

ASSESSMENT OF THE TRANSPARENCY OF THE LABOUR INSPECTION SERVICE

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1. Introduction

Openness and transparency are fundamental prerequisites for functioning of a democratic state governed by the rule of law. The more transparent the state's approach, the greater the public trust in its institutions, fostering citizen participation in public life.

The public should be thoroughly informed about the functioning of administrative bodies and should have the ability to effectively monitor their performance. This objective can be achieved by ensuring the highest level of transparency and providing access to public information.

The Labour inspection system is an important mechanism for protecting labour rights. The purpose of the LEPL Labour Inspection Service (hereinafter also referred to as the "Service"), as determined by law, is to ensure the effective application of labour standards.¹ The efficient and transparent operation of the Service is crucial for achieving this aim. Transparency of the Service enables the public to exercise effective control over its activities. At the same time, the openness of information serves a preventive function and contributes to the cultivation of responsible behavior among employers.

The purpose of this study is to assess the transparency and accountability of the Labour Inspection Service, identify existing challenges, and develop relevant recommendations. To achieve this aim, the researchers assessed the practice of providing public information as well as the state of proactive publication of public information by the Labour Inspection Service. The study analyzes the information processed or not processed by the Labour Inspection Service, the user-oriented nature of published information, and the completeness of publicly available information.

Based on the identification of existing gaps and challenges, the study offers specific recommendations that should be taken into account to improve the transparency and openness of the Labour Inspection Service.

¹ Law of Georgia on Labour Inspection, Article 5, paragraph 1.

2. Key Findings

- In certain cases, the public information provided by the Labour Inspection Service is not comprehensive and does not fully respond to the requests of interested parties. For example, the Service did not provide the list of sites inspected in January-July 2023 and the respective protocols of administrative offenses, stating that the results of inspections conducted during the said period and the related materials were still undergoing processing.
- The interview conducted with an individual involved in the protection of labour rights revealed that the Labour Inspection Service does not timely provide examination materials concerning industrial accidents. The availability of this information is of great importance to the victims and/or their family members. Therefore, delays pose a challenge not only concerning the transparency of the Service but also in terms of human rights protection.
- In response to a public information request, the Labor Inspection Service provided a position directory for 2023, listing only the titles and the number of positions, without including information on the remuneration of official positions.
- The Labour Inspection Service fails to comply with the requirements set forth by Georgian legislation and in response to a public information request, does not provide information regarding the salaries and bonuses paid quarterly to officials (in total) and other employees (in total); information about business trip expenses (both inside and outside the country) of officials (in total) and other employees (in total); as well as the list of vehicles on the balance sheet of the Service and information on fuel expenses.
- Despite the legal requirement, the above-mentioned information is not published on the website of the Labour Inspection Service either.
- The Labour Inspection Service does not fully comply with the obligations set forth by the Decree N219 of the Government of Georgia of August 26, 2013, on "Requesting Electronically and Proactive Publication of Public Information." The obligation to proactively publish public information is breached both in terms of content and periodicity, violating legislation and presenting a significant challenge to transparency.

- The information regarding the budget, state procurement, and expenditures of the Labour Inspection Service is completely absent from the Service's website.
- The Labour Inspection Service's website is not fully user-oriented. The published information is scattered around the website and is not systematically arranged.
- The information published on the Labour Inspection Service's website does not contribute to the increased confidence in its activities. Specifically, the rules and procedures for reporting violations, as well as the guarantees of confidentiality and anonymity for the information provided by employees, are not clearly outlined.

3. Methodology

To assess the transparency and accountability of the LEPL Labour Inspection Service, the authors used the following methodology:

1. Analysis of International Standards

The authors of the study examined the following international instruments and standards:

- Universal Declaration of Human Rights;
- International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly on December 16, 1966, through its Resolution and came into force on January 3, 1976. The Covenant commits its Parties to protect economic, social and cultural rights. Georgia acceded to the Covenant in 1994;
- General comment No. 23 on the right to just and favourable conditions of work (Article 7 of the International Covenant on Economic, Social and Cultural Rights) published by the UN Committee on Economic, Social and Cultural Rights on April 7, 2016;
- The European Social Charter that guarantees fundamental social and economic rights. Georgia ratified the European Social Charter (revised) in 2005, as a result of which the Parliament of Georgia recognized a number of articles of the Charter as binding;
- The Labor Inspection Convention, 1947 (No. 81) (and its Additional Protocol, 1995), which remains the main international instrument in the field of labour inspection.

Although Georgia has not ratified this Convention, it can be used to illustrate international standards and interpret the key principles;

- Guidelines on General Principles of Labour Inspection developed by the International Labour Organization (ILO);
- UN Guiding Principles on Business and Human Rights, which recognizes the state's duty to protect human rights; corporate responsibility to respect human rights, and access to remedy for business-related human rights violations.

As part of the research, the authors also analyzed the Association Agreement between Georgia, of the one part, and the European Union and the European Atomic Energy Community and their Member States, of the other part, and the Association Agenda.

2. Analysis of National Law

As part of the the research, legislation regulating the freedom of information, labour relations and the activities of the Labour Inspection Service was analysed, including:

- Constitution of Georgia;
- General Administrative Code of Georgia;
- Organic Law of Georgia “Labour Code of Georgia;”
- Organic Law of Georgia on Occupational Safety;
- Law of Georgia on Public Service;
- Law of Georgia on Labour Inspection;
- Law of Georgia on Remuneration of Public Servants.

To illustrate the constitutional standard, the researchers analyzed the ruling of Constitutional Court of Georgia N1/19/1241 dated October 13, 2017, regarding the case of "Human Rights Education and Monitoring Center" and "Ertoba-2013" against the Government of Georgia.

As part of the research, the project team also analyzed the following legal acts:

- Decree of the Government of Georgia No. 219 of August 26, 2013 on “Requesting Electronically and Proactive Publication of Public Information;”
- The Order N LIO 6 23 00000209 of the Chief Labour Inspector of the Labour Inspection Service of March 21, 2023 on “Approval of the Rules for Proactive

Publication of Public Information in the Labour Inspection Service and the Standard of Requesting and Issuing Public Information Electronically.”

3. Analysis of Public Information

To monitor and assess the transparency of the Labour Inspection Service, the researchers analyzed the Service's practice of providing public information, compliance with the timeframes, and the completeness of the information provided.

The authors of the study requested various pieces of information from the Labour Inspection Service, including inspections conducted under the Organic Law of Georgia on Occupational Safety, violations and entities identified as violating, repeated violations, follow-up inspections and their results, inspections conducted in heavy industry and identified violations, recommendations developed by the Advisory Board and their implementation status. The researchers also requested copies of protocols of administrative offenses and issued instructions, the position directory, information on the remuneration and bonuses paid, the expenses on official and business visits, and other relevant information.

In addition, the project team reviewed public information published on the website of the Labour Inspection Service, including, annual reports, publications, statistical data and other materials. The authors of the study analyzed the information processed/not processed by the Service, as well as the extent to which the published information is user-oriented. The researchers assessed the extent to which the public information proactively published by the Service is compliant with the requirements stipulated by the Decree of the Government of Georgia No. 219 of August 26, 2013, on “Requesting Electronically and Proactive Publication of Public Information.”

4. Individual Interviews

To further identify existing challenges in terms of the accountability and transparency of the Labour Inspection Service, and analyze attitudes and opinions, the project team conducted individual interviews with three people working in the field of labour rights

protection using a pre-determined questionnaire. During the interviews, respondents discussed the following issues: transparency and accountability of the Service, the practice of providing public information and evaluation of information published on the Service's website.

5. Analysis of Secondary Sources

To obtain additional information for the research, the project team reviewed studies, reports, and statements from various organizations.

4. The Role and Functions of the Labour Inspection Service

The labour inspection system is a crucial mechanism for safeguarding labour rights. It plays a significant role in implementing national labour policies and serves as a key source of information for both employers and employees regarding labour laws, contributing to the enforcement of these laws.²

The primary mission of any labour inspection system is to guarantee compliance with labour laws.

The main objectives of labour inspection include:

- Ensure compliance with labour legislation in workplaces with a view to achieving decent employment and working conditions;
- Ensure that employers and workers get information on how to comply with legal requirements;
- Ensure that enterprises implement adequate measures to guarantee that work practices and environment do not put employees into safety and health risks;
- Ensure that feedback information and lessons learnt from the practice are used as a means of developing legislation.³

According to the "Association Agreement between Georgia, on the one hand, and the European Union and the European Atomic Energy Community and their Member States,

² ILO, Guidelines on General Principles of Labour Inspection, 2022, <<https://shorturl.at/aeK79>> [25.10.2023].

