



Protection of Rights
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ISSUES OF IMPLEMENTATION OF POWERS OF LABOR INSPECTORS OF THE HEALTH AND LABOR INSPECTION BODY OF THE REPUBLIC OF ARMENIA



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As a result of the enforcement of the amendments made in Article 33 of the Republic of Armenia Labor Code, the Health and Labor Inspection Body of the Republic of Armenia (hereinafter referred to as HLIB), as an authorized body, undertook the conducting of control over the labor legislation.

According to results of the analysis of the current powers of HLIB, overall, the authorities applied in the scope of conducting oversight in labor sector are overall in compliance with the authorities of the labor inspector envisaged by the Labor Inspection Convention No 81¹ adopted by the International Labor Organization. However, there a number of issues in regard to the duties of the labor inspectors and their implementation.

According to the Article 12 of the Convention N 81, labor inspectors have the rights:

- a) to enter freely and without prior notice at any hour of the day or night any workplace liable to inspection;
- b) to enter by day any premises which they may have reasonable cause to believe to be liable to inspection;
- c) to carry out any examination, test or enquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed.

According to the analysis of the Republic of Armenia legislation, there are a number of issues and gaps in the following aspects:

- Certainty and accessibility of the labor inspectors' authorities;
- Right to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection;
- Possibility to examine other problems noticed during the inspection conducted without the direct assignment of the supervisor;

¹ Labor Inspection Convention concerning Labor Inspection in Industry and Commerce (N81), adopted on 9.06.1947, enforced for Armenia on 17.12.2005, available at <https://www.arlis.am/DocumentView.aspx?DocID=24576>

- During the implementation of their official duties, an obligation not to disclose information considered as confidential, as well as not to disclose the source of complaints subject to inspections;
- Sufficient number of labor inspectors, etc.

➤ *The certainty and accessibility of powers*

According to international regulations, the majority of the work time of the labor inspector shall be provided to carrying out inspections, since that method is considered one of the most efficient means to detect the violations in labor sector. In some cases, given the characteristics of the violation, the examination of the documents without making an inspection visit to the employer can be sufficient.

Labor inspectorates should refrain from limiting the lawful scope of inspections to certain areas or to pre-established checklists². In the scope of the inspectorate visit, the labor inspector, in the scope of Article 12 of the Convention N 81, should be eligible to conduct any kind of inspection, control or examination, which can be considered as necessary for the labor inspectors to acknowledge, that the legislative provisions are maintained. During the inspection visit based on the pre-established checklist, the labor inspectors shall also be vested with the right to conduct oversight over the working conditions and other issues related to the protection of the rights of the employees and not be limited only by the content of the checklists. The pre-established checklists can be considered as a toolkit, which, in the scope of the inspectorate facilitates the visit indicating for each area of control what aspect should be examined, however, the latter should not hinder the labor inspectors, in the scope of performing their professional duties, supervising compliance with any other provisions relating to the conditions of work and the protection of the workers within their competence in line with national legislation³.

² See Guidelines on general principles of labour inspection, point 5.2.4.

³ IBID 5.2.4, 5.2.12

The powers of the labor inspectors shall be clearly defined in the legislation of the respective sector. The certainty of the scope of the powers is vital to prevent the possible misuse and unnecessary interference to the activities of the economic entities and employees, respectively, to guarantee the principal of maintenance of legality and exclusion of self-righteousness, respectively. According to the Article 6 of the Republic of Armenia Constitution, state and local self-government bodies and officials shall be entitled to perform only such actions for which they are authorized under the Constitution or laws.

Paragraph 1 of Article 6 of the RA Law on “Inspection Bodies” define the powers of the inspection body, including conducting of the inspections in accordance with law and order, the application of liability measures set by the law in case of violation of legislation.

The powers of the employees of the previously operated Inspectorate Body were envisaged by a separate law. Currently, by the charter of the HLIB, the wording “labor inspector” is not envisaged. There is information about leadership positions and deputy heads, and in case of other positions and the authorities of other employees, no definition is available.

While carrying out their oversight activities, the labor inspectors are guided by the Republic of Armenia Laws on “Inspection Bodies”, “On Organizing and Conducting Inspections in the Republic of Armenia”, as well as “On Fundamentals of Administrative Action and Administrative Proceedings”, respectively.

The only legislative act, by which the rights and the obligations of the persons conducting inspection in any sector are defined is the RA Law “On Organizing and Conducting Inspections in the Republic of Armenia” (Article 7 and 8, respectively), however,

- a) The mentioned norms do not regulate the peculiarities of the oversight over the labor legislation and in that regard are not compliant to the international regulations, for example conducting inspection at any time of the day;
- b) In case of the absence of the checklist, the inspectors of the HLIB conduct an administrative proceeding based on the RA Law on “Fundamentals of Administrative

Action and Administrative Proceedings”, in regard to which no accessible legal act on the volumes of the rights and obligations in terms of ensuring the labor rights of the labor inspector of HLIB is available. In the mentioned case, the rights and obligations in the scope of conducting inspection are not clearly defined.

