life and health of the employees is detected, the department does not have the powers to apply immediate and efficient tools, which could be demonstrated in the ability to suspend the working process or to apply measures similar to that. The ILO assessment document also references to the absence of these kind of measures as being problematic and provides the recommendation to the State on relevant amendments.¹⁷⁹

In addition, despite the mandate to respond to labour exploitation, the Department is legally deprived from the opportunity to establish the fact of labour exploitation, as the concept of “labour exploitation” is still not defined under the legislation. The Law on Combating Human Trafficking only defines “exploitation” and connects it to the crime of trafficking, however, the legislation introduces “labour exploitation” separately, without defining its content as relevant.¹⁸⁰ This legal loophole and the lack of efficient tools for the response, significantly hinders the effective application of the only exceptional supervisory power of the Department.

Therefore, the existing Inspection Department, in the current legislative framework, cannot carry out one of its most important functions – the State supervision of the places of employment in the form of responding to detected violations. Among these, in contravention to international legal standards and experiences of numerous states, even in the cases of detecting immediate threat to life or health of the employees or damage/perishing, the Department completely lacks the opportunity for effective response, which could be demonstrated in ordering the measures of immediate eradication of the source of the threat and in suspending the operation of specific production process/equipment or termination of the enterprise if necessary.

The supervisory function is limited to exercising its powers for the purposes of prevention of labour exploitation and its response and even in this respect the Department is an inefficient body, as it does not have the relevant legal basis to assess labour exploitation, which makes it impossible to detect it. In addition, even in the case when the Department qualifies a certain act as forced labour or labour exploitation, the Department does not have the authority to carry out immediate measures. Its mandate only includes providing recommendations of advisory character.¹⁸¹

178 Ibid, Art. 4. J.

179 Progress Assessment of the Labour Inspection System in the Republic of Georgia (2016). International Labour Organization (ILO). Conclusions and Recommendations. p. 18.

180 The Law of Georgia on Combatting Human Trafficking, Article 6.11, available at: <https://matsne.gov.ge/ka/document/view/26152>, last accessed: 24.10.2016

181 Progress Assessment of the Labour Inspection System in the Republic of Georgia (2016). International Labour Organization (ILO). Conclusions and Recommendations. Scope of application. p. 14.

2.2.3. Other Powers of the Inspection Department

Apart from the awareness raising function and the supervision mandate, the Department was also assigned the mandate of other powers under the legislation, which includes elaborating and refining of the legal basis related to labour safety at organizations/establishments.¹⁸² Under the 2016 State Program of Labour Inspection its authority to determine the need for institutional reform of labour safety protection is also envisaged.¹⁸³

The labour inspection body is also authorized to provide consultations on legislation and normative acts in force in Georgia concerning labour relations, labour and health safety.¹⁸⁴ The normative basis of labour inspection mechanism envisages the authority of the body to promote the compliance with labour safety measures in individual and collective or oral labour agreements.¹⁸⁵ In addition, to conduct the analysis of the violations of labour legislation and labour and health safety and the causes of industrial injuries and to elaborate proposals and recommendations for this purpose.¹⁸⁶ The ILO assessment document defines as problem the lack of obligation of the employer to provide information to the Labour Inspection upon detecting industrial accidents and occupational diseases.¹⁸⁷

Despite the mentioned powers, under the information of the Inspection Department, from its creation up until present, it only operates in the framework of the State program and the rule on forced labour and labour exploitation,¹⁸⁸ and practical realization of other powers is mostly not materialized.¹⁸⁹

182 Order N01-10/6 of the Minister of Labour, Health and Social Affairs of Georgia, 21 April 2015, "On Approval of the Regulations of Structural Sub-divisions of the Ministry of Labour, Health and Social Affairs of Georgia", Article 2.2.j. available at: <https://matsne.gov.ge/ka/document/view/2817403>; Last accessed at 24.10.2016

183 Ordinance of the Government of Georgia N19, 18 January 2016, "On Approving 2016 State Program on Labour Inspection", Article 2. Available at: <https://matsne.gov.ge/ka/document/view/3165494>; Last accessed: 24.10.2016.

184 Order N01-10/6 of the Minister of Labour, Health and Social Affairs of Georgia, 21 April 2015, "On Approval of the Regulations of Structural Sub-divisions of the Ministry of Labour, Health and Social Affairs of Georgia", Article 2.1.e. available at: <https://matsne.gov.ge/ka/document/view/2817403>; Last accessed at 24.10.2016

185 Ibid, Article 2.2.e.

186 Ibid, Article 2.1.f.

187 Progress Assessment of the Labour Inspection System in the Republic of Georgia (2016). International Labour Organization (ILO). Conclusions and Recommendations. p. 21.

188 Letter N01/251 of the Minister of Labour, Health and Social Affairs of Georgia, 5 January 2016. Letter N01/937 of the Minister of Labour, Health and Social Affairs, 18 April 2016.

189 Interview with Levan Zhorzholiani, the Head of the Labour Inspection Department at the Ministry of Labour, Health and Social Affairs of Georgia, 12.12.2016.

2.3. Inspection Procedure

For the purposes of the State program of labour inspection, the legislation defines the rule of inspection,¹⁹⁰ according to which, regardless the organizational-legal and property status of the subjects, the same procedure applies to inspect an enterprise, organization and establishment.¹⁹¹ The process of overseeing the prevention of forced labour and labour exploitation and their response is subject to the special rule.¹⁹²

Despite the powers endowed to the Department to examine and detect the cases of discrimination in places of employment and related issues, the relevant procedure for such activities is not provided. The absence of the special rule and lack of its regulation makes the issue of the execution of this rule ambiguous, especially in the conditions when the Public Defender is identified as the national mechanism to combat discrimination, including in labour relations. It is worth noting here that the Department has not had the practice of overseeing cases of discrimination so far.¹⁹³

The aim of the present sub-chapter is to examine the basic issues related to the process of inspection in the framework of the State Program, as well as in the process of inspection for the purposes of detecting forced labour and labour exploitation.

Scheduled and Unscheduled Inspection

The Inspection Department in most part of its activities operates in the framework of scheduled, moreover, the inspection confirmed by the employer's consent, and for the purposes of preventing forced labour and labour exploitation, the Department has the authority to conduct scheduled, as well as unscheduled inspection. In cases of scheduled inspection, the Ministry itself defines subjects under supervision, the possibility of forced labour and labour exploitation, considering the size of the enterprise and the number of employees and in case of unscheduled inspection, the inspecting body relies on the application of third persons, or complains or notifications through the hot line.¹⁹⁴

190 Order N01-55/თ of the Minister of Labour, Health and Social Affairs, 7 March 2016, "On Approving the Rule of Labour Inspection and Form of Questionnaire", Annex N1, Rule of Conducting Labour Inspection.

191 Ibid, Art. 1.1.

192 Ordinance N112 of the Government of Georgia, 7 March 2016, "On Approval of the Rule of Implementation of State Supervision on Prevention and Response to Forced Labour and Labour Exploitation", available at: <https://matsne.gov.ge/ka/document/view/3215791> Last Accessed: 24.10.2016.

193 Interview with Levan Zhorzholiani, the Head of the Labour Inspection Department at the Ministry of Labour, Health and Social Affairs of Georgia, 12.12.2016.

194 Ordinance N112 of the Government of Georgia, 7 March 2016, "On Approval of the Rule of Implementation of State Supervision on Prevention and Response to Forced Labour and Labour Exploitation", available at: <https://matsne.gov.ge/ka/document/view/3215791> Last Accessed: 24.10.2016.

The best practice and recognized international standards demonstrate that the Labour Inspection needs to carry out the full supervisory authorities through scheduled, as well as unscheduled inspection. In contrary to this, the Department mainly operates in the conditions of scheduled inspections and prior consent.

Mechanisms Applicable in Inspection

The Department operates based on various legislative acts and technical documents, according to which a specific questionnaire is developed for the application in the inspection process. This defines the mechanism to be applied during inspection and other related matters. Under the monitoring rule, in the framework of the State Program, labour inspectors are authorized to: have unhindered movement in the territory of the enterprise; ask for all relevant documents; monitor places of employment in relation to labour safety and protection of health; conduct researches and measurements in the enterprise using special equipment if needed.¹⁹⁵

It is noteworthy that the 2015 Order of the Minister to carry out the State Program for labour monitoring “On Approving the Rule of Labour Inspection and Form of Questionnaire in the Process of Monitoring”, envisaged the right of the monitor, in case of the need for special research and measurement, to apply to the other body with a motion.¹⁹⁶ However, in the framework of the 2016 State Program this right of the inspectors was no more envisaged. The ILO assessment document also views the absence of cooperation of such kind as problematic and recommends the Ministry to take relevant measures to ensure the participation of technical experts and specialists of institutions of various spheres in the inspection process.¹⁹⁷ Among the instruments to be used during the inspection, the legislation does not envisage the powers of the inspector to receive and inspect materials and samples of substances from the place of employment. For adequate inspection, the ILO assessment document considers important for the legislation to determine clear obligations of employers in relation to storing of documentation, payment receipts, registers and other documents.¹⁹⁸

195 Order N01-55/ᄁ of the Minister of Labour, Health and Social Affairs, 7 March 2016, “On Approving the Rule of Labour Inspection and Form of Questionnaire”, Annex N1, Article 3.1

196 Order N01-146/ᄁ of the Minister of Labour, Health and Social Affairs, 18 May 2015, “Qualification Requirements and Rule of Selection of Persons (Monitors) Conducting Monitoring” and “On Approving the Rule of Labour Inspection and Form of Questionnaire”, Annex N2, Article 3.1.

197 Progress Assessment of the Labour Inspection System in the Republic of Georgia (2016). International Labour Organization (ILO). Conclusions and Recommendations. p. 20.

198 Ibid, p. 21.

Duty to Substantiate the Act of Inspection Results

The Inspection Department is the administrative body, which relies on the existing procedural legislation in taking decisions. During the inspection procedure, the Department conducts the proceeding based on the State Program of labour inspection,¹⁹⁹ Order on the Rule of Labour Inspection and Form of Questionnaire,²⁰⁰ as well as the Rule of Implementation of State Supervision on Prevention and Response to Forced Labour and Labour Exploitation.²⁰¹ Rules of the General Administrative Code (hereinafter – GAC/Code) are also applicable to the Inspection Department in parts where the specialized legislation is absent. This creates the obligation to substantiate the acts adopted in the process of inspection.

Confidentiality of the findings obtained as a result of inspection²⁰² makes it impossible to check the substantiation of the decisions.²⁰³ As of the supervision of the inspection process with the purpose of preventing forced labour and labour exploitation, it is revealed that the act obtained by the Department is not substantiated.

On the basis of the substantiated application of the Human Rights Education and Monitoring Center (EMC), the Inspection Department conducted the inspection to examine the signs of forced labour and labour exploitation in Ltd “Georgian Manganese” Zestafoni ferroalloy plant.²⁰⁴ Despite the grounded and evidence-based application to the Department in the framework of the case, in its final act the Department noted that “as a result of the inspection forced labour exploitation was not identified.”²⁰⁵ At the same time, in the act, it does not substantiate the mentioned result and does not discuss the evidence submitted by the applicant.