³ ILO, Labour Inspection: What It Is and What It Does, A Guide for Workers, p. 14, <<https://shorturl.at/stCI7>> [25.10.2023].

on the other hand" (hereinafter referred to as the "Association Agreement"),⁴ the parties recognise full and productive employment and decent work for all, while reaffirming their commitment to promote international trade in a manner that ensures full and productive employment and decent work for all.⁵ Strengthening cooperation and dialogue to promote decent working conditions, as well as health and safety at work, is an obligation according to Article 349 of the Association Agreement.⁶

After signing the Association Agreement, the parties also developed the Association Agenda for 2014-2016, which outlined priority areas for cooperation.⁷ The defined priorities included cooperation between the parties in preparing for the implementation of the existing EU legislation on occupational health and safety in the workplace, which in turn meant establishing an effective labour inspection system in line with International Labor Organization standards. This system would be responsible for ensuring administrative and enforcement capacities in the area of health and safety at work, and labour law.⁸

According to the Association Agenda for 2021-2027, a short-term priority is to continue working on ensuring an effective labour inspection system so that any type of working conditions and labour relations could be inspected with the necessary competence, capabilities, resources (financial, human, and administrative), and in accordance with the standards of the International Labour Organization.⁹

Although Georgia has not ratified the Labour Inspection Convention of the International Labour Organization,¹⁰ the organization emphasizes that the full implementation of commitments made by a state based on ratified conventions requires the existence of an

⁴ Association Agreement entered into force in 2016.

⁵ Association Agreement between Georgia, on the one hand, and the European Union and the European Atomic Energy Community and their Member States, on the other hand, Article 229 (I), <<https://shorturl.at/fjxGQ>> [25.10.2023].

⁶ Ibid, Article 349.

⁷ Association Agenda between the European Union and Georgia, 2014-2016, <https://www.eeas.europa.eu/sites/default/files/associationagenda_2014_en.pdf> [25.10.2023].

⁸ Ibid, p. 26.

⁹ Association Agenda between the European Union and Georgia, p. 57, <<https://shorturl.at/azFGV>> [25.10.2023].

¹⁰ Labour Inspection Convention, 1947 (No. 81), <<https://shorturl.at/ptuEM>> [17.10.2023].

adequate and effective enforcement mechanism, this also implies the establishment of an appropriate labour inspection model.¹¹

Georgia has acceded to the International Covenant on Economic, Social and Cultural Rights,¹² which in Article 7 confirms the right to just and favorable conditions of work.¹³ General Comment No. 23 of the UN Committee on Economic, Social and Cultural Rights states that to ensure accountability, Parties to the Covenant should establish a reliable and independent labour inspection system.¹⁴ Labour inspections should have sufficient resources and the authority to enter workplaces without prior notice.¹⁵

The Labour Inspection Service in Georgia, as a legal entity of public law, was established and began its operations on January 1, 2021. Before becoming a legal entity of public law under the control of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia (hereinafter referred to as the "Ministry of Health"), labour inspection was conducted by one of the departments of the Ministry of Health, namely, the Department of Labour Conditions Inspection.

According to the Law of Georgia on Labour Inspection, the purpose of the Labour Inspection Service is to ensure the effective application of labour norms.¹⁶ To achieve this aim, the Service uses the following mechanisms:

a) providing consultations and/or information upon request regarding compliance with labour norms;

¹¹ Social Justice Centre, Labour Inspection Service Assessment, 2021, p. 12, <<https://shorturl.at/bfmSV>> [16.10.2023].

¹² International Covenant on Economic, Social and Cultural Rights, 1966, <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>> [16.10.2023].

¹³ Ibid, Article 7.

¹⁴ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), 07.04.2016, E/C.12/GC/23, § 54, <<https://www.refworld.org/docid/5550a0b14.html>> [17.10.2023].

¹⁵ Ibid.

¹⁶ Law of Georgia on Labour Inspection, Article 5, Paragraph 1.

- b) providing the public with information contributing to the observance of labour regulations and facilitating public awareness raising through informational campaigns and other effective measures;
- c) receiving and reviewing complaints related to possible violations of labour regulations;
- d) conducting inspections;
- e) drawing up proposals to improve Georgia's labour legislation and enhance its implementation.¹⁷

According to current legislation, the following administrative penalties may be applied for the violation of labour norms:

- a) warning;
- b) fine;
- c) suspension of work processes.¹⁸

Given the important role and functions of the Labour Inspection Service, there is a high public interest in information related to its activities. An efficient accountability system is one of the factors determining public trust in public institutions. Transparency of the Labour Inspection Service and access to public information are necessary for exercising efficient public oversight by citizens.

During an individual interview, one of the respondents emphasized the importance of citizen engagement in the process of enhancing the transparency and accountability of the Service's activities. The respondent's recommendation includes enhancing citizen participation, which will be achieved by expanding the Advisory Board to include the representatives of independent labour unions and civil society. This expansion will significantly increase the engagement of stakeholders. Additionally, the creation of various types of informational and work formats will play an important role in this regard. During the interview, the person working on labour rights positively evaluated the readiness of the Service to strengthen this direction.

¹⁷ Ibid, Article 5, paragraph 2.

¹⁸ Ibid, Article 20, paragraph 3.

5. Overview of International Standards

Labour rights find reflection in various international documents. The Universal Declaration of Human Rights, as a paramount document in human rights protection, affirms the right of all people to just and favorable working conditions.¹⁹ The International Covenant on Economic, Social and Cultural Rights sets forth standards for safeguarding fundamental economic, social and cultural rights.²⁰ The States Parties to the Covenant recognise the right to work and are committed to taking all necessary measures to protect this right. The steps taken by a State Party to realize this right should achieve steady economic, social and cultural development and employment under conditions safeguarding fundamental political and economic freedoms to the individual.²¹ Additionally, States Parties to the Covenant recognize the universal right of everyone to just and favorable conditions of work.²²

Georgia, as a state party to the International Covenant on Economic, Social, and Cultural Rights,²³ is bound to continuously strive for the improvement of standards protecting the rights outlined in the Covenant. Ensuring compliance with international labour norms and standards is crucial to guarantee that individuals can work in dignified and safe conditions.

The European Social Charter (revised), seen as the Social Constitution of Europe,²⁴ guarantees fundamental social and economic rights. The Parliament of Georgia ratified the Charter in 2005.²⁵ Georgia has recognized 63 out of 98 provisions of the Charter.²⁶ For example, Georgia has not accepted certain provisions of the Charter, including just conditions of work (Article 2, §§ 3, 4, 6), safe and healthy working conditions (Article 3,

¹⁹ The Universal Declaration of Human Rights, 1948, Articles 23 and 24, <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> [06.09.2023].

²⁰ International Covenant on Economic, Social and Cultural Rights, 1966, <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>> [16.10.2023].

²¹ Ibid, Article 6.

²² Ibid, Article 7.

²³ Georgia acceded to the International Covenant on Economic, Social and Cultural Rights in 1994. <<https://shorturl.at/azF23>> [16.10.2023].

²⁴ Council of Europe, The European Social Charter, <<https://www.coe.int/en/web/european-social-charter>> [06.09.2023].

²⁵ Council of Europe, Signatures & Ratifications, <<https://shorturl.at/cdmt9>> [07.11.2023].

²⁶ Council of Europe, Table of accepted and non-accepted provisions by Georgia, <<https://www.coe.int/en/web/european-social-charter/georgia>> [20.11.2023].

§§ 1, 2, 3, 4), fair remuneration (Article 4, §§ 1, 5), the right to information and consultation (Article 21), the right to participate in determining and improving working conditions and the working environment (Article 22), and the right to protection in cases of termination of employment (Article 24).²⁷

Furthermore, Georgia has not ratified the Additional Protocol to the European Social Charter,²⁸ which establishes a system of collective complaints, excluding recourse to the European Committee of Social Rights in the event of violations of the Charter's provisions.²⁹ Accordingly, the presence of accessible, legal, prompt, and transparent mechanisms at the national level for redress of damage caused by violations of labour rights becomes even more crucial.

Georgia has been a member of the International Labour Organization since 1993. This organization establishes international labour standards, develops policy documents and programs aimed at promoting decent work for all people.

