



Protection of Rights
Without Borders NGO

ABSTRACT

**The Characteristics and Issues of the
Functions of the Health and Labor
Inspection Body in the Field of Labor
Rights**

2022



The report is prepared by the “Protection of Rights without Borders” Non-Governmental Organization (hereinafter referred to as the Organization) in the scope of the “EU4LabourRights: Increasing Civic Voice and Action for Labor Rights and Social Protection in Armenia” project (hereinafter referred to as the Project). The Project is implemented in collaboration with “OxYGen” Foundation, “Socioscope” NGO, “Asparez” Journalists Club NGO, Media Diversity Institute – Armenia and “Armenian Progressive Youth” NGO in partnership with the “Protection of Rights without Borders” NGO and Eurasian Partnership Foundation, respectively. The Project is financed by the European Union.

The content of the report belongs solely to "Protection of Rights Without Borders" and may not coincide with the views of the European Union, “OxYGen” Foundation, “Socioscope” NGO, “Asparez” Journalists Club NGO, Media Diversity Institute – Armenia, “Armenian Progressive Youth” NGO and Eurasian Partnership Foundation.

Since 01 July 2021 amendments to the Article 33 of the Labor Code of the Republic of Armenia came into force, the Health and Labor Inspection Body, as an authorized body, assumed state control over labor legislation.

Despite the fact that by the amendments enforced from July 1 of 2021, the powers of the inspectorate body were essentially enlarged, a number of legislative gaps and practice issues within the activities of the Health and Labor Inspection Body still exist.

The establishment of the inspectorate body and the insurance of its efficient operation derives from the international obligations undertaken by the Republic of Armenia. In order to carry out proper activities, the inspectorate body shall be vested with complete functions and necessary toolkits to ensure their implementation, including with the relevant checklist and procedures. Besides, the existence of a professional staff to ensure the smooth implementation of the relevant functions is one of the most important prerequisites in the labor rights sphere.

Since 2005, when the Labor Inspection Convention No 81 adopted by the International Labor Organization came into force, the Republic of Armenia has undertaken the obligation to establish labor inspectorate at least in two sectors: in industrial and in trade enterprises.

Since 2004, the State Labor Inspectorate has been operating as a body in charge of conducting control and supervision over the maintenance of RA labor legislation and other normative legislative acts containing labor rights. During its operation, the later was reorganized for several times by losing its main functions of conducting state supervision in terms of the requirements of labor legislation. The situation has changed only after July 1 of 2021, when the legislative amendments providing relevant powers to the inspectorate body entered into force.

As shown in the analysis, the Health and labor Inspection Body of the Republic of Armenia is vested with the majority of the powers, as envisaged by Convention No 81 on Labor Inspection. According to the Convention, the staff of the inspection body must consist of public servants whose status and conditions of service are such as to guarantee the stability of their positions and their independence in the event of a change of government or undue external influence. Labor inspectors are hired solely on the basis of the qualifications necessary to perform

the duties assigned to them, in compliance with the conditions necessary for public service recruitment established by national legislation.

According to the legislation of the Republic of Armenia, the position of the head of the inspection body is an administrative position. The leadership of the Inspection Body is appointed and dismissed by the Prime Minister of the Republic of Armenia, and the Head of the Inspection Body is accountable to the Government, the Prime Minister and the Council. The comparative analysis of the current legislation under the above-mentioned criteria shows that in the case of the head and deputies of the inspection body, the stability of the positions, independence in case of a change of government or improper external influence is not ensured. The status and service conditions of the head of the inspection body and his deputies are not such as to guarantee the stability and independence of their positions in the event of a change of government or improper external influence.

In terms of labor inspectors, the guarantees established by domestic legislation correspond to the guarantees established by the Convention. In particular, holding the position indefinitely, as well as defining the grounds for dismissal provided by law, ensures the stability and independence of the positions held in the event of a change of government. The requirement to meet the criteria of the given position provides the requirement "to be hired on the basis of qualifications". The Law of the Republic of Armenia "On Public Service" also guarantees the independence of inspectors as civil servants.