2.4. Transparency of the Operation of the Inspection Department

The standard of access to the immediate results of the work of the Inspection Department varies based on whether the Department operates in the framework of the State Program or its regulations. As a result, administrative process materials and documents of the State supervision for the purpose of preventing and responding to forced labour and labour exploitation are public, as the

199 Ordinance of the Government of Georgia N19, 18 January 2016, “On Approving 2016 State Program on Labour Inspection”, Article 2. Available at: <https://matsne.gov.ge/ka/document/view/3165494>; Last accessed: 24.10.2016.

200 Order N01-55/ᄁ of the Minister of Labour, Health and Social Affairs, 7 March 2016, “On Approving the Rule of Labour Inspection and Form of Questionnaire”.

201 Ordinance N112 of the Government of Georgia, 7 March 2016, “On Approval of the Rule of Implementation of State Supervision on Prevention and Response to Forced Labour and Labour Exploitation”, Article 1.1., available at: <https://matsne.gov.ge/ka/document/view/3215791> Last Accessed: 24.10.2016.

202 Ordinance N38 of the Government of Georgia, 5 February 2015, “On Approving the State Program of Labour Monitoring”, Article 3.1.e.

203 See the chapter for details: “Transparency of the Work of the Inspection Department”.

204 Application of the Human Rights Education and Monitoring Center (EMC) N801/455/2016, dated 22 January, 2016.

205 Letter of the Ministry of Labour, Health and Social Affairs N01/43722, dated 7 June 2016.

inspection rule does not include a special note on classifying the results, accordingly, the general standard set by the GAC is applicable to it.

However, according to the State program on labour inspection, which constitutes the basic part of the operation of the Department, in reports/findings obtained as a result of the monitoring in the framework of the program are not public,²⁰⁶ which implies automatic classification of the detected violations and provided recommendations.²⁰⁷ In parallel to the normative situation at hand, which applies a blanket prohibition to all subjects, the research confirmed that united professional unions and employees do not have access to the findings and recommendation obtained as a result of the inspection.²⁰⁸ The practice of limiting the access of the information for persons employed in the enterprise is confirmed by the rejection of the Department the written application of the employees of Ltd “Saknakhshiri GIG Group” to gain access to reports, findings and recommendations obtained as a result of the inspection of the enterprise.²⁰⁹

Automatic and blanket restriction of access to any information obtained in the framework of the inspection is in contrary to the Constitution of Georgia, as well as the legislation in force. ILO assessment report refers to the international standard, according to which labour inspectors are prohibited to disclose information related to industrial and commercial secrets that became known to them during their professional activity, which implies protecting a certain part of the information from disclosure, which is also protected under the Georgian national legislation.²¹⁰

2.4.1. Standard of Openness of Information Stored in the Administrative Body

The Inspection Department, as the administrative body, in the process of inspection might have to deal with the information that includes personal, state or commercial secret, which requires a different purpose of protection and relevant procedure of closure. Under the legislation, information including personal data is subject to protection – by way of excluding the relevant data from the information - and the information must be considered as including state or commercial secret by in accordance with the special rule. The latter in itself excludes the possibility of automatic and blanket classification of data.

206 Ordinance N38 of the Government of Georgia, 5 February 2015, “On Approving the State Program of Labour Monitoring”, Article 3.1.e.

207 Note: Non-commercial legal entity “Human Rights Education and Monitoring Center” (EMC) applied to the Tbilisi City Court to establish that the provisions of the above normative act were null and void and to request the access to the reports, recommendations and findings of the inspection of the Chiatura mining factory of Ltd “Georgian Manganese”. At this stage, the proceedings are underway at the Court.

208 Interview with Tamaz Dolaberidze – head of Metallurgy and Mining Industry Workers’ Trade Union of Georgia and Gocha Aleksandria - Deputy Head of the Georgian Trade Unions Confederation, 7 December 2015.

209 Letter of the Ministry of Labour, Health and Social Affairs N0139, dated 20 May 2016.

210 Progress Assessment of the Labour Inspection System in the Republic of Georgia (2016). International Labour Organization (ILO). Prohibitions; p. 15.

The Constitution of Georgia establishes the standard of access to information, according to which every citizen is authorized to have access to information stored in state institutions, if it does not include state, professional or commercial secret.²¹¹ The analogous rule is determined by the GAC and any information stored in the administrative body, which does not include state, professional and commercial secret or personal information, is considered as public information.²¹²

Accordingly, Ordinance of the Government of Georgia “On Approving the State Program of Labour Monitoring”, which blankly envisages that (any) information on detected violations as a result of monitoring and provided recommendations are not public, contradicts the standards set by the Constitution of Georgia and GAC, which establish the presumption of openness of the information and strictly define the exceptional circumstances.

Rule and Procedure of Classifying Information as Commercial Secret

Under the Constitution of Georgian and GAC, closure of public information is not an automatic process. For the information to be completely confidential, it is necessary that by their content they belong to a certain category of confidential information and are considered as such in each specific case, under the rule/procedure established by the law.²¹³

GAC defines in details what type of information belongs to commercial information and enumerates the forms and content of such information. It is noteworthy that not any type of information that are related to a private individual can be considered as commercial information, but only the type of information what has specific commercial significance, in addition – information which represents an innovation or a significant technical accomplishment, or any other information, disclosure of which could reasonably be expected to cause competitive harm to a person.²¹⁴

Automatic classification of information does not correspond with the rule established under GAC, as the Code requires considering such information secret based on the application of the person presenting the information and only after the assessment of the individual case by the administrative body, following relevant procedures.²¹⁵

The Inspection Department in the framework of its competence also carries out the inspection of legal entities of public law. Under the legislation, an administrative agency is a legal entity in

211 Constitution of Georgia, Art. 41, para. 1.

212 General Administrative Code of Georgia, Art. 10.

213 Ibid, Article 28.

214 Ibid, Article 27².

215 Ibid, Art. 27².3.

public law (except for political and religious associations), and any other person that exercises public authority in accordance with the Georgian legislation²¹⁶ and freedom of information rules set out under GAC is applicable to them.

Under the rule defined by the law, private legal entities exercising public authority are considered as administrative bodies for the purposes of freedom of information,²¹⁷ and the Inspection Department automatically issues non-public recommendations as a result of their inspection, based on which it illegally closes the information on labour violations identified in administrative bodies.

While classifying the information on the results of the inspection of state bodies as secret, the aim of the State Program on labour monitoring might be related to the protection of state secret, however, achieving this goal with the existing form contradicts the Georgian legislation in force. The procedure of classifying the information as state secret and the level of secrecy of the information is determined by The Law on State Secret, according to which the rule of declaring public information as state secret completely excludes automatic secrecy of the information related to the Administrative Body. Under the rule established by the law, for identifying information as state secret it is necessary to have the information on a specific sphere belonging to the state governance and this information needs to be classified as secret following the procedure established by the law.

State secret can only be such specific information that is related to specific spheres of state governance (state defense, economics, external relations, intelligence, data in the spheres of state security and public order). The law not only identifies specific spheres of state governance, but immediately refers to the forms of information and documents, the classification of which is permitted in various spheres of governance.²¹⁸ In addition, the information can belong to the state secret if it is recorded in the state secrets list established by the Government.

Apart from the abovementioned, the law requires that the information that belongs to the state secret must be secret or considered as such, in accordance with the rules established by the law and/or international treaties and agreements of Georgia. The procedure of classifying the information as secret is set by the Government of Georgia and can be carried out by authorized persons of the Government of Georgia and of the President.²¹⁹

216 Ibid, Art. 3.1.

217 Textbook of the General Administrative Code, Paata Turava, Natia Tskepladze (GYLA, 2010, pp. 15-20).

218 General Administrative Code of Georgia, Art. 6.

219 Law of Georgia on State Secret, Art. 4.2.a.a.

Disclosing the Closed Information Based on Overriding Public Interest

Even in the cases when the results of the inspection and recommendations on detected violations, in accordance with the requirements and rules established by the law, are considered as commercial or state secret, there might still be a legitimate and legal basis for their disclosure, when there is an overriding public interest and the value of the disclosing the information is much higher than the interest of their secrecy.

Council of Europe Convention N205 on Access to Official Documents, which is recognized as binding by Georgia, determines the obligation of the administrative body to discuss and assess the overriding public interest to the information stored in the establishment and the significance of disclosing the information in the democratic society.²²⁰ In addition, the subject requesting the information and its goals must be taken into account, which is provided to the interested public to ensure access to information of particular significance.

In the framework of the study Human Rights Education and Monitoring Center (EMC) applied to the Inspection Department to request the results of the inspection and the provided recommendations to the mines that are owned by “Georgian Manganese” in Chiatura. The Department refused providing the information referring to the relevant article of the State program. At the same time, despite the allegations of EMC on the overriding public interest in this case, the administrative body did not consider the disclosure of the closed information, as this matter was not even assessed based on the indicated test.²²¹

Therefore, this kind of regulation of the operation of the department is in contrary to the requirements of the Constitution of Georgia and the provisions of the law, represents an unjustified limitation and hinders the assessment of the effectiveness of the measures undertaken by the state to bring the practice of protecting and realizing labour rights in compliance with the law.

Major findings

While examining the goals, scope of work and powers of the Inspection Department, the study identified the following findings:

- The Inspection Department does not constitute the body that supervises the protection of labour rights, as its mandate is extremely curtailed and is mainly limited to awareness raising

220 Council of Europe Convention N205 on Access to Official Documents, Art. 3.2.

221 Letter N01/7791 of the Ministry of Labour, Health and Social Affairs, dated 2 February 2016.

and consulting of employers. This, in turn, contradicts the basic purpose of labour inspection set by the ILO, which is primarily demonstrated in supervisory activities;

- The authority of the Inspection Department is mainly limited to the issues of labour safety and health. This contradicts with the ILO-established international standards, which envisages examination of the full spectrum of labour rights as the scope of operation of the labour inspection;
- The Department does not have the mechanism of unconditional access to the place of employment, which makes the adequate inspection impossible and reduces the possibility for detecting labour rights violations. This also contradicts the international standard, which envisages the powers of the inspector to conduct the inspection of the place of employment without a prior consent at any period of day or night;
- The law envisages non-binding recommendations as the only mechanism of response by the Department. With this, it ignores the standard established by the relevant ILO conventions, which implies the obligation of the state to have the relevant system of sanctions, which defines the forms of sanctions, as well as the criteria for their application and ensures their enforceability;
- Even in cases of immediate threat to life and health of employees or damage/perishing, the Department completely lacks the opportunity for effective response;
- In regard to preventing and responding to forced labour and labour exploitation, which is the only supervisory mandate of the Department, it still constitutes a non-operational body, as it does not have the legal basis for assessing labour exploitation and effective mechanisms to respond to it;
- There is an automatic and blanket closure of inspection reports, findings and recommendations elaborated in the framework of the State program, which contradicts the Constitution of Georgia and the existing regulations of information freedom. These documents are also closed for employees and professional unions;
- The legislation leaves certain ambiguities in regard to the range of subjects under the inspection mandate. According to it, self-employed individuals and the ones employed in the informal economic sector are left beyond the labour inspection, over whom, under the relevant ILO conventions and recommendations, the supervisory authority of the labour inspection is also applied;

- In practice the Department does not apply its authority to detect the facts of discrimination. The legislation does not define the specific rule of examining facts of discrimination and, at the same time, the relationship of the activities of the Department to the Equality Department of the Public Defender, which is created as a national mechanism to combat discrimination, is not clear;
- In case of the need for special examinations and measurements during the inspection, the legislation does not envisage the authority of the working group to involve a specialist of the relevant sphere, an expert or a body. In addition, among the tools to be applied during the inspection the legislation does not envisage the authority of the inspector to obtain and examine the materials or samples of substances from the place of employment.