The International Labour Organization considers several conventions as “priority”, including the Labour Inspection Convention of 1947 (No. 81), the Labour Inspection (Agriculture) Convention of 1969 (No. 129), the Tripartite Consultation (International Labour Standards) Convention of 1976 (No. 144), and the Employment Policy Convention of 1964 (No. 122).³⁰

The Labour Inspection Convention (No. 81)³¹ and its Additional Protocol of 1995³² establish framework standards that labour inspections must adhere to in order to protect workers' rights. The Convention establishes requirements for the structure and organizational setup of labour inspection, defines the scope of its powers, and obliges the labour inspection to

²⁷ Ibid.

²⁸ Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, 1995, <<https://rm.coe.int/16802ec94f>> [26.10.2023].

²⁹ *Human Rights Education and Monitoring Centre, Georgian Young Lawyers Association, Partnership for Human Rights*, Protection of Social and Economic Rights in Georgia, Assessment prepared for the third cycle of the Universal Periodic Review (UPR), 2021.

³⁰ *International Labour Organization, Rules of the Game, A Brief Introduction to International Labour Standards*, revised edition, 2009, <<https://shorturl.at/1ANO6>> [02.10.2023].

³¹ Labour Inspection Convention, 1947 (No. 81), <<https://shorturl.at/ptuEM>> [17.10.2023].

³² Protocol of 1995 to the Labour Inspection Convention, 1947, <<https://shorturl.at/ixPOS>> [17.10.2023].

publish an annual report.³³ The Labour Inspection Convention is one of the key international documents in the field labour inspection, however, since Georgia has not ratified this convention,³⁴ the mentioned standards are not automatically binding.³⁵

In the guidelines on the general principles of labour inspection, significant importance is given to periodic reporting in the process of enhancing the effectiveness of inspections, evaluating the obtained results, and establishing common criteria.³⁶ The document emphasizes the importance of encouraging labour inspectors to compile detailed reports with a summary of each visit. The International Labour Organization considers individual reports resulting from conducted inspections as a significant source of information and the foundation of the reporting and information system, therefore, they should be prepared and stored in accordance with developed instructions.³⁷ According to the recommendation of the International Labour Organization, a report should be prepared after the completion of each inspection, shortly after the visit, within a pre-determined period.³⁸ Individual reports should contain useful information and data for both future inspections and ensuring accountability of the inspection system.³⁹

The annual report of the Labour Inspection Service should include as much information as possible, taking into account national peculiarities.⁴⁰ The International Labour Organization's guidelines on general principles of labour inspection specify the minimum information that a report should contain, including a list of laws and regulations related to the activities of the labour inspection, data on the personnel of the labour inspection

³³ *International Labour Organization, Rules of the Game, A Brief Introduction to International Labour Standards*, revised edition, 2009, <<https://shorturl.at/1ANO6>> [02.10.2023].

³⁴ International Labour Organization, Up-to-date Conventions and Protocols not ratified by Georgia, <<https://shorturl.at/cBI36>> [08.11.2023].

³⁵ *Human Rights Education and Monitoring Center (EMC)*, Fragmented Labour Inspection – Unregulated labor rights, 2020.

³⁶ ILO, Guidelines on General Principles of Labour Inspection, § 3.4.1, <<https://shorturl.at/jBRV4>> [25.10.2023].

³⁷ *Ibid*, § 3.4.4.

³⁸ *Ibid*, § 3.4.5.

³⁹ *Ibid*, § 3.4.7.

⁴⁰ *Ibid*, § 3.4.10.

service, areas subject to inspection, as well as information on conducted inspections, identified violations, imposed fines, workplace accidents, and occupational diseases.⁴¹

Under the Association Agreement, Georgia has committed to incorporating internationally recognized core labour standards in national legislation and practice in the form provided by the International Labour Organization conventions.⁴² The Agreement also includes the obligation to reflect priority and other International Labour Organization conventions.⁴³

Labour rights and standards are linked to universally recognized human rights and are crucial for establishing social justice and decent working conditions. International labour standards set by the International Labour Organization protect human rights in the workplace and include the rights to work, safe and healthy working conditions, fair remuneration, and equal pay for work of equal value. The protection of labour rights is an integral part of fulfilling the duty to protect human rights.⁴⁴

In 2011, the UN Human Rights Council endorsed the UN Guiding Principles on Business and Human Rights.⁴⁵ Businesses provide opportunities for employment and the development of human skills that contribute to the realization of the right to work for a fair remuneration and the achievement of a decent standard of living. However, it can also have a negative impact on human rights by discriminating against employees, affecting the environment, and creating an environment that is hazardous and harmful to health and life.⁴⁶ The Guiding Principles provide for the State's duty to protect human rights; the

⁴¹ Ibid.

⁴² Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, Article 229, Paragraph 2, <[https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:22014A0830\(02\)](https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:22014A0830(02))> [25.10.2023].

⁴³ Ibid, Article 229, Paragraph 3.

⁴⁴ *Tim de Meyer*, International Labour Standards as Human Rights, 2022, <<https://shorturl.at/bkqGI>> [17.10.2023].

⁴⁵ Guiding Principles on Business and Human Rights, Implementing the United Nations “Protect, Respect and Remedy” Framework, 2011, <<https://shorturl.at/gnsyQ>> [30.09.2023].

⁴⁶ *Claire Methven O'Brien*, Business and Human Rights, A Handbook for Legal Practitioners, Council of Europe, 2019, p. 11.

responsibility of business to respect human rights; the right of victims to an effective remedy for business-related human rights abuses.⁴⁷

In addition to judicial remedies for business-related human rights harm, states should also ensure the existence of non-judicial grievance mechanisms.⁴⁸ Administrative, legislative, and other non-judicial mechanisms play an important role in complementing judicial mechanisms.⁴⁹

Along with the ombudsman, mediation, arbitration and a specialised tribunal,⁵⁰ the Council of Europe considers the labour inspectorates as one of the state-based non-judicial mechanisms for the protection of human rights.⁵¹

One of the criteria for assessing the effectiveness of a non-judicial grievance mechanism is its predictability,⁵² which implies providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available.⁵³

One of the factors determining the effectiveness of both State-based and non-State-based non-judicial grievance mechanisms is transparency, which involves keeping parties to a grievance informed about its progress and providing sufficient information about the mechanism's performance.⁵⁴ Regular communication with the parties about the progress of the grievance is important to maintain confidence in the process.⁵⁵ Ensuring transparency by providing stakeholders with statistical data, case studies, or more detailed information

⁴⁷ Guiding Principles on Business and Human Rights, Implementing the United Nations "Protect, Respect and Remedy" Framework, 2011.

⁴⁸ Ibid, p. 30.

⁴⁹ Ibid.

⁵⁰ Improving Accountability and Access to Remedy for Victims of Business-related Human Rights Abuse through State-based Non-judicial Mechanisms: Report of the United Nations High Commissioner for Human Rights, 2018, pp. 3-4, <<https://digitallibrary.un.org/record/1637320?ln=en>> [25.10.2023].

⁵¹ *Claire Methven O'Brien*, Business and Human Rights, A Handbook for Legal Practitioners, Council of Europe, 2019, p. 141.

⁵² Guiding Principles on Business and Human Rights, Implementing the United Nations "Protect, Respect and Remedy" Framework, 2011, p. 33, <<https://shorturl.at/gnsyQ>> [30.09.2023].

⁵³ Ibid.

⁵⁴ Ibid, p. 33.

⁵⁵ Ibid, p. 35.

on individual cases is important to demonstrate the legitimacy of the mechanism and maintain public trust.⁵⁶

The publication of the outcomes of enforcement action by a State-based non-judicial grievance mechanism is considered a reasonably common practice. It can be viewed as a form of “naming and shaming“ or it can be a spur to better compliance by others, and also can help to identify systematic, legal, or structural problems with particular markets or industrial sectors.⁵⁷ As a result, based on such information, it is possible to identify areas where legislation needs to be improved, supplemented, or developed. Transparency helps businesses stay informed about established requirements, responsibilities, and legal obligations.⁵⁸

6. Overview of Georgian Legislation

Freedom of information ensures the transparency of public institutions and their accountability towards the public. The right of access to information enables the individuals to effectively monitor the activities of government entities and participate fully in public life. The essence of freedom of information is that any non-confidential information should be accessible to everyone.