According to the information received from the Health and Labor Inspection Body, “the obligations of the inspectors are defined by the job description of civil service”, which is confirmed by an individual legal act of the head of the inspection body⁴.

The following information is included in the job description of the labor inspector:

- while carrying out inspection, demand necessary information on the labor rights from the respective departments or the relevant inspection bodies
- while carrying out inspection, demand documents, data and other information, explanation, references from the economic entities, **which are directly connected to the objectives of the inspection**
- in the scope of the inspection, acquire items, test samples and other necessary documents, **which are directly connected to the objectives of the inspection** and do not hinder the normal activities of the economic entity⁵.

As we can see, the inspections can factually be conducted only upon the availability of a pre-established checklist (according to the RA Government Decree N 718-Ն, dated April 30 of 2020, currently, certain number of sectoral checklists are partially or completely confirmed⁶), except for, the applicable wording clearly define, that even in case of the availability of the checklist, the labor inspector has the right to carry out the above mentioned activities, only if the latter are compliant with the objectives of the inspection, which does not completely reflect the approach envisaged by the above mentioned international regulations.

⁴ Letter of HLIB 06/22353-2022

⁵ [ԲՕՏՀ | Պաշտոնի անվազիք \(gov.am\)](http://www.gov.am)

⁶ <https://www.arlis.am/DocumentView.aspx?docid=171506>

The lack of certainty of the rights and obligations of the labor inspectors, as well as the applicable tools used by them lead to the appealing of the powers and the legality of the administrative acts adopted as a result of their implementation in the Republic of Armenia Administrative Court⁷.

According to the employees of the HLIB, the body, while recording the complaint-applications, examines the issues recorded in the complaint and in case of detecting other problems, the employee should present an explanation, receive permission and a relevant instruction to address the detected problems.

According to Article 6 of the RA Law “On Fundamentals of Administrative Action and Administrative Proceedings”, the official from the inspectorate body, based on the inspection checklist, in the scope of his/her official powers delegates certain assignments (ordinance) to the economic entities in regard to the elimination of the detected violations and gaps.

In case of the absence of the pre-established checklist, the inspectors of the HLIB carry out the administrative proceeding, envisaged by the RA Law “On Fundamentals of Administrative Action and Administrative Proceedings”, in the scope of which the body in charge of carrying out the proceeding can conduct an examination of a physical person, location, any object or item, hear the parties and the of the proceeding witnesses of the proceedings, etc.

The Republic of Armenia Law “On Fundamentals of Administrative Action and Administrative Proceedings” does not regulate the authority to grant an interim order to the participant of the proceeding for the elimination of the violation.

However, according to the monitoring results, in some cases, the HLIB, while conducting an inspection, issues an ordinance to the economic entity for example on the obligation to conduct the final settlement, factually identifying the examination and the inspection, for which the HLIB does not have the legal ground. The judicial practice also confirms this practice.

In the monitored cases, the Administrative Court recorded, that in contrast to inspection, examination is not an individual administrative proceeding, rather an activity appointed upon

⁷ See ՎԴ/3372/05/21, http://datalex.am/?app=AppCaseSearch&case_id=38562071809957805:

necessity during the ongoing stage of the proceeding⁸. The charter of the HLIB restricts the cases of issuing ordinance in healthcare sector.

Thus, the domestic legal acts defining the rights and the obligations of the labor inspectors are completely compliant to the international regulations and restrict the opportunities of carrying out the powers more efficiently in terms of inspection and in regard to the proceedings not foreseeing inspection, the relevant legal procedures are applicable.

- *Right to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection;*

During the inspection visit conducted based on the pre-established checklist, the labor inspectors should be eligible to supervise other issues related to working conditions and the protection of the employees, not to be limited only by the content of the checklists⁹.

According to Article 3 of the Republic of Armenia Law on “Organizing and Conducting Inspections in the Republic of Armenia”, before the commencement of the inspection, the head of the respective state institution publishes a decree or ordinance on conducting of the relevant inspection, which 3 working days prior to commencing the inspection shall be issued to the head of the economic entity or the acting head of the economic entity.

According to the analysis of the legislative field regulating the sector, the right of the labor inspector to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection, except for the failure to include the conditions envisaged by Paragraph 1, 4, 5, 5 and 7 of the Republic of Armenia Labor Code directed to the detection of the inspections. Actually, the domestic legislative regulations envisage only limited cases on carrying out inspection visit without a prior warning.