The right of a labor inspector to enter any enterprise at any time of the day, including at night, is not defined in any domestic legal act. Thus, the regulation of the requirement provided by the law to notify the employer in advance about the inspection, as well as taking an additional instruction from the superior to study other problems observed during the inspection, as well as not clearly providing the possibility of entering any enterprise at any time of the day, including at night, are contrary to Convention No. 81. and should be revised.

The domestic legislation of Armenia does not define the duty of inspection bodies to keep secret the source of complaints about all kinds of defects or violations of legal provisions, which

can be an additional guarantee for employees not to be afraid to disclose problems in the workplace.

Although in practice the inspection body uses different methods when conducting proceedings, its powers are not defined by the law, but are defined by its Charter, which is a local act. When appealing the results of inspections/orders conducted by the inspection body, the mentioned issue is also raised by the plaintiffs, and the judicial practice is not uniform in this regard.

The inspection body is authorized to carry out inspections and to issue orders to the employer to eliminate the violations revealed by the inspection. At the same time, the current legislation does not prohibit inspection bodies from exercising control powers without conducting inspections /within administrative proceedings/. The Law of the Republic of Armenia "On Inspection Bodies" also regulates issuing orders by inspection bodies, defining their powers. According to the Charter of the Health and Labor Inspection Body, the latter can issue orders to eliminate violations largely in the health sector, not in the field of labor, although in practice, when conducting inspections in the context of labor relations, the Inspection Body issues orders to eliminate the violations of labor rights.

In practice, when there is no approved checklist for the oversight the observance of the norms of labor legislation, the employees of the inspection body carry out an inspection within the framework of the RA Law "On Basics of Administration and Administrative Procedure" and issue orders to employers to eliminate the recorded violations, even in the case when to issue an order in the field of labor rights is not provided for by any law and the Charter of the Inspection Body. In this respect, by conducting investigative activities instead of inspection, the Inspection Body also violates the time limits as envisaged by Article 37 of the RA Code of Administrative Offences. In the monitored cases, the RA Administrative Court recorded, that in contrast to examination, inspection is not an independent proceeding, rather an assignable action during its regular stage, upon necessity.

Another problem was recorded, when the Inspection Body examines the cases of the administrative offences on the ground of the RA Code of Administrative Offences and subjects

the employers to administrative penalty which is problematic in terms of the alleged administrative offences, since the later was vested with the relevant power by legislation only after August 5 of 2021, that is the powers of the inspectorate body to subject the employer to liability and to examine the powers of the inspectorate body arise since that day and the powers prior to the mentioned time period cannot have retroactive force.

By the Charter of the Inspection Body, the latter can conduct oversight over the employers both in public and private sectors, respectively. However, the applications filed against the state or community bodies are few. The majority of the applications are filed to the Health and labor Inspection Body against the employers in private sector, especially after being fired.

The complaints against state body are often filed directly to the RA Administrative Court. One of the reasons in doing so is the lack of awareness of the powers of Health and labor Inspection Body or the lack of trust in terms of the impartiality towards the body, which is a part of the executive branch of government.

According to the statistical data, 40% of the complaints filed by the individuals related to Article 130 of the RA Labor Code: that is, the final settlement was not calculated and ensured within the relevant prescribed timeframe and in the scope of the administrative proceeding, more penalties were imposed in a line with Article 169.8 of the RA Code of Administrative Offences for the failure by the employer to make count and (or) pay the salary. The majority of the complainants (56%) were females.

Within the observed time period, 146 cases were terminated on the ground of denouncement by the applicant. According to the research, the applicants denounced the application mainly due to the reason, that during the current stage of the administrative proceeding, the employers voluntary restored the violated rights, the applicant withdrew the application and therefore, the necessity to adopt the administrative act was revoked. That is, the application filed to the inspectorate body was voluntarily an efficient method.