The legal basis for access to public information is outlined in Chapter 2 of the Constitution of Georgia (fundamental rights). According to paragraph 2 of Article 18 of the Constitution, "everyone has the right to be familiarised with information about him/her, or other information, or an official document that exists in public institutions in accordance with the procedures established by law, unless this information or document contains commercial or professional secrets, or is acknowledged as a state secret by law or in accordance with the procedures established by law as necessary in a democratic society to ensure national security or public safety or to protect the interests of legal proceedings."⁵⁹

⁵⁶ Ibid.

⁵⁷ Office of the UN High Commissioner for Human Rights, Access to Remedy for Business-related Human Rights Abuses, Accountability and Remedy Project II, 2017, p. 32, <<https://shorturl.at/hntBO>> [27.10.2023].

⁵⁸ Ibid, 35.

⁵⁹ Constitution of Georgia, Article 18, Paragraph 2.

In addition, "information contained in official records pertaining to an individual's health, finances or other personal matters shall not be made available to anyone without the consent of the individual, except as provided for by law and as is necessary to ensure national security or public safety, or to protect public interests and health or the rights of others."⁶⁰

Norms related to freedom of information are enshrined in the General Administrative Code of Georgia. Publicly available information includes any official document (including drawings, models, plans, diagrams, photographs, electronic information, video and audio recordings) stored in a public institution, obtained, processed, created, or sent by a public institution or its employee in connection with official activities, as well as information proactively published by a public institution.⁶¹

Any public information is open. An exception applies to cases provided by law and information that, in accordance with established procedures, relates to state, commercial, or professional secrets or personal data.⁶² Additionally, Georgian legislation explicitly determines information that cannot be kept confidential.⁶³

The person requesting public information can be anyone.⁶⁴ Everyone has the right to request public information regardless of its physical and storage form, also to choose the form of receiving public information if it exists in various forms and to read the original of the information.⁶⁵ Besides, it is not mandatory to specify the motive or purpose of the request in the application for public information.⁶⁶

The General Administrative Code of Georgia obliges all public institutions to appoint a public servant responsible for ensuring access to public information and proactively publish information.⁶⁷ The Decree of the Government of Georgia No219 of August 26, 2013, on

⁶⁰ Ibid, Article 18, Paragraph 3.

⁶¹ General Administrative Code of Georgia, Article 2, Paragraph 1, Subparagraph "m".

⁶² Ibid, Article 28.

⁶³ Ibid, Article 42.

⁶⁴ Ibid, Article 37, Paragraph 1.

⁶⁵ Ibid.

⁶⁶ Ibid, paragraph 2.

⁶⁷ Ibid, Article 36.

“Requesting Electronically and Proactive Publication of Public Information” imposes an obligation to publish information about the person (persons) responsible for ensuring access to public information.⁶⁸

Georgian legislation obliges public institutions to provide public information promptly or no later than 10 days, if a reply to the request for public information requires:

- a) searching for and processing information from its structural unit or another public institution in another locality;
- b) searching for and processing individual unrelated documents of significant volume;
- c) consultation with its structural unit or another public institution in a different locality.⁶⁹

According to the Law of Georgia on Public Service, public service shall be carried out transparently and openly.⁷⁰ A public servant is obliged to ensure the release of public information to the interested party and/or facilitate its provision in accordance with the Georgian legislation.⁷¹ Additionally, the law protects against the disclosure of personal data of other individuals, as well as state, commercial, and professional secrets that become known to a public servant in the course of performing official duties.⁷²

The standard for proactive publication of public information, the procedure for requesting public information in electronic form, and the list of public information that should be proactively published are approved by the Decree of the Government of Georgia No219 of August 26, 2013, on “Requesting Electronically and Proactive Publication of Public Information.”⁷³ The administrative body is obliged to ensure the proactive publication of public information, as outlined in the annex of the aforementioned Decree (the list of public information subject to proactive publication), on its own electronic resource.⁷⁴

⁶⁸ Decree of the Government of Georgia No219 of August 26, 2013 on “Requesting Electronically and Proactive Publication of Public Information”, Annex – the list of public information subject to proactive publication, Paragraph 2.1.

⁶⁹ General Administrative Code of Georgia, Article 40.

⁷⁰ Law of Georgia on Public Service, Article 17.

⁷¹ Ibid, Article 74, Paragraph “b”.

⁷² Ibid, paragraph “c”.

⁷³ This Decree is discussed in detail in Chapter 8 of this study.

⁷⁴ Decree of the Government of Georgia No219 of August 26, 2013 on “Requesting Electronically and Proactive Publication of Public Information”, Article 2.

The Law of Georgia on Labour Inspection defines the basic principles and directions of the activities of the Labour Inspection Service, its powers, the exercise of these powers, and other issues related to ensuring the effective application of labour norms.⁷⁵

In order to ensure transparency and accountability, the Law of Georgia on Labour Inspection imposes an obligation on the Chief Labour Inspector to submit an annual report on the activities of the Labour Inspection Service to the Advisory Board of the Service and the Parliament of Georgia, no later than 6 months after the end of the calendar year.⁷⁶

The annual report of the Chief Labour Inspector is public information.⁷⁷ The law also establishes the minimum information that the annual report should contain, namely:

- a) Overview of the legislation of Georgia and other regulatory norms related to the activities of the Labour Inspection Service;
- b) Future vision and strategy of the Labour Inspection Service;
- c) Information on the number of employees of the Labour Inspection Service;
- d) Statistical data on workplaces subject to inspection;
- e) Statistical data on inspection visits;
- f) Statistical data on identified violations and imposed measures;
- g) Statistical data on accidents;
- h) Statistical data on occupational diseases.⁷⁸

It should be noted that this provision is identical to the requirements outlined in the Labour Inspection Convention of the International Labour Organization of 1947 (No. 81), and essentially enumerates the same points as those contained in the Convention.

7. The Practice of Providing Public Information by the Labour Inspection Service

In 2023, significant challenges were revealed in terms of providing public information by the Labor Inspection Service. In particular, in response to the requests from the "Fair

⁷⁵ Law of Georgia on Labour Inspection, Article 1.

⁷⁶ Ibid, Article 10, Paragraph 1.

⁷⁷ Ibid, Article 10, Paragraph 3.

⁷⁸ Ibid, Article 10, Paragraph 2.

Labour Platform"⁷⁹ and the "Social Justice Center," the Service concealed information about inspected enterprises in the inspection materials, including inspection reports. As a result, it was unclear from the provided documentation which company had violated the regulations.

The Social Justice Center, in collaboration with the Fair Labour Platform, filed a lawsuit in Tbilisi City Court demanding the full disclosure of information about the inspections conducted by the Labour Inspection Service.⁸⁰

The Labour Inspection Service cited paragraph 5 of Article 19 of the Law of Georgia on Labour Inspection as the legal basis for withholding information, stating that "a labour inspector is obliged to protect the confidentiality of information obtained in the course of exercising the powers conferred on him/her under this law."

According to the assessment of the Social Justice Centre, the Labour Inspection Service incorrectly interpreted the aforementioned article of the law as a basis for restricting the provision of public information. An analysis of the norm demonstrates that its purpose is to protect the interests of employees, especially when the inspection commences based on a complaint, not to disclose information about the author of the complaint. This norm restricts the disclosure of information obtained by public servants during their official activities in the non-professional sphere and protects the confidentiality of information obtained as a result of a complaint received by the Labour Inspection Service and/or information received by the labour inspector from the person during inquiry.⁸¹

The General Administrative Code of Georgia determines the lawful grounds for withholding information (state, professional or commercial secret or personal data). Article 19 of the Law of Georgia on Labour Inspection does not establish an additional ground for withholding information. Therefore, any decision related to releasing public information should comply with the General Administrative Code of Georgia.

⁷⁹ Fair Labor Platform, <<https://shroma.ge/>> [15.09.2023].

⁸⁰ Social Justice Center files a lawsuit against the Labour Inspection Service for withholding public information, 2023, <<https://shorturl.at/bhkOV>> [15.09.2023].

⁸¹ Law of Georgia on Labour Inspection Service, Article 19, paragraph 3.