Chapter IV.

Review of Institutional Framework of Labour Inspection in Light of International Standards and National Legislation

The aim of the present chapter is to identify international standards and guarantees, which are established for independent and adequate functioning of the institutional model of the Labour Inspection. This includes a number of components, including the place of the Labour Inspection in the system of the State structure, the guarantees of its independence, the cooperation with different relevant bodies or organizations, as well as the issues of their financial and material-technical provision. Apart from this, the status of inspectors and the legal and social guarantees of their work is also important. The study of the mentioned issues is based on the ILO conventions²²² and authoritative commentaries. Apart from this, the comparative analysis of the mentioned topics is presented on the basis of studying the practice and legislation of the countries to be researched.

The aim of the present chapter is also to describe the place of the existing Labour Inspection Department in the system of administration of labour politics; to assess the guarantees of its institutional independence, the mechanisms of State supervision and control over it, systems of accountability and important aspects necessary for the adequate administrative operation of the body, including the guarantees of independence of the work of inspectors, the forms of participation of social partners in the existing model and the mechanisms of cooperation with other institutions.

1. Review of Institutional Framework of Labour Inspection in Light of International Standards

1.1. Place of Labour Inspection in the System of State Structure, Guarantees of Its Independence and Control-supervision

The Labour Inspection, based on the importance of its universally recognized functions and the character of tasks endowed on it, plays an important role in protecting the labour rights and in the process of guaranteeing the conformity of other issues related to labour activities with the

²²² C081 - Labour Inspection Convention, 1947; C129 – Labour Inspection (Agriculture) Convention, 1969; C150 – Labour Administration Convention, 1978.

legislation. Therefore, the functional significance determines its place in the state structure in general, including in the system of labour administration. Its functional significance also determines the guarantees necessary as a minimum, which, in the end, provide the possibility for the independent and effective functioning of the Labour Inspection. This to the large extent depends on the forms of control and supervision of the Inspection, as well as on its financing and accountability to the supervisory body. In the institutional model the employees of the Inspection have no lesser function in relation to other bodies, particularly to social partners.

1.1.1. Place of Labour Inspection in Governance System

An important guarantee of institutional strength of the Labour Inspection is its existence in the central governance system of the State, which constitutes one of the key recommendations of the ILO and is the requirement of the convention in force in this sphere in relation to the institutional structure of the Inspection. Under the ILO, the Labour Inspection must be placed in the system of the central State governance.²²³ The experience showed that the operation of the Inspection in the system of central governance makes the process of establishing and implementing of labour policy easier.²²⁴ In addition, placing the Labour Inspection in the central structure, under the ILO experience, promotes a rather rational application of existing resources²²⁵

In most of the cases the Labour Inspections are organized as units in subordination of the Ministry, which have a centralized structure and other decentralized departments. The Labour Inspection, traditionally, is under the subordination of a ministry related to labour and other issues and operates under direct, exclusive control and supervision.²²⁶ At the same time, the Labour Inspection must be under the control and supervision of a central institution in case if the State has the relevant administrative experience.²²⁷ Obviously, such standard is not an unconditional requirement of the ILO, as States, based on their internal governance structure, have a certain leverage relating this issue.²²⁸

Apart from the necessity of placing the Labour Inspection under the exclusive control of the central governance, the ILO additionally notes that the Inspection must not be affected by the control of local governance bodies in the execution of its functions and shall not be accountable towards them.²²⁹ Apart from the abovementioned, the ILO also finds it appropriate to distribute the authority belonging to the Labour Inspection to various central State institutions, the aim of

223 ILO convention No. 81; Art.4 (1).

224 International Labour Conference, 100th Session, 2011; para.200.

225 International Labour Conference; 95th Session, 2006; para. 146.

226 Ibid, para. 143.

227 Labour Inspection Convention. No.81; 1947; Art.4 (1).

228 Ibid, Art. 4(2).

229 Labour Inspection Recommendation No.020; para.10.

which is to subordinate the issues under inspection to those institutions the competence of which is directed to the spheres to be inspected.²³⁰

Three possible basic categories of Labour Inspection can be distinguished. The general inspection System, which is a centralized system and the whole spectrum of functions and obligations is placed under the uniform inspection authority.²³¹

In addition, there is a specialized inspection system, in the framework of which the functions of labour inspection and the issues to be inspected are divided between different specialized institutions and entities, however, despite such distribution, all mentioned institutions are placed under the full control and supervision of the central government.²³²

And, in addition, the labour inspection system, which is based on involving multidisciplinary groups in the specific issue, and which implies the joint work of inspectors of various competences and their joint or altering involvement in the process of labour inspection.²³³

1.1.2. Transparency and Accountability

The international standard also determines the transparency and accountability mechanisms of the inspection. One of the important forms of accountability is the reports of labour inspection, in relation to which international standards identify the obligation of creating two types of reports. In particular, the reports which the Labour Inspection presents to the central State institution, under the supervision of which it is placed, and on the other hand, there is an obligation of specific inspectors or local inspection services to provide reports to the central labour inspection.²³⁴

Despite the fact that international instruments do not determine the unconditional obligation of presenting reports to inspectors and local inspection services, this is implied in their regulations, as the annual reporting of the central labour inspection is only possible in case of presenting periodic reports by them.²³⁵ At the same time the annual report of Labour Inspection must be based on the mentioned periodic reports, in which, as a minimum, detailed information will be presented on places of employment, number of employees, inspection visits and their outcomes, as well as the on existing situation of health and safety.²³⁶

230 International Labour Conference; 95th Session, 2006; para. 144.

231 Ibid, para. 143.

232 Ibid.

233 Ibid.

234 Labour Inspection Convention, No. 81; 1947; Art. 19(1).

235 International Labour Conference; 95th Session, 2006; para. 310.

236 Ibid. para. 309

1.1.3. Role of Social Partners in Labour Inspection System

Standards established by ILO conventions in force, applicable in the sphere of labour inspection, consider the role of Labour Inspection to promote and encourage the relationship and collaboration of the Inspection to the employee and the employer,²³⁷ for which the primary responsibility rests on the central State agency above the Labour Inspection.²³⁸

Apart from the abovementioned, the ILO requires that the cooperation between the officials of the Labour Inspection, employees and employers must be organized in the form of joint committees, conferences or other similar forums, in the framework of which the representatives of the Labour Inspection, together with the representatives of the unions or employers and employees, will jointly discuss the matters related to the execution of labour legislation and health and safety of the employees.²³⁹ One of the widespread forms of coordination and cooperation of social partners and inspection mechanism is also the Tripartite Social Partnership Commission, which, together with carrying out various functions, shall analyze the reports of the Labour Inspection and based on them it shall elaborate the proposals to improve the labour policy.

1.1.4. Labour Inspection Budget and Its Expenditure

The amount and management of the budgets of a specific State institution is significantly related to the guarantees of its independence. Under the ILO standard, the States need to take all necessary measures to ensure that the Labour Inspection has all the financial resources to carry out its functions.²⁴⁰ The aim of the sufficiency of financial resources is not only the adequate and comprehensive operation of the Labour Inspection, but it primarily implies the creation of the independence guarantees of relevant quality and scope for individual labour inspectors on one hand, and for the Labour Inspection on the other hand.²⁴¹ The ILO additionally notes that the insufficient budgetary resources in itself implies insufficient guarantees of independence for the Inspection.²⁴² As a rule, in the majority of countries, the budget of the Labour Inspection is included in the main budget of the Ministry of which the Inspection is a structural entity.²⁴³

237 R081 – Labour Inspection Recommendation, 1947 (N. 81); para. 4(1). Available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312419; Last accessed: 24.10.2016.

238 Labour Inspection Convention No.81, Art.5.

239 R081 – Labour Inspection Recommendation, 1947 (N. 81); para. 6. Available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312419; Last Accessed: 24.10.2016.

240 ILO No. 81 convention; Art. 11.

241 ILO, International Labour Standards and Guiding Principles on Labour Administration and Labour Inspection; CONCLUSIONS ON LABOUR ADMINISTRATION AND LABOUR INSPECTION; Para. 15; p. 175.

242 International Labour Conference; 95th Session, 2006; para. 370

243 Ibid, para. 240.

1.1.5. Experience of Countries Examined in the Study

Examining the models of the institutional framework of the Labour Inspection is particularly interesting based on the examples of different countries. In Great Britain, the labour inspection authority is distributed to different entities based on their functional competencies, the most important of which is the Executive Body of Health and Safety.²⁴⁴ This is the state agency, the activities and financing of which is determined by the Employment and Pensions Department, to which the Inspection is accountable. It is important that the consultative council of the Executive Body of Health and Safety is the Tripartite Commission, which is composed of the representatives of employers and employees and they can make their contribution to the process of forming the national labour policy.²⁴⁵

The mentioned body operates through various agencies, which are divided into the units accountable for the matters related to health and safety. However, apart from the Executive Body for Health and Safety, in *Great Britain* a number of State agencies are created to exercise control over other matters related to labour rights, e.g. – revenue and procurement services, which are responsible for controlling direct and indirect taxes and in this direction they ensure the supervision of the compliance with minimum wages. The mandate of inspection hour of work and other issues are distributed between various State inspection bodies.²⁴⁶

The labour inspection body operating in *Greece* is a state agency directly depending on the Ministry of Labour and Social Protection, however, the obligation of overseeing inspection rests on the special supervisor appointed by the Government. The labour inspection of Greece constitutes of different bodies, which are divided based on geographical factors, as well as based on specificities of the work to be carried out.²⁴⁷

In *Poland* model the national labour inspection constitutes a State agency, which is subordinated to the lower chamber of the Parliament of Poland and the function of its supervision rests on the Labour Protection Council of the Parliament. As of the structure of the Inspection, it consists with the General Inspection, which is divided into 43 territorial entities of Labour Inspection.²⁴⁸ The role of social partners and other organizations is significant at the institutional level. The head of the parliament of Poland (Sejm) elects the members of the Labour Protection Council out of the parliament members, senators, as well as the candidates proposed by the Committee of Ministers, organizations of employees and employers, experts and representatives from science.²⁴⁹

244 A mapping report on Labour Inspection Services in 15 European countries; 2012; 14.1 Legal framework p. 82. Available at: http://www.oit.org/labadmin/info/WCMS_112675/lang--en/index.htm. Last accessedL 24.10.2016.