As shown by the examination of the judicial acts, while filing a complaint against an inspectorate body, the applicants raise the issue of failing to engage the interested parties in the drafting process of the relevant reports, not being present at the elaboration process of the draft

reports, failure to sign the report on the administrative violation, as well as failure to explain the rights and the obligation, envisaged by Article 267 of the RA Code of Administrative Offences to the latter. That is, the employees of the inspectorate body do not maintain the guarantees envisaged by the RA Code on Administrative Offences, as a result of which, in case of appealing it at the court, the act, which was adopted in the outcomes of the instituted proceeding can be recognized annul by the court on the ground of the failure to maintain the relevant procedure and as a result, the violated right will not be restored.

In the sphere of ensuring labor rights, the cooperation between the state bodies is an obligatory condition in order to ensure the effective implementation of the functions of the Health and Labor Inspection Body of the Republic of Armenia. For example, if the State Revenue Committee, while carrying out its function detects a violation, the examination of which is vested to the inspectorate body, the later forwards it to the inspectorate body.

According to the statistics, the majority of the proceedings carried out on its initiative were instituted on the ground of the information received from the State Revenue Committee. However, in some cases, such information was received later, when the violation was already detected and the deadline to subject to liability was already expired.

Taking into account the circumstance, that, while carrying out administrative proceeding, the administrative bodies are biased by the deadlines prescribed by the RA legislation, the transfer of information made on time can be determining.

As shown by the analysis, the employees apply to the Health and Labor Inspection Body of the Republic of Armenia mainly after being fired, for example by the issue of the unpaid salary, failure to ensure the final settlement, etc. Such practice of applying to the Health and Labor Inspection Body under the availability of different conditions witness about the fears of the employees, especially when they are afraid of losing their jobs and on the other hand about the lack of awareness on the grounds and ways for applying to the Health and Labor Inspection Body. In order to solve the above-mentioned problem, it is necessary to raise the awareness of the public on the activities of the Health and Labor Inspection Body, as well as on applying to the inspectorate body, respectively.

On the other hand, it is important for the Health and Labor Inspection Authority to work with employers to prevent possible violations. It can be through organizing courses, seminars, discussions, issuing manuals, publishing booklets, references to increase awareness among business entities and citizens, as well as carrying out explanatory work with business entities regarding the requirements defined by legal acts, providing advice on specific issues.

Besides, the Health and Labor Inspection Body does not have sufficient staff, as a result of which, the response to the violation in the sphere of labor rights can be not efficient.

The establishment of an extrajudicial body on labor disputes is considered as one of the priorities of the Government of the Republic of Armenia. The analysis of judicial practice and the administrative proceedings of the inspection body shows that, at least to some extent, the issues examined by the inspection body and the courts coincide. Examining cases in the court is more time-consuming and mostly causes litigation costs, for example, representation costs, in some cases, even being exempted from paying the state fee by law, the court also charges a state fee. In this respect, the objective for the operation of the extrajudicial body is to accelerate the solution of the labor disputes, which is directed for the interests of the employee and the employer, respectively. The choice of the extrajudicial mechanism depends on the degree of development of the country's institutional system, trade unions and other mechanisms.

Essentially, the provision of an extrajudicial mechanism, both as part of the inspection body and as a separate structure, can be an effective way to protect the rights of employees, providing a shorter time to resolve the dispute without additional costs, as well as helping to relieve the burden on the courts.

However, it is important that the already existing Inspection Body does not go beyond its supervisory powers, including actually performing a dispute resolution function. In this regard, it is crucial to clearly separate the powers of bodies with the authority to resolve a labor dispute, including by separating the aspects of exercising control and resolving a dispute. For this purpose, it is very important to clearly define the supervisory powers of the Inspection Body by the

legislation, to exclude the latter from going beyond the limits of its powers and the practice of dealing with the restoration of the violated rights of actual workers.