According to the General Administrative Code of Georgia, public information is considered open, except in cases provided by law and information classified as state, commercial, or professional secret or personal data.⁸²

Information representing the personal data or a commercial secret of others and has become known to a person with regard to his/her fulfillment of professional duties is considered a professional secret.⁸³ Notably, information that does not represent the personal data of another person or a commercial secret may not be considered a professional secret.⁸⁴

Information about the inspected enterprises cannot be classified as a professional secret unless it falls under the category of a commercial secret. According to the General Administrative Code of Georgia, a commercial secret is defined as information about a plan, formula, process, or means of a commercial value, or any other information used for manufacturing, preparing or processing of goods, or for rendering services, and/or is a novelty or a significant result of technical activity, and other information that may prejudice the competitiveness of a person if disclosed.⁸⁵ Besides, when submitting information, a person should indicate that the information is his/her commercial secret.⁸⁶ Therefore, information cannot be considered a commercial secret automatically and the public institution should make an official decision regarding classifying it as a secret information.

After the Social Justice Center filed a lawsuit against the Labour Inspection Service, the Service changed its position and disclosed requested information without concealing data relating to the companies.⁸⁷ The representative of the Social Justice Center noted that after taking legal action, the Service ensured access to requested public information. Therefore, on September 2023, due to the absence of the subject matter and as a result of the withdrawal of the action, this dispute was terminated.

⁸² General Administrative Code of Georgia, Article 28, paragraph 1.

⁸³ Ibid, Article 27³.

⁸⁴ Ibid.

⁸⁵ Ibid, Article 27², paragraph 1.

⁸⁶ Ibid, Article 27², paragraph 3.

⁸⁷ After the Social Justice Center initiated a lawsuit, the Labour Inspection Service changed its practice of withholding public information, 2023, <<https://shorturl.at/fpLW1>> [07.09.2023].

Despite the abovementioned, this research uncovered instances where the Labour Inspection Service did not disclose public information because the inspection results and materials were still undergoing processing.

It should also be mentioned that restricting access to the reports/conclusions and recommendations drawn up as a result of inspecting labour conditions has been a matter of legal dispute in the past as well. In particular, in 2017, the Constitutional Court of Georgia invalidated⁸⁸ contested norms without examining the merits of the case. This action was taken because access to public information had been restricted by a subordinate normative act – the Decree of the Government. Besides, the legislature had not delegated regulation of this issue to the Government of Georgia in accordance with the law.

Within the scope of this study, the researchers requested various public information from the Labour Inspection Service to analyze the practice of providing public information. In certain cases, the Service could not ensure the complete release of requested information.

At the first stage, the researchers requested the following information processed from January 1, 2023, until the date of submitting application:

- a) Detailed information on inspections conducted under the Organic Law of Georgia on Occupational Safety and the Organic Law "Labour Code of Georgia", indicating the sites inspected by the Labour Inspection Service, violations identified, and measures taken;
- b) Detailed information on inspections of workplace accidents, indicating inspected sites, identified violations as well as information on systemic violations;
- c) Information on violations of minors' labour rights (indicating inspected sites and results);
- d) Detailed information on inspections carried out in the medical sector (indicating inspected sites and results);

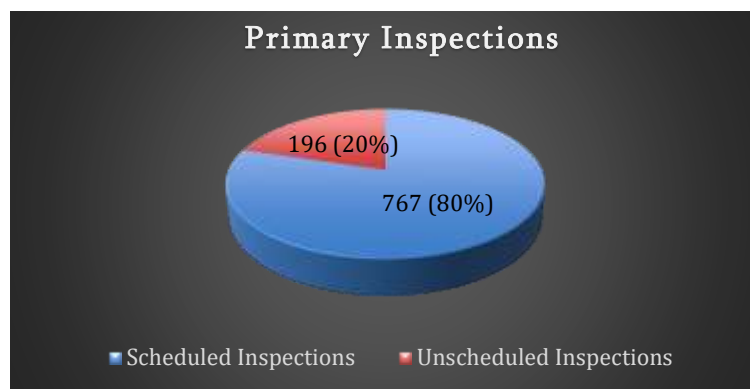
⁸⁸ The ruling N1/19/1241 of October 13, 2017 of the Constitutional Court of Georgia in the case of "Human Rights Education and Monitoring Center" and "Ertoba-2013" v. the Government of Georgia.

e) Detailed information on discrimination and sexual harassment identified at the workplace (indicating inspected sites and results).

The Labour Inspection Service did not provide this information because the inspection results and materials of requested period (between January 1, 2023 and July 26, 2023) were undergoing processing. However, the Service provided⁸⁹ statistical data relating to the inspections conducted in this period.

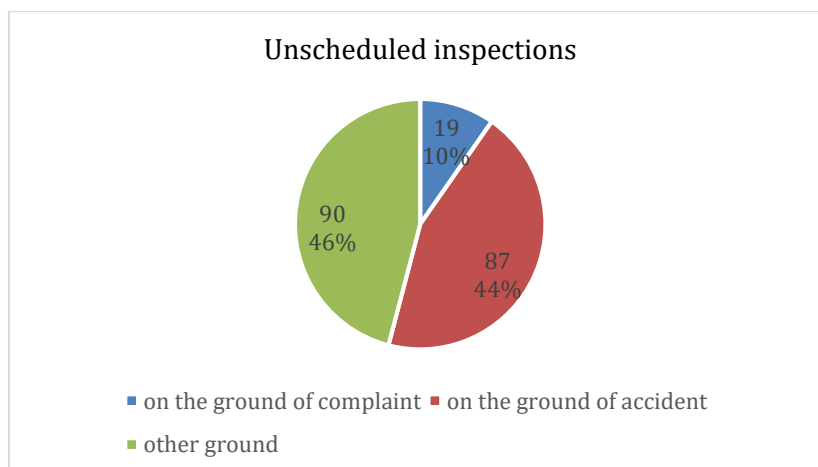
Data regarding primary inspections conducted between January 1, 2023, and June 30, 2023, under the Organic Law of Georgia on Occupational Safety are represented in Diagram N1.

Diagram N1



Unscheduled site inspections, indicating the grounds for inspections, are represented in Diagram N2.

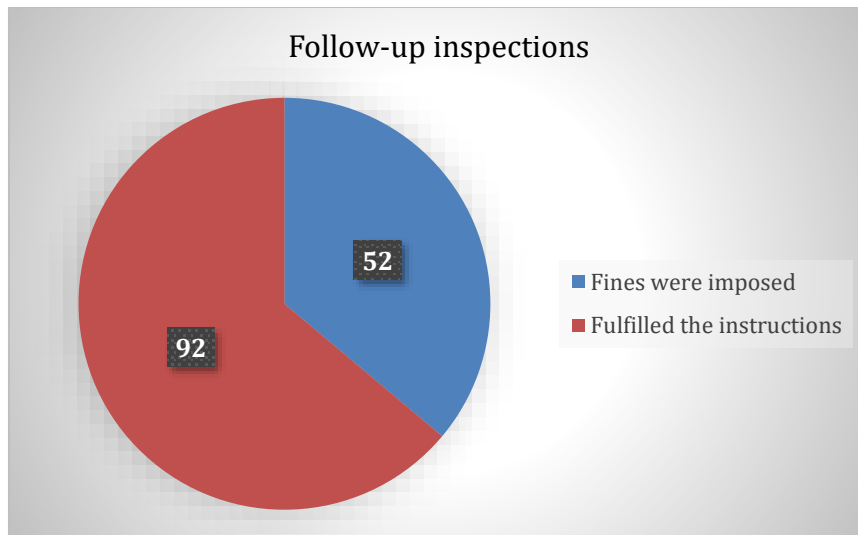
Diagram N2



⁸⁹ Letter LIO 0 23 00828160 of August 4, 2023 of the LEPL Labour Inspection Service.

According to the information provided by the Service, out of 196 sites inspected without scheduling, follow-up inspections were conducted at 144 of sites. The Service imposed fines on 52 sites due to the failure to fulfil instructions, and 92 sites fully eliminated violations, towards which inspection acts were drawn up. The results of follow-up inspections are represented in Diagram N3.

Diagram N3



Data regarding scheduled and unscheduled inspections conducted by the Labour Inspection Service under the Organic Law “Labour Code of Georgia” are represented in Diagrams N4, N5 and N6.

