

NEW REGULATIONS FOR HAZARDOUS OCCUPATIONS (LEGISLATIVE INITIATIVE AND OVERVIEW OF EXISTING PRACTICES)

The Parliament held the I hearing of the [government-initiated](#) draft law on Labor Safety on June 5. The topic of labor safety was also discussed during the sittings of the State Constitutional Commission and a number of opinions from different stakeholders were heard in this regard.

It is critically important for the draft law to ensure effective mechanisms for the protection of the life and health of employees, rather than creating an ineffective system vulnerable to corruption. It is also expedient for the government to put into use all the mechanisms that already exist in the country's legislation.

During the period of 2012-2017, 209 criminal proceedings were initiated by the Prosecutor's Office for the violation of Article 170 and Chapter XXXI (Breach of Safety Regulations at Work) of the Criminal Code of Georgia¹. Out of these 209 cases, 20 were dropped. According to information received by the Common Courts, during 2012-2017, the City and District Courts heard a total of 130 cases. In most of these cases, the court issued suspended sentences or agreed to a plea bargain with the defendants. Only in 12 cases did the court issue a sentence of imprisonment.

The provision of labor safety is envisaged through Georgia's international commitments. It is important to note the existing situation in the country, specifically a number of inadequate responses to specific incidents related to occupational safety.

Overview of the existing situation and practice of labor safety

The initiated draft law defines terms and regulations on labor safety for the existing industries in the labor market. The responsibilities, obligations and duties between the employer and employee are defined more precisely. The law applies to hazardous occupations, the exact list of which will be defined by the Government within 6 months following the entry into force of the law.

The [Decree](#)² of the Government of Georgia is the basis for labor safety inspections carried out in companies. The aim of the state labor inspection program is the following: prevention of violation of labor safety, raising awareness of the employee and employer on labor safety, providing information and consultations, preventing human trafficking by awareness raising, drafting/amending standards for labor safety, as well as defining the necessity for institutional reform in the sphere of labor safety. The rules for conducting the inspections are approved through individual administrative acts of the Ministry of Labor, Health and Social Affairs.

The aforementioned Decree also stipulates that the Labor Safety and Health Inspector should seek consent from the employer that he wishes to inspect³. According to Article 3 (1b) of the Decree, the Labor Conditions Department is tasked with drafting reports/findings. The Department does not have the mandate to issue sanctions. Only recommendations can be issued in case of violations.

The Department can research into workplace accidents if the employer consents. According to information provided by the Ministry of Labor, Health and Social Affairs⁴, the inspectors of the Department looked into 10 instances of workplace accidents during 2016-2017. The mechanism of research into workplace accidents does not include sanctions. According to the Department, the case is handed over to respective law enforcement agencies if there are any signs of violation of law.

¹ As of June 2017

² Decree of the Georgian Government, 29 December 2016 #627

³ Article 2 (1) of the Labor Conditions Inspectors State Program 2017

⁴ As of May 22, 2017

2015	Inspections were carried out in 118 companies, 588 infringements were found, 116 were fixed on the basis of recommendations
2016	Inspections were carried out in 96 companies, 1275 infringements were found, 6 were fixed on the basis of recommendations
2017	Inspections were carried out in 720 companies, 785 infringements were found

Chart 1. Data on workplace accidents

Company name	Accident date	Type of business
Ltd. "Saqnakshiri GIG"	09.05.2017 (under inspection)	Mining extraction
Ltd. "Geostili"	28.03.2017	Metallurgical industry
Ltd. "Georgian manganеzi" ferroalloy factory	06.01.2017	Metallurgical industry
Ltd. "Georgian manganеzi" Perevi mine of Chiatura mining concentrating mill	04.01.2017	Mining extraction
Ltd. "Georgian manganеzi" Itkhvisi mine of Chiatura mining concentrating mill	03.12.2016	Mining extraction
Ltd. "Solo development"	18.10.2016	Construction business
Jsc. "GIG Group - Ltd. Saqnakshiri"	07.10.2016	Mining extraction
Ltd. "Aiani"	20.10.2016	Construction business
Ltd. "Iberiis Varskvlavi"	09.09.2016	Construction business
Ltd. "Edemi", executor construction company "LAG+"	20.07.2016	Construction business
Ltd. "International energy corporation of Georgia"	29.06.2016	Energetics

It is also important to observe the legal repercussions following the death of employees at worksites and the work of the Prosecutor's Office in this regard. We thus requested information on the investigations/criminal proceedings carried out by the Prosecutor's Office, as well as the final outcome, of all instances of fatal accidents (including Article 170 and Article 240, 241, 242, 243, 244, 245 of Chapter XXXI of the Criminal Code of Georgia) of workers in the time period 2012-2017.