⁸ See ՎՊ/12063/05/18, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809929071

⁹ See ILO Guidelines on general principles of labour inspection, կետեր 5.2.4, 5.2.12, available at https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/genericdocument/wcms_844153.pdf

Moreover, if in the scope of the examination of the complaint, a necessity to conduct an inspection of the documents arises and the employer is also previously notified.

Thus, failure to legally envisage the legal obligation to notify the employer about the inspection visit, as well as the acquisition of additional assignment from the supervisor to examine other problems detected during the inspection, as well as paying an inspection visit during at any hour of the day or night contradict the Convention N 81 and therefore, are a subject for review¹⁰.

➤ *Keep the source of complaints strictly confidential*

According to the Article 15 of the Convention N 81, the labor inspectors:

- a) shall be prohibited from having any direct or indirect interest in the undertakings under their supervision;
- b) shall be bound on pain of appropriate penalties or disciplinary measures not to reveal, even after leaving the service, any manufacturing or commercial secrets or working processes which may come to their knowledge in the course of their duties; and
- c) shall treat as absolutely confidential the source of any complaint bringing to their notice a defect or breach of legal provisions and shall give no intimation to the employer or his representative that a visit of inspection was made in consequence of the receipt of such a complaint.

The domestic legislation of Armenia does not define an obligation for the state institutions in charge of carrying out inspections to keep the source of complaints confidential, which can be an additional guarantee for the employees not to be afraid to detect the problems in the workplaces.

It should be mentioned in this context, that through the website of "<https://employeeprotect.am>", the citizens can also report anonymous complaint, however, in the HLIB, an administrative proceeding can be instituted based on an application, to which the

¹⁰ See Guidelines on general principles of labour inspection, ԼԷԽՆ 5.2.8:

general requirements presented to the application in a line of Article 31 of the RA Law on “Fundamentals of Administrative Action and Administrative Proceedings” are applied. Besides the latter, in a line with the decree N 14-L, dated 06.11.2019 adopted by the Management Board of the Inspection Body, according to the order on receiving the complaints from public and on their further procedure, the name, surname should be mentioned in the complaint, and the anonymous complaints will not be processed¹¹.

➤ *Sufficient number of inspectors*

According to Convention N 81, the number of labor inspectors shall be sufficient to secure the effective discharge of the duties of the inspectorate and shall be determined taking into consideration the number, nature, size and situation of the workplaces liable to inspection, the number and classes of workers employed in such workplaces, the number and complexity of the legal provisions to be enforced, the material means placed at the disposal of the inspectors, as well as the practical conditions under which visits of inspection must be carried out in order to be effective. According to the data received from the HLIB, there are overall 339 vacancies in the HLIB, out of which 212 employees are in charge of carrying out inspection activities (both in healthcare and in labor sectors) and out of the vacancies, only 156 positions (74%)¹² are replenished.

There is also a problem of replenishing the vacant positions too in the HLIB, particularly taking into consideration the increase in the number of administrative proceedings. In the context of carrying out efficient inspection, it is necessary for the Inspection Body to have sufficient number of employees, otherwise, the detection of the problems will not be carried out properly and efficiently and the violations of the labor rights will be undetected, particularly during the stage, when the labor relations are being carried out.

¹¹ The charter is available by the link: https://hlib.am/wp-content/uploads/2020/08/BOXOQ_KARG-1-1.pdf, point 15

¹² HLIB letter 06/22353-2022 as of 16.12.2022

RECOMMENDATIONS

At legislative level

- At legislative level, clearly define the powers of the labor inspectors, including the information on the failure to enter freely and without prior notice to the employer to the institution liable to inspection, the possibility to examine other problems raised during the inspection without the additional assignment by the supervisor in this regard, as well as the possibility to make an inspection at any hour of the day or night any workplace in a line with the requirements of the Convention N81.
- While carrying out inspection, define a clear obligation for the labor inspectors not to have a share in the institutions under inspection, not to publish information acquired during the inspections, as well as not to reveal the sources of information considered a ground for conducting the inspection in a line with the requirements of the Convention N81.
- At legislative level, clarify the scope of jurisdiction to issue ordinance by the HLIB and in the scope of maintaining the legislative norms regulating the sector exclude the practice of the HLIB, without having a legislative ground, to issue ordinance as a result of the failure to eliminate the violation.

In the field of HLIB legal practice

- In a line with Article 6 of the Constitution, exclude the practice of detecting legislative violation not envisaged by law.
- Ensure sufficient number of professional employees, replenishing the vacant position and upon necessity add the number of the labor inspectors.
- In the scope of administrative proceedings, ensure the maintenance of guarantees and deadlines of the RA Code of Administrative Offences.