245 Ibid, 14.2.The organisation; p. 82;

246 Ibid.

247 Ibid. An overview of the Labour Inspectorate in Greece; p. 46.

248 Ibid. An overview of the Labour Inspectorate in Poland; p.60.

249 NATIONAL LABOUR INSPECTORATE – STRUCTURE AND COMPETENCES; p. 1. Available at: <https://www.pip.gov.pl/pl/f/v/35972/The%20NLI%20s%20organizational%20structure%20and%20responsibilities.pdf>. Last accessed: 24.10.2016.

In *Kazakhstan* the head of the State Labour Inspection is the Minister of Labour and Social Protection, namely the Social Protection Committee of the Ministry. The latter is divided into two parts. One of them is the State Labour Inspection and the other is the Social Protection Unit. With its functional role, the Labour Inspection is divided into two parts: Legal Department and Protection of Labour and Safety Department. Apart from the mentioned Labour Inspection, various central agencies are responsible for the legal issues of labour, such as e.g. the specialized inspections of sanitary conditions, as well as of the emergencies.²⁵⁰ It is important that in 2013 the functions and mandate of the Labour Inspection in Kazakhstan was to a certain extent transferred to the executive bodies of the local level.²⁵¹

1.2. Significance and Forms of Cooperation between Labour Inspection and Various Subjects

For the adequate operation of the Labour Inspection, its close cooperation and coordination with the State organs and other subjects is required. In addition, considering the functions to be carried out, it is important for the Labour Inspection to have all the relevant data that are necessary for achieving its objectives. For this purpose, information sharing, referral of cases or cooperation formats between the bodies of different functions will be examined.

1.2.1. Referral

The ILO underlines the importance of the obligation of the involvement of different institutions during the work of the Inspection and of providing the information. Often the recipients of the information on industrial injuries and incidents are law enforcement bodies or social service providers. The ILO requires that during the investigation of such incidents and accidents, these bodies, in their competence, must ensure the involvement of the Labour Inspection to examine the issues under its competence. Considering the mentioned standard, in case of an industrial accident, representatives of various agencies are obliged to involve the inspection in all cases, as any industrial accident can become the basis of response, or as a minimum, the source of planning and implementing the prevention activities for the Labour Inspection. Such coordination is the obligation of not only the relevant agency, but also of the Labour Inspection. In particular, in case when the Inspection got involved first in the investigation of the place of the incident, it is obliged

250 Department(s) responsible for Labour Inspection. Available at: http://www.ilo.org/labadmin/info/WCMS_156049/lang--en/index.htm. Last accessed: 24.10.2016.

251 Direct Request (CEACR) - adopted 2015, published 105th ILC session (2016); Article 4. Supervision and control of the labour inspection system by a central authority. Available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::P13100_COMMENT_ID:3240246. Last accessed: 24.10.2016.

to provide a qualified identification of the necessity of involvement of additional agencies.²⁵² For the purposes of coordination, the ILO considers the social service providing agencies, police, tax inspections, human rights protection mechanisms and emigration services as of particular importance.²⁵³

1.2.2. Joint Cooperation and Information Exchange

Considering the character of the organizational structure or functions of the Labour Inspection, the functions of the labour inspectors can be distributed among different bodies of the Labour Inspection, which, in turn, might be divided on the basis of geographical or sectoral character. Accordingly, the most important issue is the effective cooperation and experience sharing between these bodies²⁵⁴, ensuring of which, the ILO considers, is the responsibility of the central body supervising the Inspection.²⁵⁵

Representatives of employers, as well as of employees, at a specific place of employment (if any), need to have an authority, in the framework of direct cooperation with the Labour Inspection authorities, with defined rules and scope, to participate in the investigation process and particularly in examining industrial injuries and occupational diseases.²⁵⁶

Under the ILO standards, full and comprehensive information sharing between the agencies must be ensured at the central level, as well as the systemic format of inter-agency cooperation, for the purposes of systemic information exchange and update.²⁵⁷ The effectiveness of the labour inspection policies is largely dependent on the ability to access relevant and necessary databases, which requires obligatory enhancement of certain cooperation mechanisms with the institution that holds such data.²⁵⁸

252 Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference 95th Session, 2006, Para. 156.

253 Ibid, Para. 52-56.

254 Ibid, para. 152.

255 Labour Administration Convention No.150.

256 R081 – Labour Inspection Recommendation, 1947 (N. 81); para. 5. Available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312419. Last accessed: 24.10.2016.

257 Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference 95 th Session, 2006, Chapter IV. Structure of the labour inspection system, P. 52.

258 International Labour Conference; 95th Session, 2006; para. 138.

1.2.3. Experience of Countries Examined in the Study

At the national level in Great Britain, social partners jointly work in the sphere of safety and health at the work place. National Tripartite Commission primarily has the function of advising the Government, as well as the responsibility to elaborate annual plans, which cover the issues related to legislation, policies, enforcement and information.²⁵⁹ In *Greece*, central and local offices conduct the communication and information sharing on a daily basis. Apart from this, the mentioned units systematically ensure the involvement of the relevant agencies in the investigation or in other issues belonging to their competence.²⁶⁰ In all 14 provinces of *Kazakhstan* the national units of the Labour Inspection operate, which are structurally organized as the central body. The central and local offices have elaborated different communication methodologies and they interact systematically.²⁶¹ In *Poland*, the Labour Inspection, while carrying out its functions, actively cooperates with the public employment and those State bodies, which have the obligation of inspecting labour conditions and supervision, as well as with construction supervision bodies, police, procurement organizations, social welfare institutions or local self-government bodies.²⁶²

1.3. Infrastructure of Labour Inspection and Resources

Under international standards, for the comprehensive operation of the Labour Inspection, it is necessary, together with other requirements, to have adequate financial and human resources. While discussing the Labour Inspection, the ILO major conventions pay particular attention to this matter and impose obligation to the relevant competent agency to implement all relevant measures, to ensure that the Labour Inspection has all material-technical and financial resources required to carry out its functions.

1.3.1. Number of Employees

For the effective operation of the Labour Inspection, the number of labour inspectors is particularly important. Relevant conventions are directly concerned with this, which determine the requirement of adequate number of labour inspectors and link this to the effective execution of the functions of the Inspection. In this process, it is important to consider the content of the work of the labour inspectors, including the number of enterprises and/or employers to be inspected,

259 Labour Inspection: What it is and what it does; A guide for workers; Cooperation with social partners at workplace level; p. 35.

260 Programming and communication. Available at: http://www.ilo.org/labadmin/info/WCMS_115425/lang--en/index.htm. Last accessed: 24.10.2016.

261 Local divisions. http://www.ilo.org/labadmin/info/WCMS_156049/lang--en/index.htm. Last accessed: 24.10.2016.

262 A mapping report on Labour Inspection Services in 15 European countries; 2012; An overview of the Labour Inspectorate in Poland; Main tasks and issues. P. 62.

the nature of the issues to be inspected, the size of the place of employment and the complexity of the legal regulations, the execution of which the Labour Inspection is responsible for. In addition, the practical conditions under which the labour inspectors are obliged to conduct the inspection, material means at the disposal of the inspectors, etc.²⁶³

Apart from the above, the number of labour inspectors must be increased in such models of inspection, where the inspectors have additional issues in their functions that are beyond their main authority.²⁶⁴

1.3.2. Ensuing the Provision of Material-technical Means

For the sound and effective operation of the Labour Inspection, only the adequate number of labour inspectors and the proper procedures of their selection or of increasing their qualification is not sufficient. Under the ILO conventions, the function of the relevant competent state body is to take appropriate measures to provide the Labour Inspection with sufficient material-technical resources.²⁶⁵ Analogically, the local offices of the Labour Inspection must be equipped with all necessary technical means to conduct relevant activities.²⁶⁶

Labour inspectors also require adequate equipment (which at the same time must be properly stored and maintained) to be able to obtain samples or carry out other measures comprehensively; at the same time, to conduct the kind of analysis that requires specialized technical knowledge, process or methods. Inspectors need to have access to the specialized regional or national laboratory services.²⁶⁷

1.3.3. Transportation and Business Leave Expenses

Considering the nature of the work to be undertaken by the labour inspectors and the need for constant mobility, it is necessary to ensure the unhindered access of the Labour Inspection to transportation means, which are necessary to carry out the obligations of the inspectors.²⁶⁸ In a number of countries, labour inspectors might be using the transportation specifically provided for them, public transportation, or taxi services. Relevant state bodies must take all necessary measures to ensure the availability of relevant transportation, food or means for living expenses.²⁶⁹

263 Labour Inspection Convention No.81, Art. 10; Labour Inspection Convention No.81, Art. 14.

264 International Labour Conference; 95th Session, 2006; para. 174.

265 Ibid. para. 238.

266 Labour Inspection Convention No.81, Art.11; ILO No. 129 convention; Art. 15.

267 International Labour Conference; 95th Session, 2006; para. 247.

268 Labour Inspection Convention No.81, Art.11; Labour Inspection (Agriculture) Convention No. 129; Art. 15.

269 International Labour Conference; 95th Session, 2006; para. 250.

1.4. Independence and Qualification of Labour Inspectors

The existence of the effective system of Labour Inspection at the national level largely depends on the labour inspectors with professional training and adequate resources, who, at the same time, are independent from outside influences.²⁷⁰ Effective Labour Inspection largely depends on the enforcement of those legal regulations, which will attract and sustain the necessary number of qualified and motivated labour inspectors.²⁷¹ The ILO sets relevant standards for this purpose.

1.4.1. Status of Labour Inspectors

Under the international standards, the labour inspectors shall be public officials, whose status and work conditions shall be defined in a way that their stability and independence is ensured from any change in Government or unjustified external interventions.²⁷²

The status of a public official is important for ensuring the independence of labour inspectors, as public officials are appointed for life, which is the guarantee of their stability. Apart from his, their dismissal from the office or imposing the kind of sanctions, which bear serious consequences, requires the existence of serious abuse of office and the process must be carried out or certified/approved by the relevant organ/official, which, in turn, ensures guarantees of necessary independence and autonomy.²⁷³

1.4.2. Protection from Dismissal Based on Political Opinions

The ILO Committee regularly mentions that it is impossible for labour inspectors to be completely independent in their activities, if their job or career advancement depends on political opinions. Without such protection, even the requirement of the convention is challenged, which ensures the stability of the inspectors and ensures their protection from any undue external influences.²⁷⁴

270 International Labour Standards and Guiding Principles on Labour Administration and Labour Inspection; p. 2.

271 International Labour Conference; 95th Session, 2006; para. 173.

272 Labour Inspection Convention No.81, Art. 6; Labour Inspection (Agriculture) Convention No. 129; Art.8 (1).

273 International Labour Conference; 95th Session, 2006; para. 203.

274 Labour Inspection Convention No.81; Art. 6.

1.4.3. Composition of Labour Inspectors and Gender Equality

The composition process of labour inspectors shall not exclude persons of any sex from fulfilling this office, however, at the same time, it is possible if duties of specific character are assigned to the specific sex of labour inspectors, which in only this exceptional circumstance is not considered as derogation from the principles established by the Convention.²⁷⁵