Diagram N4

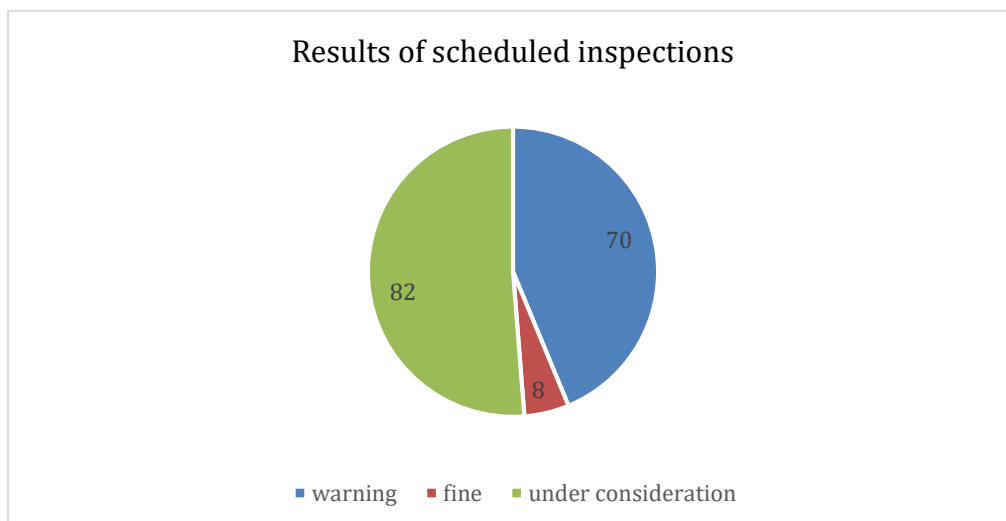


Diagram N5

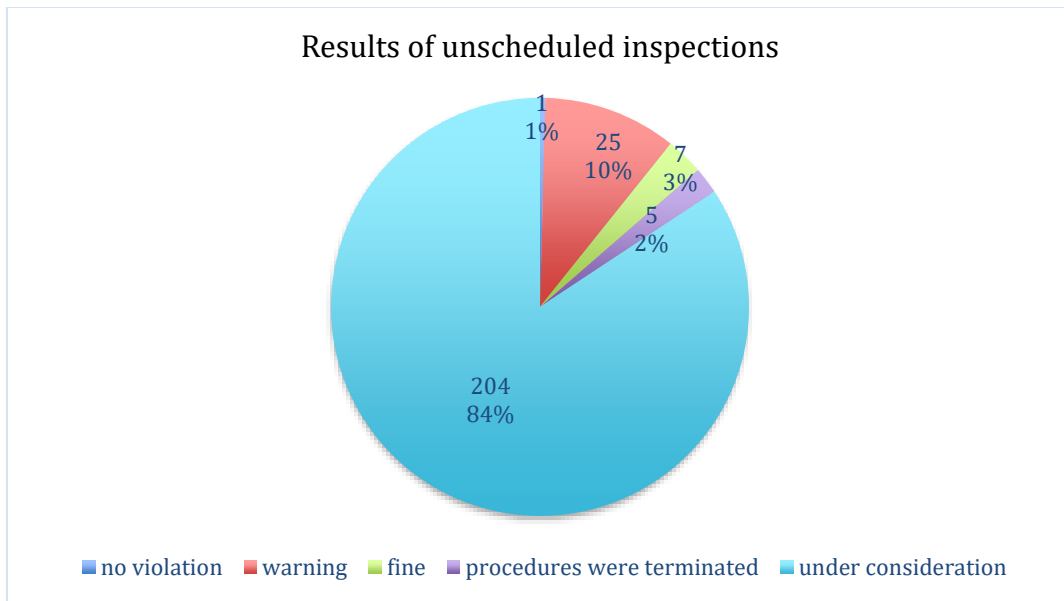
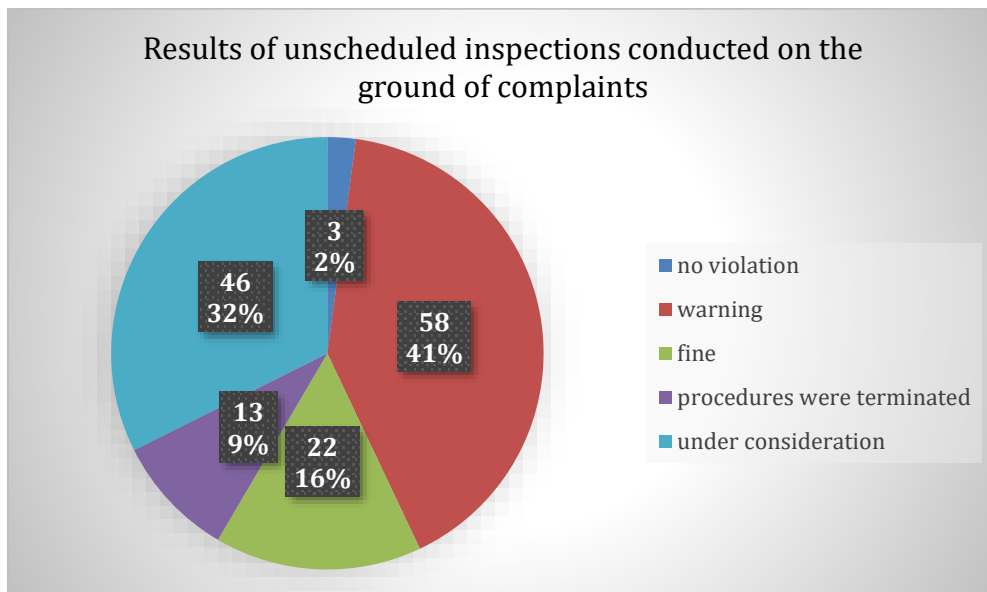


Diagram N6



Based on information from the Labour Inspection Service concerning discrimination, 4 sites were inspected on the ground of complaints. Discriminatory treatment was found in

all 4 cases. At the time of provision of information, follow-up inspections had not been conducted. In all 4 cases fines of double amount were imposed. As for the types of violations, in one case, the violation involved discrimination based on a different view (restriction of equal access to qualification enhancement, professional training, and retraining); in another case, victimization was identified concerning two employees (equal access to the conditions of remuneration); the third case involved harassment based on appearance; and the fourth case concerned discrimination based on a different view (restriction of equal access to labour conditions).

The Labour Inspection Service did not provide information on sexual harassment.

Violations of minors' labour rights were identified at 9 sites (4 scheduled inspections, and 6 inspections on the ground of complaints). As of the date of the provision of information, only primary inspections had been conducted at these sites. In all cases, violations were found and 10 protocols of administrative offences were drawn up (two protocols at one of the sites). In all cases, fines were imposed as an administrative sanction.

On August 10, 2023, the authors of this study submitted another application to the Labour Inspection Service, and in addition to information on the inspected sites, violations and measures taken, requested relevant protocols of administrative offences. The Service did not provide requested information and documentation because the results and materials of inspections conducted during the requested period (January 1, 2023 and August 18, 2023) were undergoing processing.⁹⁰

During an individual interview, one of the respondents raised a similar concern regarding the Labour Inspection Service's response. In particular, public information requested in July 2023, concerning protocols and reports of inspections conducted in June and July at private sector sites, had not been provided by the Labour Inspection Service as of the interview date (October 27, 2023). The Service attributed the delay to the time required for processing information due to limited human resources. The respondent emphasized the critical nature of timely provision of documentation, especially in cases of industrial

⁹⁰ Letter LIO 7 23 00877343 of August 18, 2023 of the LEPL Labour Inspection Service.

accidents, as it is crucial for protecting individuals' rights in response to workplace incidents.

Furthermore, the Labour Inspection Service did not provide public information regarding workplace accidents to another interested party. The Service indicated that these data are currently being processed and they would be able to share the quarterly information once the activity report for the respective reporting period is published.⁹¹ Such refusal to provide public information constitutes a violation of legislation and a significant challenge in terms of transparency.

The authors of the study submitted an additional application to the Labour Inspection Service and requested protocols of administrative offences and instructions drawn up between April 1, 2022, and September 30, 2022. Within the timeframe specified by the General Administrative Code of Georgia, the Service provided 989 protocols of administrative offences together with instructions/inspection protocols prepared by the Department of Occupational Safety Oversight.⁹²

On October 5, 2023, the researchers additionally requested protocols drawn up by the Department of Labour Rights Oversight. The Service provided requested information on October 13, 2023.⁹³

On September 15, 2023, the researchers addressed the Labour Inspection Service and requested the position directory, information about structural units and the authorities of the personnel as well as the administrative legal act of the Chief Labour Inspector, which determines the classification of labour inspector positions and their remuneration. In response to this request, within the timeframe determined by the General Administrative Code of Georgia, the Service provided⁹⁴ the following documentation:

- The position directory of the Labour Inspection Service;

⁹¹ Letter LIO 6 23 01024338 of September 28, 2023 of the LEPL Labour Inspection Service.