RECOMMENDATIONS

At legislative level

- To amend the Law of the Republic of Armenia "On Public Service" in accordance with the requirements for the positions of inspection bodies, including the head and deputies of the Health and Labor Inspection Body in accordance with Article 6 of Convention No. 81, in particular excluding the possibility of dismissing the person holding the mentioned position from the position due to the change of the official's superior (or direct manager) in case, as well as as a result of the change in the balance of political power, to guarantee the stability and independence of the positions in the event of a change of government or from improper external influence.
- Taking into account the judicial practice, through legislative amendments, in any case, to exclude the dismissal from the positions of the head and the deputies of the Health and Labor Inspection Body at the absolute discretion of the RA Prime Minister, in order to avoid the practice of arbitrary dismissal. For example, make it an autonomous position.
- Accordingly, through amendments in both the RA Law "On Public Service" and in the Charter of the Health and Labor Inspection Body review and tighten the requirements for the appointment of the head of the Inspection Body and his deputy for such a position, which will be aimed at the merit based selection to those positions.
- In the context of extra-judicial/judicial dispute resolution body, state control over labor relations and planned structures, to clarify the functions of the Health and Labor Inspection Body clearly defining the supervisory powers of the Health and Labor Inspection Body to exclude the latter from going beyond the limits of its powers and solving actual disputes.

- Clearly define in legislation the powers of labor inspectors, including clearly providing the possibility of the inspector not to notify the employer about the inspection in advance, the possibility of studying other issues noticed during the inspection without taking an additional instruction from the superior, as well as the possibility of entering any enterprise at any time of the day, including at night in accordance with Convention No. 81.
- Similarly, define the duties of labor inspectors: not to have a share in the structures under control, not to publish confidential information that became known during the performance of their duties, as well as not to reveal the sources of complaints that are the basis for the inspection, in accordance with Convention No. 81.
- Clarify in legislation the scope of the authority of the Inspection Body to issue an order in the context of monitoring the observance of labor legislation and other legal norms regulating the sector, to exclude the practice of the Inspection Body issuing an order to employers to eliminate the violation without having a legal basis, including as a result of failing to carry out an inspection.
- Accordingly, in the context of the observance of labor legislation and other relevant legal norms, clearly define the issues in respect of which, in the event of detection of violations, the Inspection Body is authorized to issue instructions/orders in order to eliminate them, making them conform to the requirements of Convention No. 81 to exclude the exercise of such power in any situation.
- Legally establish and create efficient operation grounds for submitting unanimous application and for their feedback, respectively.
- In the context of mutual assistance of state bodies, elaborate concrete procedures for information exchange between the state agencies for detecting labor violations in order to ensure the maintenance of deadlines and other legislative requirements as envisaged by Article 37 of the RA Law on “On Fundamentals of Administrative Action and Administrative Proceedings”.

On legal practice of the Health and labor Inspection body

- In a line with Article 6 of the Constitution, exclude the practice of revealing the violations through the methods not envisaged by law.
- Before legislative changes, exclude the practice of issuing orders to eliminate the detected violations in the case of discovering violations in the field of labor law.
- Ensure the sufficient amount of employees by replenishing the vacant positions and add the number of inspectors, upon necessity.
- In the scope of the administrative proceeding, ensure the guarantees and the deadlines prescribed by the RA Code of Administrative Offences.
- Taking into account the ongoing reforms, as a result of which state bodies are being dissolved, reorganized, merged, ensure the proactive role of the Health and Labor Inspection Body by implementing effective control over the provision of labor rights in the mentioned processes.

On awareness raising

- Conduct awareness raising campaigns on the inspectorate body, its functions, including sharing of informative videos, posting of leaflets in different places, etc. Demonstrate the successful practice of the inspectorate body for the purpose of raising the public trust towards the inspectorate body.
- Conduct awareness raising for public servant of state and local self-governing bodies about the powers and opportunities of the Health and Labor Inspection Body, as well as increase confidence in the results of inspections and proceedings carried out at state and local self-governing bodies as employers and the measures of responsibility applied.