1.4.4. Qualification Requirements of Labour Inspectors

Necessary qualification requirements of the labour inspectors include the recognized technical skills and qualifications; in addition – personal and psychological abilities, which are necessary to work with numerous different people or situations.²⁷⁶ The ILO, considering the functions of labour inspectors, indicates that it is necessary for them to have a high level technical training and experience, as well as the relevant education and the ability of obtaining the trust of all parties of the process.²⁷⁷

The ILO recommendation, which concerns the agricultural sphere, additionally defines the qualification requirements for labour inspectors. Namely, the candidates interested in acquiring a relatively higher position need to have professional or academic qualification, or relevant practical experience in the sphere of labour administration.²⁷⁸ Those wishing to undertake other positions (assistants of inspectors or junior staff of inspection) need to comply with the secondary general education requirement in case this level of education is sufficiently developed in the relevant county. At the same time, in this case the inspectors need to be provided with adequate technical training or possess adequate administrative or practical experience in labour-legal matters.²⁷⁹ In a number of countries, similar to other public positions, a labour inspector is required to have the document confirming relevant high education.²⁸⁰

The ILO recommendation is interesting, according to which where countries are divided for the purposes of inspection into districts, and especially where the industries of the country are of a varied character, inspectors, more particularly during the early years of their service, should be transferred from district to district at appropriate intervals in order to obtain a full experience of the work of inspection.²⁸¹

275 Ibid, Art. 8. Art. 10.

276 International Labour Conference; 95th Session, 2006; para. 182.

277 R020; Labour Inspection Recommendation, 1923; para.13.

278 ILO Recommendation No133; Para.5.

279 Ibid, Para 6.

280 International Labour Conference; 95th Session, 2006; para. 185.

281 R020; Labour Inspection Recommendation, 1923; para. 16.

1.4.5. Career, Professional and Remuneration Benefits

One more important guarantee for the independence of labour inspectors is the remuneration, which, together with the prospects of career growth, needs to create the opportunity for sustaining highly qualified individuals and for protecting them from external influences.²⁸²

The ILO Committee considers that the principle of adequate remuneration included in the conventions encompasses remuneration, career advancement prospects and elements of respect towards the function of inspectors.²⁸³ In the conditions of inadequate remuneration first of all the risk of finding and sustaining qualified staff is created, in addition the risk of corruption and unfaithful and biased attitude of inspectors is increased.²⁸⁴

1.4.6. Existing Requirements and Obligations towards Inspectors

International standards determine that any kind of interest of inspectors must be excluded towards the enterprises the inspection of which is in their competence, together with the disclosure of any commercial or secret information.

It is important that the notion of interest and its content shall not be understood as an evidently demonstrated interest from the side of the inspector, which has a clear and objective demonstration, but also any other circumstances must be implied towards which there is a reasonable expectation on the creation of a conflict of interest for the inspector.²⁸⁵ Relevant conventions determine the confidential information that became known to inspectors during their activities as the professional secret of inspectors. The conventions refer to the protection of manufactural or commercial secret after the inspector in question leaves the office.²⁸⁶

It is important that the inspectors treat the source of the complaint with full confidentiality and that they do not reveal any information to the employer that will give the latter the opportunity to make a connection of the fact of the inspection to a specific person.²⁸⁷ There are cases when derogation is permitted from the confidentiality requirement, when there is a need to submit an individual case to the investigation body. In this case, the interest of protection of an individual victim outweighs the confidentiality requirement.²⁸⁸

282 International Labour Conference; 95th Session, 2006; para. 204.

283 Ibid, para. 208.

284 Ibid, para. 209. para. 210. para. 214.

285 Ibid para. 226-227.

286 Ibid para. 229.

287 Ibid para. 223.

288 Ibid para. 237.

It is also important for the national legislation to define the terms such as “interest”, “secret”, and “confidentiality”. At the same time, if needed, the exceptional circumstances must be identified, in case of which labour inspectors are exempted from the envisaged obligations and responsibilities.²⁸⁹

1.4.7. Training of Labour Inspectors

Diversity of issues under the mandate of the Labour Inspection requires the inspectors to have relevant knowledge and familiarity with the content of legal, economic and scientific spheres and industries, in which they have to operate.

As the ILO's observation of the activities of labour inspections in various countries showed, only prior basic training for inspectors and even the additional training for the probationary period does not ensure the effective fulfillment of their complex functions and acquisition of necessary skills. Modern methods of performance in various spheres of technology and economics are accompanied with the impact on safety and health issues at places of employment, as well as on the productivity of the employees, which leads to the need of continuous training of the inspectors. The mentioned need is reiterated by the ILO Convention N129.²⁹⁰

1.4.8. Experience of Countries Examined in the Study

It is important that in the models of all the four countries examined in the study, the labour inspectors are public officials.²⁹¹ In Greece, professional recruitment process is conducted through the balanced approach, according to which the Inspection is staffed by the specialist from social sciences, as well as from technical and natural sciences fields. Recruited inspectors undergo a special training, upon the completion of which they are obliged to pass the relevant exam.²⁹² In Kazakhstan the permanent employment and training of labour inspectors is provided. Qualification of the inspectors that have less than 20 years of experience is examined regularly. Inspectors need to have education in medical, engineering, legal or technological spheres.²⁹³ In the *United*

289 Ibid para. 223.

290 Ibid. para. 187.

291 A mapping report on Labour Inspection Services in 15 European countries; 2012; An overview of the Labour Inspectorate in Greece; Available at: http://www.ilo.org/labadmin/info/WCMS_156049/lang--en/index.htm. Last accessed 24.10.2016. Human Resources and career development; Available at: http://www.ilo.org/labadmin/info/WCMS_112602/lang--en/index.htm. Last accessed: 24.10.2016. Permanency of inspectors; A mapping report on Labour Inspection Services in 15 European countries; 2012; An overview of the Labour Inspectorate in Poland. p. 60-61.

292 Selection Process and Background required. Available at: http://www.ilo.org/labadmin/info/WCMS_115425/lang--en/index.htm. Last accessed: 24.10.2016.

293 Permanency of inspectors. Available at: http://www.ilo.org/labadmin/info/WCMS_156049/lang--en/index.htm. Last accessed: 24.10.2016.

Kingdom, inspectors are recruited with the guarantee of permanent employment and on the basis of the selection contest and they undergo qualified trainings. For the recruitment of the staff, the Great Britain actively cooperates with the Academy.²⁹⁴ In *Poland*, the labour inspectors are recruited based on a fixed term contract, which does not exceed 3 years. Persons interested in serving as inspectors are obliged to take part in the preparatory trainings and pass the State exam. Labour inspectors regularly undergo qualification checks, once in every 3 years as a minimum, which is conducted by the supervisor of the inspector. At the same time, the legislation comprehensively identifies the grounds for the dismissal of the inspectors.²⁹⁵

Major Findings

The review of the institutional framework of Labour Inspection in light of the international standards identified the following basic findings:

- Under the ILO standards, the Labour Inspection must be placed in the central governance system for ensuring its effectiveness and institutional strength. In turn, the Labour Inspection can operate as a unified body, or it can be divided based on functional or territorial characteristics, and constitute a type of different coordinated bodies of inspection;
- In the process of the Labour Inspection activities and in planning of labour policies, it is necessary to have the mechanisms of institutional involvement of social partners - employers and employees and a close cooperation with them;
- For the proper administration of labour policies it is important to have the institutionalized system of exchange of information/databases, referral and joint cooperation between the Labour Inspection and various bodies;
- Standards related to the Labour Inspection also include the issue of ensuring the transparency and accountability of the Labour Inspection;
- An important guarantee of the independence and effectiveness of the Labour Inspection is the sufficiency of the financial resources and of the material-technical basis necessary for its operation;
- Effective and corruption-free operation of the Labour Inspection is also ensured by the

294 Available at: http://www.ilo.org/labadmin/info/WCMS_112675/lang--en/index.htm. Last accessed: 24.10.2016.

295 A mapping report on Labour Inspection Services in 15 European countries; 2012; An overview of the Labour Inspectorate in Poland.

sufficient number of labour inspectors, who, in turn, are equipped with the broad guarantees of independence, which include: open-ended employment, high standard of dismissal from work, adequate remuneration, prospects of career advancement, internal rotation system and systematic training and professional development;

- The international standard specifies the qualification requirements of labour inspectors, which are related to the level of education, the high level of technical knowledge, experience and relevant skills;
- The international standard also envisages the obligation of labour inspectors in relation to confidentiality of the source of the application and non-disclosure of commercial and professional secrets.

2. Institutional Framework of the Labour Conditions Inspection Department according to the National Law

2.1. The role of the Labour Conditions Inspection Department in the labour administrative system

In accordance with the Labour, Health and Social Affairs Minister's order²⁹⁶ the Labour Conditions Inspection Department was established as a structural subdivision²⁹⁷ of the Ministry. The labour conditions supervision convention is centralized, implemented by the Department and is not distributed on the local governments – municipalities and self-governing cities.

As long as the Inspection Department is part of Ministry's Office²⁹⁸, its performance is a part of Ministry's vertical profile, therefore is under the supervision and direct control of the Minister. The Department is managed by the head of the Department appointed by the Minister of Labour, Health and Social Affairs. On behalf of the Department, the legal acts are signed by the head of the Department²⁹⁹, who directly reports to the Minister, his/hers first deputy or deputy.³⁰⁰ The head of the Inspection Department was appointed in two years after establishment of the Depart-

296 Decree of the Government of Georgia N249 of 31st December 2005 "On approval of the statute of the Labour, Health and Social Affairs Ministry", article 2d.d., available: <https://matsne.gov.ge/ka/document/view/12460>, last access: 31.10.2016

297 Same. Article 4.3.l.

298 Decree of the Government of Georgia N38 of 5 February 2005 "on approval of the state program on labour monitoring", Article 1.2. available: <https://matsne.gov.ge/ka/document/view/2719707>, last access: 24.10.2016.

299 Order of the Minister of Labour, Health and Social Affairs N01-10/n of 21 April 2015 "on approval of the statute of the structural subdivision of the Ministry of Labour, Health and Social Affairs"; article 3.4.e. available: <https://matsne.gov.ge/ka/document/view/2817403>; last access: 24.10.2016.

300 Decree of the Government of Georgia N249 of 31st December 2005 "On approval of the statute of the Labour, Health and Social Affairs Ministry", available: <https://matsne.gov.ge/ka/document/view/12460>, last access: 31.10.2016.

ment, which caused numerous critics from different organizations and was subject of respective recommendations by ILO.³⁰¹

According to the requirements of the ILO, the Inspection Department is under central authority governing system³⁰², but to increase the effectiveness of the institutional independence and power it is important to assess labour conditions supervision mechanism in a form of a Department from the perspective of the institutional framework.

While debating on the quality of independence and performance effectiveness, it is essential to estimate based on the law the legal nature of the ministry, Department and legal entities of public law. The Ministry is an entity of the executive government, which ensures state governance in the defined area. In the national system, the Ministries operate based on Departments (subdivisions). Apart from that, state controlled legal entities of public law, which operate under different legal regulations than Departments and other structural units, are assumed to be part of the ministries' system.