⁹² Letter LIO 4 23 00911675 of August 30, 2023 of the LEPL Labour Inspection Service.

⁹³ Letter LIO 2 23 01090566 of October 13, 2023 of the LEPL Labour Inspection Service.

⁹⁴ Letter LIO 1 23 01003778 of September 22, 2023 of the LEPL Labour Inspection Service.

- Ordinance NLIO 6 23 00000515 of June 30, 2023, of the Chief Labour Inspector on approval of job descriptions of the staff members of the LEPL Labour Inspection Service;
- Ordinance NLIO 3 23 000002605 of April 5, 2023, of the Chief Labour Inspector on the evaluation of qualified public officers of the LEPL Labour Inspection Service in 2023, classification of labor inspector positions and the rule for remuneration, and its Annex.

The 2023 position directory provided by the Labour Inspection Service includes only the positions and the number of personnel. The Law of Georgia on Remuneration in Public Institutions envisages the obligation to include official salaries of persons employed in public institutions (except for those employed based on an employment agreement) in the position directory of a public institution.⁹⁵ Therefore, the Service did not fully provide requested public information.

On September 15, 2023, the authors of this study requested from the Labour Inspection Service public information about salaries and increments transferred quarterly to the officials (in total) and other personnel (in total) from 2021 to September 2023; Expenses related to the business trips of officials (in total) and other personnel (in total) within the country and abroad; the list of the vehicles on the balance sheet of the Service, and information on expenses related to the use of fuel. The Labour Inspection Service did not provide this information and explained that due to the volume of information, additional time was needed for its processing.⁹⁶

It should be highlighted that the requested information is included in the list of information to be proactively published as approved by №219 Decree of August 26, 2013, of the Government of Georgia on “Requesting Electronically and Proactive Publication of Public Information.” Information regarding the transferred salaries and increments as well as expenses relating to the official visits should be published quarterly. According to the Decree, information that should be published quarterly should be made available on the website within one month after the end of the respective quarter. Based on these

⁹⁵ Law of Georgia on Remuneration in Public Institutions, Article 5, paragraph 2.

⁹⁶ Letter LIO 1 23 01003778 of September 22, 2023 of the LEPL Labour Inspection Service.

requirements, by the time the public information request was submitted, the Service should have already processed and published data for the years 2021 and 2022, as well as the data for two quarters of 2023.

As for the list of the vehicles and information regarding the use of fuel, the administrative body is obliged to publish this information annually, within 3 months after the respective year ends. In this case, considering the requirements of the Decree of the Government and the respective timeframes, by the time the request was submitted, the Service should have already processed the requested data for the years 2021 and 2022.

8. Proactive Publication of Public Information by the Labour Inspection Service

One of the means of ensuring openness and transparency of public institutions is a proactive publication of information. This means the placement of public information of public interest on electronic resources by a relevant public institution. Proactive publication makes it easier for interested parties to obtain public information as, in this case, they do not have to submit an application to the public institution.

The General Administrative Code of Georgia obliges public institutions to ensure proactive publication of public information under the procedure and conditions determined by a relevant subordinate normative act.⁹⁷ According to the same Code, the standard for requesting public information electronically is approved by the relevant subordinate normative act.⁹⁸ Based on this provision, №219 Decree of August 26, 2013, of the Government of Georgia on “Requesting Electronically and Proactive Publication of Public Information” determines the standard for proactive publication of information, the rule for requesting public information electronically, and the list of public information to be published proactively.

The Decree of the Government applies to the Administration of the Government, Ministries, the Office of the State Minister, State Sub-Agencies, Legal Entities of Public

⁹⁷ General Administrative Code of Georgia, Article 28, paragraph 2.

⁹⁸ Ibid, Article 37, paragraph 4.

Law under the governance of the Ministry, and the state control of the State Minister, a special-purpose militarised institution of the executive authority directly subordinated to the Government.⁹⁹

According to the Decree, information that must be proactively published on the electronic resource of the administrative body is divided into seven groups:¹⁰⁰

- a) General information about the administrative body;
- b) Public information page;
- c) Information on the staffing of the administrative body;
- d) Information on public procurement and privatization of state property carried out by the administrative body;
- e) Information on the financing and budgeting of the administrative body;
- f) Legal acts;
- g) Other public information (information regarding the services of the administrative body).¹⁰¹

Each group envisaged by the Government decree includes detailed list of information to be published proactively as well as timeframes for publishing and updating information. Information, which is to be published annually, should be published within 3 months after the end of the year. Information, which is to be published quarterly, should be published within one month after the end of the respective quarter. The relevant administrative body is responsible for the accuracy and validity of information published electronically.

Notably, by its Ordinance¹⁰² of March 21, 2023, the Chief Labour Inspector approved the rule for proactive publication of information by the Labour Inspection Service and the standard for requesting and providing public information electronically. The Ordinance

⁹⁹ Decree N219 of August 26, 2013 on “Requesting Electronically and Proactive Publication of Public Information,” Article 1, paragraph 3.

¹⁰⁰ Ibid, Article 2, paragraph 1.

¹⁰¹ Ibid, Annex – The list of information to be published proactively.

¹⁰² Ordinance N LIO 6 23 00000209 of the Chief Labour Inspector of LEPL Labour Inspection Service of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs, 21/03/2023, <<https://lio.moh.gov.ge/lloow.php?id=47>> [13.11.2023].

reiterates the detailed list of information that should be published proactively and determines the department/division responsible for their publication.

This chapter evaluates the practice of proactive publication of information as of 12-20 September 2023. Notably, according to the indication on the website of the Service, the website is under construction.

a) General information about the administrative body

General information about the administrative body is more or less published on the website of the Labour Inspection Service. In particular, the structure of the administrative body and the description of its functions, legal acts regulating its activities, annual reports, information about the Head and the Deputies and the contact information are published.

The strategies, concepts and action plans prepared by the administrative body as well as the contact information of the public relations service are not published on the website.

It is important to note that the 2022 annual report of the Labour Inspection Service includes a separate chapter regarding the future plans of the Service, in particular: Continue work in accordance with the Charter of the Service and the Law of Georgia on State Budget for fully staffing the Office; Effective discharge of the Service's primary and supporting duties in parallel with drafting a plan of human resources development; Developing annual action plan for structural units of the Service that, in the light of permanent review, will comply with identified needs, international standards and other pressing issues; Raising awareness at national level; In terms of occupational safety and health at work, facilitating the implementation of directives provided in Annex XXX to the Association Agreement between the EU and Georgia; Developing the electronic system of labour inspection; Permanent monitoring of the Accredited Program of Occupational Safety Specialist; Providing material and technical base to the Service; Facilitating uninterrupted

communication by spreading information via mass media; Promoting public engagement, etc.¹⁰³

b) Public information page

Information that should be published on the public information page is partially present on the website of the Labour Inspection Service. In particular, in accordance with the requirements of the Decree of the Government, the following information is published: Legal acts relating to the accessibility of public information, information on the rule for appealing the individual administrative legal acts adopted as a result of administrative proceedings, and information that should be included in the administrative complaint. However, information about the person responsible for ensuring access to public information is not present on the website, in particular his/her name, surname and position.

Notably, according to the Chief Labour Inspector's Ordinance¹⁰⁴ of 21 March 2023 on the "Rule for Proactive Publication of Information by the Labour Inspection Service and the Standard for Requesting and Providing Public Information Electronically," the Head of Administrative Department – Natia Bubuteishvili is responsible for ensuring access to public information, including for providing public information electronically and its proactive publication. It is advisable to indicate information about the person responsible for ensuring access to public information in the relevant section of the webpage as well.

The list approved by the Decree of the Government envisages the publication of an annual report submitted by the administrative body to the President of Georgia and the Parliament as laid down by Article 49 of the General Administrative Code of Georgia. According to Article 49 of the General Administrative Code, a public institution shall, on December 10 each year, submit to the Parliament of Georgia, the President of Georgia and the Prime Minister of Georgia the report regarding the release of public information. The report regarding the release of public information by the Labour Inspection Service from 1 January

¹⁰³ 2022 Report on Activities of the LEPL Labour Inspection Office, p. 77, <<https://shorturl.at/nyGLS>> [15.09.2023].