The Department in the current legal capacity is not independent law subject, as it does not have the authority which implies the right of the subject on its own behalf to obtain rights and obligations, enter into contracts, to present itself in the court as a plaintiff or defendant.³⁰³ The Minister of Labour, Health and Social Affairs administratively controls legal acts issued by the head of the Department.³⁰⁴

The Inspection Department does not have property. It acts in accordance with the law of Georgia on "on the State Budget", based on the budget of the Ministry of Labour, Health and Social Affairs together with other Departments of given entity.³⁰⁵ Therefore, under the current legal system the Department does not have high guarantees of financial independence, as in this regard it depends on the Ministry. Opposite to that are the legal entities of public law, which have private property and manage it independently to perform defined goals and functions.³⁰⁶

Moreover, the current legal framework of the Department does not envision legal basis for existence of the regional, territorial units. Correspondingly, there is lack of possibility to divide its authority through the regional representations' for prompt and effective implementation of the authority.

301 International Labour Organization, Progress Assessment Of The Labour Inspection System in The Republic Of Georgia, 2016, Conclusions and Recommendations. Pg.19.

302 Ibid. Central Authority. Pg.12.

303 Law of Georgia on Legal Entity of Public Law, article 3.1, available: <https://matsne.gov.ge/ka/document/view/19204>, last access 03.11.2016.

304 Decree of Government of Georgia N38 of 5th February 2015 "on approval of state program on the labour conditions monitoring", article 1.3. Available: <https://matsne.gov.ge/ka/document/view/2719707>, last access: 24.10.2016.

305 Ministry of Labour, Health and Social Affairs of Georgia, Letter N02/66794 from 4 September 2015.

306 Law of Georgia on Legal Entity of Public Law, article 7, available: <https://matsne.gov.ge/ka/document/view/19204>, last access: 03.11.2016.

The status and legal form of the Inspection Department also differs from other supervisory bodies of Georgia, including Environmental National Agency, Technical and Construction Supervision Agency and National Food Agency, which for ensuring higher guarantee of independence act as legal entities of public law. In addition, they have territorial units to ensure flexibility of performance and effectiveness.

Therefore, present Labour Conditions Inspection Department functions under the central governing system, which is in compliance with the ILO standards, but in different legal form and in the establishment terms by law it is possible to provide more independence, flexibility, effectiveness and institutional sustainability.

2.1.1. Role of the social partners

The Trilateral Commission of the Social Partnership is an advisory body under the supervision of the government, which is compromised from employers' and employees' units from different sectors around the country.³⁰⁷

Among the competences of the Commission, which coordinates and defines labour policy, are included issue related to the labour inspection.³⁰⁸ The provision of the Department, in case of necessity, for the purpose of the discussions on the matters related to the inspection also envisages interference and involvement of the trilateral commission.³⁰⁹

Despite that Social Partnership Trilateral Commission is the only format for coordinating the employers and employees association with the Labour Conditions Inspection Department performance, the work of the commission in general, and in this part, is evaluated as explicitly ineffective by the social partners.³¹⁰ In addition, there is no other institutionalized format for coordination of the employers and employees association with the Labour Conditions Inspection Department, except for trilateral commission, which is a significant challenge for the existing Department model.

307 Decree of the Government of Georgia N258 from 7 October 2013 "on approval of Trilateral Commission of the Social Partnership"; available: <https://matsne.gov.ge/ka/document/view/2037256>, last access: 15.11.2016.

308 Ibid.

309 Order of the Minister of Labour, Health and Social Affairs N01-10/n from 21 april 2015 "on approval of statute of the structural units of the Ministry of Labour, Health and Social Affairs of Georgia." article 2.3. available: <https://matsne.gov.ge/ka/document/view/2817403>; last access: 24.10.2016.

310 Interview of the Head of the Labour Union of the Metallurgical and Mining Industry Workers Tamaz Dolaberidze and Deputy Chairman of the Labour Unions Association of Georgia Gocha Alexandria. 7 December December 2015; Interview with the Employer's Association Chairman, Mikheil Kordzakhiastan; 17 December 2015

2.1.2. Accountability

The official supervision on the activities of the Department is conducted by the Minister³¹¹, due to fact that the Inspection Department is fully under subordination of the Ministry. Based on above-mentioned subordination, the universal system of accountability is applied, according to which the Department submits periodic report (quarter or annual) on its activities to the high level officials. The head of the Department also ensures preparation of the other reports in compliance with the rules defined by the Minister and their submission to the management of the Ministry.³¹²

In practice, the Department prepares periodic reports on activities of the division, but it is essential to define by the law the content of the report and the information, which must be included in the periodic and annual reports.

2.2. The necessary resources for the Department activities

The significant components for the existence of the firm institutional guarantees are administrative, financial and human resources mobilization. It ensures the independent, effective and quality work of the Department, which on the other hand is precondition for the public trust towards inspection mechanism.

2.2.1. Financial and administrative resources

The Inspection Department operates based on the budget defined by the state program.³¹³ The law of Georgia “on approval of the State budget” has envisaged certain funds³¹⁴, which totalled 550 000 GEL in 2016 for the implementation of the project.³¹⁵

311 Decree of the Government of Georgia N249 from 31 December 2005 “on approval of the statute of the Ministry of Labour, Health and Social Affairs”, article 1.3.

312 Order of the Minister of Labour, Health and Social Affairs N01-10/n from 21 April 2015 “on approval of statute of the structural units of the Ministry of Labour, Health and Social Affairs of Georgia. Article 3.1, available <https://matsne.gov.ge/ka/document/view/2817403>; last access: 24.10.2016.

313 Letter N01/66794 of Ministry of Labour, Health and Social Affairs from 4 September 2015.

314 The Law of Georgia on State Budget, “Labour and employment system reform” program (program code:35 05), available <https://matsne.gov.ge/ka/document/view/3165494>, last access: 02.11. 2016.

315 The Decree of the Government of Georgia N19 of 18 January 2016 “On Approval of the State Program on the Labour Conditions Inspection”, article 4.1 , available: <https://matsne.gov.ge/ka/document/view/3165494> , last access: 02.11.2016.

In 2015, the governmental program budget was changed several times – in the beginning it was 1 000 000 GEL³¹⁶. Later, on 15th September 2015 the budget was defined at 250 000 GEL³¹⁷ and the final changes applied in December and resulted in 192 000 GEL.³¹⁸

As for today, the Inspection Department does not have the territorial units and corresponding infrastructural resources, which are indicated as problem issues in the ILO evaluation document.³¹⁹ In the same document, ILO issues recommendation for the Government to gradually provide affordable and properly equipped regional offices. Existence of the regional offices is an important condition for the timely and effective reaction of the inspection, which is specifically relevant in our reality, including the labour condition at the operating enterprises in the industrial zones

At the same time, the ILO recommends, that performance of the labour inspections must be implemented through extensive and appropriate use of the information and communication technologies. The mentioned challenges require allocation of the financial resources for the duly and effective operation of the Department.³²⁰

2.2.2. Human Resources

For the duly performance of the Department, it has to be composed of a sufficient number of staff with expertise in various fields, who will be able to maintain duly and quality work of the mechanism due to their respective education and high professional experience.

According to the international standards, the efficient work of the inspectorate mechanism mainly depends on the sufficient number of inspectors, which must be correlative to the number of enterprises/employees in the country. Currently, the Inspection Department consists of 22 inspectors³²¹ and having in mind the amount of functioning enterprises, the number of inspectors can be estimated as satisfactory.³²² Based on ILO evaluation, for the effective and large-scale work of the Inspection Department it is important to estimate the sufficient number of inspectors and to hire them.³²³

316 Decree of Government of Georgia N38 of 5th February 2015 “on approval of state program on the labour conditions monitoring“, article 4.1. available <https://matsne.gov.ge/ka/document/view/2719707?publication=0> , last access:19.11.2016.

317 Ibid.

318 Ibid.

319 International Labour Organization, Progress Assessment Of The Labour Inspection System in The Republic Of Georgia, 2016, Resources. pg.14.

320 Ibid.Offices and Equipment.Pg.19.

321 Letter N01/86050 of Ministry of Labour, Health and Social Affairs from 22 November 2016.

322 International Labour Organization, Progress Assessment Of The Labour Inspection System in The Republic Of Georgia, 2016, Activities of Labour Inspection.Pg.19.

323 Same. Results and Impact of Labour Inspection supervision. Pg. 21.

2.3. The guarantees of labour inspection's independence

The international standards and experience of variety of countries point out that for establishment of the independent, qualified and secure from corruption risk inspectorate mechanism it is crucial to create occupational and social protection guarantees for the individual labour inspectors.

International standards specify that the labour inspection has to be composed from qualified inspectors with status of civil servants, who will guarantee preservation of the position, regardless of the political forces change. The key precondition for ensuring independence of the inspectors is setting up the corresponding official salary and social security benefits.

At present, the Inspection Department is not composed of inspectors with civil servant status. The inspectors act in the framework of the state program³²⁴ and are supernumerary servants at the ministry, with 3 month labour contract, which is regulatory area of the labour codex.³²⁵ According to the labour contracts, the inspectors' official salary is 1000 GEL.³²⁶

Therefore, the labour inspectors are appointed or hired based on the labour contracts for accomplishment of temporary tasks.³²⁷ The currently effective legislation itself defines, that supernumerary employees must be hired for the period of the task completion.³²⁸ ILO in the evaluation document indicates importance of the fact that labour inspectors must be civil servants employed in the conditions, which will ensure their sustainable performance and independence from the governmental changes and unnecessary influence. Also, according to ILO evaluation, the transfer from temporary contracts to the open-end labour contracts must be done based on individual assessment.³²⁹

On the given position the inspectors are selected based on the criteria's defined by the Minister of Labour, Health and Social Affairs³³⁰, which does not require specific professional knowledge from the employed individuals.³³¹

324 Letter N01/86050 of Ministry of Labour, Health and Social Affairs from 22 November 2016. Annex 1: Labour Contract, article 1.1.

325 Letter N01/86050 of Ministry of Labour, Health and Social Affairs from 22 November 2016.

326 Order of Minister of Labour, Health and Social Affairs of Georgia N01-164/o dated 18 May 2015 "Monitoring performing individuals' (monitors) qualification requirements and selections rules", article 9.2. Letter N01/86050 of Ministry of Labour, Health and Social Affairs from 22 November 2016.

327 Law of Georgia "on "Public Service", article 8.

328 Ibid. Article 23.2.8.

329 International Labour Organization, Progress Assessment Of The Labour Inspection System in The Republic Of Georgia, Institutional and Organizational Arrangements. Pg.19.

330 Letter N01/86050 of Ministry of Labour, Health and Social Affairs from 22 November 2016.

331 Order of Minister of Labour, Health and Social Affairs of Georgia N01-164/o dated 18 May 2015 "Monitoring performing individuals' (monitors) qualification requirements and selections rules", article 3 Letter N01/86050 of Ministry of Labour, Health and Social Affairs from 22 November 2016.

ILO highlights necessity of the labour inspection job description elaboration in compliance with international standards, selection of the corresponding labour inspectors and their constant trainings.³³² Also, ILO considers problematic that the statute does not provision involvement of appropriate specialists and experts in the labour inspector's activity.³³³ Due to the specificity of the technical inspection of the mines, additionally it recommends the government to select the functional specialist and to integrate him/her in the system.³³⁴

Therefore, within the existing circumstance and current regulations, the inspectors of the labour conditions Inspection Department are not assumed to be the staff with independence guarantees, as they do not have respective occupational and social protection guarantees provided by the legal status and labour contract. In terms of settlement of the current legislation, the issue of qualification requirements' duly regulation and involvement of the appropriate expert or specialist in the labour inspection activity in light of respective legal basis and practice existence can be named problematic.

2.4. Other bodies' activities relation to the work of the Inspection Department

2.4.1. *The activities of the state supervision providing bodies*

The current national legislative framework foresees several types of inspection and investigation mechanisms, which have direct connection to the workplaces and workers' rights condition. In this respect is important to mention LEPL Technical and Construction Supervisory Agency under the Ministry of Economy and Sustainable Development, Makhviladze Scientific-Research Institute of Labour Medicine and Ecology and local government bodies, whose activities are straight directed on the workplaces and can possible have opportunity to identify labour conditions violation facts and results.

332 International Labour Organization, Progress Assessment Of The Labour Inspection System in The Republic Of Georgia, Institutional and Organizational Arrangements. Pg.19.

333 Ibid. Building up a Labour Inspection System in line with ILO Convention No. 81. Pg.13-14.

334 Ibid. Functional specialisation. Pg. 20.

Technical and Construction Supervision Agency

The Technical and Construction Supervision Agency is a structural unity under the Ministry³³⁵, whose main component of activity is supervision and controls of the facilities with increased technical threats.³³⁶ Particularly, the agency's task is technical threat posed labour safety protection supervision on the facilities under its mandate, which puts under inspection following issues: employer's obligations to ensure workplace safety, determination of the personnel in charge, provision of the first medical aid, notification of the workers, including instruction publication, risk assessment management and other.³³⁷ The agency also supervises the increased technical threat posed by the equipment used in the facility operation.³³⁸

Scientific-Research Institute of Labour Medicine and Ecology

Makhviladze Scientific-Research Institute of Labour Medicine and Ecology is a medical profiled organization, which focuses on study of the occupational diseases on the workplace and their prevention. For this purpose, the organization conducts variety of measures, including: scientific researches; definition of the labour conditions according to their harm, danger class and quality; early detection and estimation of the occupational diseases; occupational diseases database creation, processing and other.³³⁹

Local Government Bodies

The job description of the local government bodies includes duly supervision of the construction process, which means control of the compliance with the construction permit conditions. The above-mentioned does not aim monitoring of a construction as a workplace, but includes control of the construction process safety compliance with the established standards and therefore supervision of the safety risks for the employees in the working process.

335 Order of Minister of Economy and Sustainable Development N1-1/1527 23 July 2012 "on approval of the statute of the LEPL Technical and Construction Supervision Agency".

336 Ibid.

337 Law of Georgia "on product safety and free movement", article 24.1.

338 Decree of Government of Georgia N249 dated 31st December 2005 "on approval of the statute of the Ministry of Labour, Health and Social Affairs of Georgia", article 2.2.d, available: <https://matsne.gov.ge/ka/document/view/12460>, last access: 31.10.2016.

339 Statute of the N. Makhviladze Scientific-Research Institute Labour Medicine and Ecology, article 5.

Overlap and coordination of the supervisory bodies' authorities

The above-mentioned entities' supervisory area and mandate analysis clearly demonstrates that respective occupational authorities and functions of the Inspection Department, Technical and Construction Supervisory Agency and local government bodies in the part of labour safety and health issues supervisory obligations are overlapping, which may create body' authorities duplication, as well as problems with identification of authorised entity for implementing concrete type state supervision. The overlap of supervisory bodies' functions, and in some cases controversial regulation issues, are pointed out by ILO, who sees the necessity for the determination of the mandate limits for the Inspection Department and other supervisory bodies.³⁴⁰

Hence, the issue of power differentiation between the Inspection Department and other supervisory bodies requires proper legal regulation, which will insure the risk of authorities overlap and defines the work area, mandate and responsibility for each of them.

On the other hand, considering existing supervisory bodies' authorities and experience, the cooperation format of the above-mentioned authorities is very important in the field of labour safety and health protection issues effective supervision. Their scope of work defining documents (statute, charter) does not determine special regulations, rules and procedures for cooperation. The study shows, that the supervisory bodies in practice work in isolation and they don't have close cooperation experience with the Inspection Department.³⁴¹ In this regard, ILO considers particularly valuable to use the resources of the Scientific-Research Institute on Labour Medicine and Ecology, who with respective financial support and strengthening can play significant role in the implementation of the labour safety standards prevention policy.³⁴² Herein, the ILO considers problematic the experience of respective concrete qualified experts and institutions involvement in the Department activities, which must play significant role in process of qualified supervision.³⁴³

Therefore, the functioning supervisory or respective competence holding bodies are not closely connected to each other. Mainly, they react independently and there is no mechanism for coordinated cooperation or practice of systematic action.³⁴⁴ For the effective supervisory activities, it is curtail to have coordination formats of various inspection mechanism and complex use experience.

340 International Labour Organization, Progress Assessment Of The Labour Inspection System in The Republic Of Georgia, 2016, Conclusions and Recommendations. Pg. 17-18.

341 Letter of LEPL Technical and Construction Supervision Agency N09/278 dated 25 February 2016. Interview with representative of the Scientific-Research Institute Labour Medicine and Ecology, October 2016.

342 International Labour Organization, Progress Assessment Of The Labour Inspection System in The Republic Of Georgia, 2016, Occupational Safety and Health Institutions. Pg.9.

343 Ibid. Association of qualified experts or institutions. Pg.20.

344 Order of Minister Economy and Sustainable Development of Georgia N1-1/1527 23 July 2012 "on approval of the statute of the LEPL Technical and Construction Supervision Agency". Statute of the N. Makhviladze Scientific-Research Institute Labour Medicine and Ecology, Law of Georgia "on product safety and free movement".

2.4.2. Referral system between the Inspection Department and other entities.

For the duly implementation of the labour policy it is important that the information exchange and redirection, referral system is effectively operating among the relevant entities, which would promote and strengthen coordinated and versatile work practice.

In regard of direct contact with the workplaces can be studied the Ministry of Internal Affairs' investigation bodies, Office of Public Defender of Georgia and supervisory bodies functioning in diverse fields, which have access or information on the separate accidents on the workplaces as well as on problem generalization and analyse.

During implementation of the authority by the above-mentioned authorities it is important to have referral format of cooperation between them and Inspection Department, which ensures process flexibility and effectiveness of the labour rights protection supervision.

In 2016, the Memorandum of Understanding was signed between the Labour Conditions Inspection Department and Ministry of Internal Affairs, which is a first formalized form of referral, but the study demonstrates that there is no experience of such cooperation between the Department and other bodies.³⁴⁵ Currently, in the existing legislation there is not provisioned such special formats of cooperation. Particularly, during performance of obligations by the above-mentioned bodies, in case of Inspection Department work related issue detection or reasonable assumption, there is no direct obligation to inform the Inspection Department. The existing legislation still provides opportunities for the respective entities involvement in the process. The General Administrative Code envisages administrative bodies' obligation to submit statement to the respective authorized administrative body, but given general entry cannot ensure bilateral and multilateral coordination and communication between the relevant entities.

Based on the statement of the "Human Rights Education and Monitoring Centre (EMC)" the Food National Agency investigated one of the enterprises on issue of 5 workers possible food intoxication on the workplace and identified significant violations.³⁴⁶ Despite the existing threat to the workers' health, the Agency did not contact the Labour Conditions Inspection Department and confined to only personal authority performance.³⁴⁷ In of the cases, similar attitude was demonstrated by the Ministry of Environmental and Natural Resources Protection State Subordinate Entities' Environmental Supervision Department. Particularly, during administrative proceeding performed by them, was identified high possibility of the workers' life and health

345 Ministry of Agriculture of Georgia' LEPL Food National Agency, letter N09/1459 dated 21 March 2016.

346 Ministry of Agriculture of Georgia' LEPL Food National Agency, letter N09/2945 dated 28 December 2015.

347 Ministry of Agriculture of Georgia' LEPL Food National Agency, letter N09/7923 dated 17 October 2016.

threat containing environment. EMC studied whether the Environmental Supervision Department contacted the Labour Conditions Inspection Department about the possible risks.³⁴⁸ But it was revealed, that the Environmental Supervision Department does not have a flexible referral mechanism, which could have provided the supervisory system possibility for complex reaction on the problematic issues.³⁴⁹

Thus, according to the current situation, there is no information exchange and redirect, referral adequate system between the Labour Conditions Inspection Department and other relevant entities, which could have provided close coordination among them and effective functioning of the supervision system responsible for the human rights protection.

Major Findings

The study of the legislative framework of the Labour Conditions Inspection Department revealed the following:

- The Inspection Department operates within the frameworks of the central government, in compliance with ILO standards; however, in the conditions of different legislative form and the way it was founded by the law, it is possible for this body to exercise more independence, flexibility and institutional sustainability;
- Apart from the three-way commission, there is no other institutional format for the coordination between the unions of the employed and employers and the mechanism for the labour inspection, which is a significant challenge for the existing Department. At the same time, the work of the three-way commission is described as ineffective by its social partners;
- Based on the current legal format of the Department, a universal reporting system is in place, however, it is important to define, in terms of legislation, the content of the reports and the information that should be included in the periodic and annual reports of the mechanism;
- The Inspection Department does not have any territorial units or relevant infrastructural resources. Also, the inspectors are not well equipped with applicable information and communication technologies. The mentioned challenges create the need for relevant financial allocation, which is an important condition for the successful work of the Department;

348 “Human Rights Education and Monitoring Centre”, Statement g01/342/2015 dated 9 November 2015.

349 Environmental and Natural Resources Protection Ministries’ Environmental Supervision Department, Letter N5/15/00072406 dated 17 November 2015.

- The Department now has 22 inspectors, which, considering the number of enterprises throughout the country, cannot be considered enough;
- The labour inspectors, considering their legal status and labour relations, are not equipped with relevant independence guarantees, since there are no relevant labour and social protection mechanisms in place;
- In the given legal regulation conditions, it is problematic to relevantly regulate the qualification requirements for the inspectors and the absence of practice of involving the experts or specialists with relevant qualifications is also an issue;
- The authority and functions of the Inspection Department, the Department of technical and construction supervision and the relevant agencies of the local municipalities overlap, in terms of supervising occupational health and safety, which duplicates the authority and also makes it difficult to identify the agency responsible for the State supervision;
- Existing supervision or other agencies with similar competencies are not closely connected with each other. In most cases, they act separately and there is no mechanism for coordinated actions and complex practices;
- There is no relevant referral system for exchanging and redirecting information between the Inspection Department and other relevant organizations, which would ensure effective, close coordination and effective work of the human rights' protection supervision system.

Conclusion

Creating the Department of Labour Conditions Inspection after the Labour Inspection was abolished about ten years ago, was an important step, as it represents an attempt to return the issue of supervision of labour rights' protection in the realm of governance. However, the study showed that the existing mechanism of the inspection doesn't answer to the existing challenges in the country, in terms of labour rights and does not comply with international ILO standards and the experiences of other countries.