¹⁰⁴ Ordinance N LIO 6 23 00000209 of the Chief Labour Inspector of LEPL Labour Inspection Service of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs, 21/03/2023, <<https://lio.moh.gov.ge/llo.php?id=47>> [13.11.2023].

2022 to 10 December 2022 is published on the website of the Service. The 2021 report is not published on the website of the Service. Notably, to ensure transparency of the administrative body, and analysis of statistical data and existing practice of providing public information, it is essential to publish the report of each year on the website of the Service.

Besides, the list approved by the Decree of the Government also envisages publication of general statistics of the applications submitted based on Articles 37 and 40 of the General Administrative Code of Georgia. General statistics of the received applications relating to the release of public information is published on the website of the Labour Inspection Service, in particular, the number of received applications and the results of their review. Only statistical data for 2022 are published on the website. According to the published information, in the IV quarter of 2022, three applications were under review, however, the results are not indicated in the published statistical data. It should be highlighted that according to the Decree of the Government, this information should be published quarterly, within one month after the end of the respective quarter. Data for the first and second quarters of 2023 are not published on the website of the Labour Inspection Service, which constitutes a breach of obligation set forth by the Decree of the Government.

c) Information on the staffing of the administrative body

Information regarding the results of the announced competitions as well as about the employees of the administrative body indicating the categories and gender are not published on the website of the Labour Inspection Service.

d) Information on public procurement and privatization of state property carried out by the administrative body

The fourth group of information that should be proactively published includes information on public procurement and privatization of state property carried out by the administrative body. This information should be published quarterly. It should be highlighted that none of the information included in this group is published on the website of the Labour Inspection Service, in particular: the annual plan of public procurement; information on the public procurement carried out within the scope of the annual plan that should indicate the provider, object of procurement, means of procurement, value of the agreement and

transferred amount; information regarding the transfer of state property ownership and possession; and advertising expenses.

e) Information on the financing and budgeting of the administrative body

Information regarding the approved and adjusted budget, as well as budget execution, cannot be found on the Labour Inspection Service's website. Additionally, details about salaries, increments, and bonuses transferred quarterly to officials (in total) and other personnel (in total) are not available on the website.

Besides, information about the total expenses relating to the official and business visits (within the country and abroad separately) of officials and other personnel are not published on the website of the Labour Inspection Service. This information should be published quarterly by the administrative body.

The following information envisaged by the Decree of the Government is also not published on the website of the Labour Inspection Service: the list of the vehicles on the balance sheet of the Service indicating their models, information on expenses related to the use of fuel and vehicle technical services, and the list of immovable property on the balance sheet of the Service, as well as information on telecommunication expenses incurred from international and local telephone conversations.

Additionally, not disclosed on the Service's website are financial aids (grants, credits) allocated by foreign public authorities, international organizations, and other state units, and grants issued by the Service. Also missing is information on the amount allocated from the funds foreseen by the Budget Code of Georgia and legal acts regarding these funds.

f) Legal acts

The normative acts directly related to the activities of the Labour Inspection Service as well as individual legal acts of public interest are published on its website. Publication of these acts should be positively assessed.

Apart from public information that should be proactively published according to the Decree of the Government, other information placed on the website was also analyzed

during the research. During the individual interview, the practice of publishing¹⁰⁵ protocols of administrative offences on the website was positively assessed. However, the incomplete publication of information remains a challenge. In particular, only protocols of administrative offences and decisions on imposing penalties are published on the website. Detailed information about the grounds of the inspection, results and conclusions are not present.

During the individual interview, the respondent highlighted aspects related to the format of annual reports. While these reports contain crucial information about the Service's work, their publication format isn't user-oriented, as they are primarily aimed at individuals working on labour rights. Therefore, the respondent suggests an additional publication of information from the annual reports using graphs, explanations, and booklets that would be more accessible to the general public.

Besides, to strengthen trust in the Labour Inspection Service, one of the respondents recommends the publication of detailed information (guide) that will explain to the employees the circumstances under which they can address the Service and the rules and procedures for notifying the violation. The respondent also considers it important to indicate on the website assurance of anonymity and the confidentiality of information submitted by employees. This will serve as an incentive for the employees.

9. Conclusion

Transparency and openness significantly determine public trust in public institutions. The labour inspection system is one of the important mechanisms for protecting labour rights. Therefore, it plays a crucial role in implementing national labour policy. Access to information is necessary to assess the work of the Labour Inspection Service, carry out monitoring, and identify existing tendencies and shortcomings.

¹⁰⁵ Labour Inspection Service, Published protocols of administrative offences and decisions, <<https://lio.moh.gov.ge/act.php>> [13.11.2023].

In 2023, significant challenges were identified in terms of providing public information by the Labour Inspection Service. In particular, in response to the requests of the “Fair Labour Platform” and the “Social Justice Center”, the Service concealed information about the inspected enterprises in its inspection materials, including in the inspection reports. After the “Social Justice Center” initiated a lawsuit, the Labour Inspection Service changed its position and provided the requested information, without concealing the data relating to the companies. Consequently, on September 7, 2023, due to the absence of the subject matter and as a result of the withdrawal of the action, this dispute was terminated.

Notably, within the scope of this research, in certain cases, the Labour Inspection Service did not provide requested public information because its processing required additional time.

This study has demonstrated that significant challenges exist in terms of proactive transparency of the Labour Inspection Service. Assessment of the practice of proactive publication of information on the website has revealed that the Service does not fully comply with the requirement of the Georgian legislation, in particular, the obligations set forth by №219 Decree of August 26, 2013, of the Government of Georgia on “Requesting Electronically and Proactive Publication of Public Information.” The obligation to publish information is breached in terms of content as well as periodicity.

A significant part of the public information to be published proactively, according to the list approved by the Decree of the Government, is not present on the website of the Service. The relevant sections are created; however, they do not include any information. It should be highlighted that information on financing and budgeting is not present at all on the website.

The study also demonstrated that the information published on the website is not systematized and structured. The available information is not sufficiently user-oriented and fails to offer clear guidance to employees on the specific circumstances and procedures for contacting the Labour Inspection Service. Furthermore, it is essential to ensure that

interested parties have readily accessible information concerning the relevant stages and potential outcomes.

In summary, addressing the identified shortcomings in a timely manner is essential to improve the transparency and openness of the Labour Inspection Service.

10. Recommendations

The following recommendations should be taken into account to improve the transparency of the Labour Inspection Service:

- The Labour Inspection Service should respond to public information requests in a timely manner and provide inspection materials to interested parties without any obstacles. In certain cases, due to the nature of the violation, timely release of particular inspection materials is essential (for example, in case of industrial accidents).
- The Labour Inspection Service should develop effective mechanisms for the timely processing of inspection materials to avoid delays in terms of providing public information.
- The Labour Inspection Service should publish all public information envisaged by the Decree №219 of August 26, 2013, of the Government of Georgia on “Requesting Electronically and Proactive Publication of Public Information.”
- The Labour Inspection Service should categorize information into thematic sections on its website, ensuring simplified access and straightforward retrieval of necessary information.
- Proactively published public information should be updated periodically as determined by the Decree of the Government of Georgia.

- The Labour Inspection Service should take relevant measures to strengthen public trust. To achieve this, it is advisable to publish comprehensive guidance on the circumstances under which employees can approach the Labour Inspection Service and the rules and procedures for reporting violations. Additionally, ensuring information regarding the confidentiality of provided information and guarantees of anonymity on the website can serve as a strong incentive for employees.
- In addition to the protocols of administrative offences and the decisions on imposing penalties, it is recommended to publish detailed information on the grounds, results, and conclusions of the inspections on the Service's website. At the same time, it is advisable to publish information in a systematized manner, categorized by the nature of violations, specific sectors, the size of the company, and other characteristics.
- It is important to separate in the annual report of the Labour Inspection Service the number of primary and follow-up inspections as well as the number of inspections of specific industries/regulations and inspections carried out within the scope of the supervision over the norms laid down by the Labour Code.
- Information included in the annual report of the Labour Inspection Service is desirable to be additionally presented in an easily comprehensible manner. This could involve using graphs, explanations, and booklets to enhance clarity and accessibility, simplifying access to and understanding of the information.
- The Labour Inspection Service should implement measures to enhance citizen engagement. Creating diverse informational and working formats would increase citizen participation, fostering transparency and accountability of the Service.