The study shows that, despite the fact that the supervision of the labour rights is defined as the main function of the Department, its activities within the supervision mandate is mainly suspended. Currently, the activities of the Department are, in fact, limited to voluntary monitoring within the State Program, which turns the Department into a recommendatory agency responsible for raising awareness among employees and employers and issuing recommendations.

The legal nature of the Department, its mandate and authority does not comply with the main components, as defined by the international labour inspection standards and also contradicts the experiences of labour inspection mechanisms (studied during this research), which operate in completely different political, economic and social context.

The existing inspection mechanism, which excludes the access to the workplace without prior consent, as well as, the observance of the rights and the obligatory execution of the results of the inspection, does not ensure the prevention of violation of labour rights or relevant response, which makes the idea of State supervision meaningless. The experience of the countries, studied within the frameworks of this research, clearly indicate that the decisions made by the inspection mechanisms are not of a recommendatory nature and their execution is ensured by relevant sanctions.

Apart from the limited mandate and authority of the Inspection Department, the institutional form of the mechanism is also limited, which weakens independence, effectiveness and sustainability guarantees. At the same time, the insufficiency of mechanisms for the inclusion of its social partners in the work of the Department is also a significant challenge, which on the one side excludes inclusion of parties and on the other hand, creates question marks with regard to transparency and trust towards the mechanism.

The study also revealed the problem of accessibility to the recommendations made by the Department and the relevant information, which means that the work of the Department is automatically closed. This contradicts national legal framework, also creates significant obstacles in terms

obtaining information about work conditions and the possible risk for those employees, who are directly connected to the results of inspection.

Due to the closed nature of work of the Inspection Department, during the study, it was complicated to observe its work for the purposes of evaluating its efficiency; however, the study revealed a number of obstacles in the work of the Department, such as the absence of territorial units, as well as, of human, financial and administrative resources and the lack/insufficiency of those resources. The study also revealed, as one of the main problems, the necessity of creating independence guarantees for labour inspectors, which is fundamental for the objectivity and impartiality of the inspection mechanism.

The study also shows that there is no relevant experience of collaboration between the Inspection Department and other agencies, which is demonstrated by the absence of coordination system, as well as, the absence of institutional mechanisms for referral and exchange of information.

As a response to the existing needs in the sphere, for the functioning of the labour administrating system, it is important for the State to immediately implement multilateral reform of the inspection mechanism, which will ensure its independent, effective and human rights based work.

Recommendations

Recommendations regarding the objectives of the inspection mechanism, its spheres of activities and authority:

- To define implementation of the State supervision over the labour rights protection, as the main function of the inspection mechanism and to immediately enforce its mandate;
- To broaden the supervision mandate of the labour inspection mechanism and include all aspects of labour relations in accordance with ILO standards. Namely, expand its authority to include the full aspect of realizing the labour right, including inspecting occupational safety and health, as well as, all other aspects of labour rights;
- To equip the inspection mechanism, in compliance with international standards, with unconstrained/free access to the sites of inspection, which means that inspectors will have right to inspect the site at any time, for 24 hours;
- To equip the inspection mechanism with pertinent, efficient mechanisms for responding to violations and possible prevention, in compliance with ILO standards. Also, the law should define the authority of labour inspectors to make decisions for using relevant sanctions;
- For the legislation to define and write the details the sanctioning system, which would be responsible for implementing both preventative, as well as, response measures and will include the sanction forms/measures and will define the criterion for their usage and will ensure their enforceability;
- For the sanctioning system, taking into consideration international standards and the experiences of other countries, include the possibility of such measures, including warnings, remarks with reasonable timing, fines, cancel/suspension of work of an enterprise or specific work/segment/production process;
- In case of discovering immediate risk to the health and safety of the employees, the labour inspection mechanism should have fast and effective levers, within its sanctioning system framework;
- The issue of enforceability of sanctioning mechanisms, should be immediately included in the legislation, with regards to occupational health and safety, as well as, forced labour, exploitation and discrimination. Also, with regards to other components of the labour right, the sanctioning mechanisms should become compulsory before the end 2017;

- To immediately define the meaning of the labour exploitation concept and fully expand the labour inspection mechanism mandate over these cases as well;
- To clearly separate the mandates, in terms of labour relations and revealing and studying discrimination cases, of the inspection mechanism and the Public Defender of Georgia and establish regulations for studying discrimination, the relevant procedure and the enforceability;
- To immediately cancel, within the State program, the blanket, closed regulations for the inspection reports, conclusions and recommendations and the publicity of every decision made as a result of inspection or any other information, put be in compliance with the constitution and freedom of information as defined by GAC;
- For the law to clearly define the subordinate bodies of the Department's mandate; initiate the discussion regarding the self-employed persons and persons employed in non-formal economic sector;
- For the law to clearly define the authority of labour inspectors and the procedure of including experts or specialists of the sphere, if needed; Also to define the authority of labour inspectors in terms of removing and inspecting material and samples of substances from the work space.

Recommendations regarding reform of the institutional framework and its effective functioning:

- Review the existing model of the labour Inspection Department, which will include the increase of its institutional capacities for independence, effectiveness and sustainability;
- Consider the possibilities of inclusion of social partners in the activities of the inspection mechanism and for this purpose, create the institutionalized format for the participation of parties, which will ensure for the work of the agency to be based on transparency, absence of corruption and trust;
- For the State to ensure the effective work of the Trilateral Commission of the Social Partnership, which, among other issues, will ensure consistent and continuous work on the issues of labour inspection;
- To clearly define, in the legislation, the accountability forms of the inspection mechanism and the content;

-
- For the State to form the territorial units of the labour inspection mechanism stage by stage, which will be equipped with relevant financial, infrastructural and human resources;
 - Taking into consideration the existing experience and broadening of inspection mandate, study the need for human, financial, informational and administrative resources necessary for effective and relevant inspection and ensure provision of such resources;
 - Equip labour inspectors with independence and relevant legal protection guarantees, which includes regulating relevant occupational (e.g. defining the status of a public servant) and social protection mechanisms by law;
 - For the qualification requirements for the labour inspectors to include relevant education and/or experience requirements in the relevant sphere; ensure consistent training process for the labour inspectors;
 - To clearly define and separate in the law the authority and functions of Inspection Department, the Department of technical and construction supervision and the relevant agencies of the local municipalities with regards to the issues of occupational health and safety;
 - Establish an effective mechanism for coordinated action of a supervision or other institutions with relevant competencies and establish complex work practices while performing inspection;
 - Create effective system for exchange of information, redirection and referral system between the inspection mechanism and other relevant agencies.

Also, for the purposes of reforming the relevant legal base, practices and the way policy is formulated in the labour sphere:

- For the State to ratify applicable ILO conventions and relevant articles of the European Social Charter in the labour sphere;
- For the State to ensure the relevant legal framework for labour and health safety at the place of work, which would comply with the international standards, including the relevant directives of the European Union;
- Administer the reform process of the inspection mechanism with close involvement of its social partners and other relevant stakeholders;

- The objectives, authority and regulations of the inspection mechanism should be defined by the law, including ensuring the changes in the labour code;
- Implement large informational campaign for the purposes of informing the public about the mandate and activities of the labour inspection agency.

Annex 1.

The data regarding the participants of the qualitative research is organized in the annex. In the process of face-to-face comprehensive interviews, unstructured questionnaire limited the opportunity to create complete database related to working record, exact amount of remuneration or age of employees. Consequently, the above-mentioned data was not obtained in case of some interviewees. The data is complete regarding the categories of labour conditions of employees. In particular, abbreviation HHD stands for hard, hazardous and dangerous workplaces, the symbol “-“ means workplaces of other kind.

Chapter I: Mineral extraction and processing enterprises

Workplace #1.					
Interviewee	Work experience (in different positions) (years)	Age	Remuneration (net)	Labour condition	Gender
Interviewee 1	5-6	49	<450	-	female
Interviewee 2	10	58	<500	-	female
Interviewee 3	10	48	<550	-	female
Interviewee 4	<25	48	<400	-	female
Interviewee 5			<1000	HHD	male
Interviewee 6			<900	HHD	male
Interviewee 7	30	52	200	-	female
Interviewee 8	2	28	1000	HHD	male
Interviewee 9	11	55	220	-	female
Interviewee 10			<1000	HHD	male
Interviewee 11	41	64	<1400	-	male

Workplace #2					
Interviewee	Work experience (in different positions) (year)	Age	Remuneration (net)	Labour condition	Gender
Interviewee 12	10	64		HHD	male
Interviewee 13	7	40		HHD	male
Interviewee 14			<700	HHD	male
Interviewee 15	7	29	<1000	HHD	male
Interviewee 16			470	HHD	male
Interviewee 17				HHD	male
Interviewee 18	<1		350	HHD	male
Interviewee 19	<1		<400	HHD	male

Workplace #3					
Interviewee	Work experience (in different positions) (years)	Age	Remuneration (net)	Labour condition	Gender
Interviewee 20	22	47	<700	HHD	male
Interviewee 21		48	945	HHD	male
Interviewee 22	29	47	670	HHD	male
Interviewee 23	30	57	600	HHD	male
Interviewee 24	11	57		HHD	male
Interviewee 25	27	45		HHD	male
Interviewee 26	14	46	800	HHD	male
Interviewee 27	11	41	600	HHD	male
Interviewee 28		43	600	HHD	male
Interviewee 29	21	47		HHD	male
Interviewee 30	8	37		HHD	male

Chapter II: Workplaces in railway transport sector

Interviewee	Work experience (years)	Age	Remuneration (net)	Labour condition	Gender
Workplace #4					
Interviewee 31	27	47	1000<	HHD	male
Interviewee 32	8				male
Interviewee 33	14	36	1000	HHD	male
Interviewee 34					male
Workplace #5					
Interviewee 35	12	35	1200	HHD	male
Interviewee 36	42		1400	HHD	male
Interviewee 37		35	1200	HHD	male
Interviewee 38	8	28	1200	HHD	male

Chapter III: Workplaces in garment factories

Interviewee	Work experience (in different positions)	Age	Remuneration (net)	Labour condition	Gender
Employer #10					
Interviewee 39	3	<25		–	female
Interviewee 40	9	60	400-600	–	female
Employer #11					
Interviewee 41	<1	25	250-350	–	female
Employer #12					
Interviewee 42		<35		–	female
Employer #13					
Interviewee 43	6	51	<100	–	female
Interviewee 44	6	51	<100	–	female
Interviewee 45	6		<100	–	female

Chapter IV: supermarket chains of food and consumer products

Interviewee	Work experience (years)	Age	Remuneration (net)	Labour condition	Gender
Employer #6					
Interviewee 46	3	24	350<	–	female
Interviewee 47	<4	22	350<x<450	–	female
Employer #7					
Interviewee 48	2	23		–	female
Interviewee 49	<2	21	240	–	female
Employer #8					
Interviewee 50	5 months	20		–	female
Interviewee 51	2 months	19	270	–	female
Employer #9					
Interviewee 52	4 months	20	360	–	female