Chapter XXXI (Breach of Safety Regulations at Work) of the Criminal Code of Georgia envisages sanctions for crime, such as: Breach of safety regulations during mining, construction or other works, Breach of safety regulations during the placement, design, construction or operation of electric or thermal energy facilities or gas, oil or oil products facilities, breach of production and technical safety regulations in an enterprise or workshop vulnerable to explosion, breach of fire safety regulations, etc. The maximum sentence for certain crimes defined in Chapter XXXI is a prison sentence of 9 years.

According to information provided by the Prosecutor's Office, 209 criminal proceedings were initiated in the time period 2012 – June 2017. Out of these 209 cases, 20 were dropped.⁵

⁵ Information provided by the Court and the Prosecutor's Office do not match each other. According to information provided by the Prosecutor's Office, criminal proceedings were initiated in 209 cases, out which 20 were dropped. According to information provided by the court, 130 cases were heard in the common courts.

Chart 2. Data on the commencement and closing of investigations/criminal proceedings by the Prosecutor's Office on fatal workplace accidents

Article/Year	2012		2013		2014		2015		2016		2017 (4 months)		Total	
	Started	Closed	Started	Closed	Started	Closed	Started	Closed	Started	Closed	Started	Closed	Started	Closed
170 Violation of labor protection rules	3	0	8	3	10	0	8	0	11	0	1	0	41	3
240 Violation of safety rules while executing mining, construction or other works	35	1	8	4	26	1	33	2	24	4	4	1	150	13
240 ¹ Violation of safety rules on electric or thermal energy, units, gas, oil or petroleum product units	1	0	4	1	3	0	0	1	2	0	2	2	12	4
241 Violation of safety rules on atomic energy units	0	0	0	0	0	0	0	0	0	0	0	0	0	0
242 Violation of safety rules in enterprise or workshop vulnerable to explosion	0	0	0	0	0	0	0	0	0	0	0	0	0	0
243 Violation of fire safety rules	0	0	0	0	0	0	4	0	0	0	0	0	4	0
244 Violation of safety rules of registration, preservation, transportation, sending or use of explosive, inflammable, corrosive substances or pyrotechnic ware	0	0	0	0	0	0	2	0	0	0	0	0	2	0
245 Violation of safety rules of using nuclear material, radioactive waste, radioactive substance or other source of ionising radiation	0	0	0	0	0	0	0	0	0	0	0	0	0	0

According to information received from the Common, District and City Courts, there were 130 cases in 2012-2017.

The following decisions have been ruled by the City and District Courts against the defendants in the 138 cases:

- **Suspended sentence - 68**
- **Plea bargain - 27**
- **Fine - 26**
- **Prison sentence - 12**
- **Cleared of charges - 2**
- **Diversion - 3**

In three cases, the right to conduct business was revoked as a punishment. In one case, the permit required by the technical oversight agency was revoked.

The Court of Appeals⁶ heard 23 cases. The first instance ruled the following:

- The appeal was denied in 6 cases
- The punishment was commuted in one case
- The punishment was increased in two cases

The Supreme Court of Georgia heard three appeals (two were considered inadmissible, while the ruling for one case was left in place)

⁶ The Tbilisi Court of Appeals did not provide the requested information

Chart 3. The number of cases heard by the City and District courts, sorted by year and articles of the Criminal Code of Georgia

City and district courts*						
Article	2012	2013	2014	2015	2016	2017
170 Violation of labor protection rules	2	4	4	6	8	3
240 Violation of safety rules while executing mining, construction or other works	16	10	19	19	19	12
240 ¹ Violation of safety rules on electric or thermal energy, units, gas, oil or petroleum product units	0	1	1	0	1	1
241 Violation of safety rules on atomic energy units	0	0	0	0	0	0
242 Violation of safety rules in enterprise or workshop vulnerable to explosion	0	0	0	0	0	0
243 Violation of fire safety rules	0	0	0	0	0	0
244 Violation of safety rules of registration, preservation, transportation, sending or use of explosive, inflammab inflammable, corrosive substances or pyrotechnic ware	0	0	0	0	0	0
245 Violation of safety rules of using nuclear material, radioactive waste, radioactive substance or other source of ionising radiation	0	0	0	0	0	0
						Total: 130 cases

6 cases in 2015 on Article 240/243

Chart 4. The number of cases heard by the Court of Appeals, sorted by year and articles of the Criminal Code of Georgia

Kutaisi court of appeals*						
Article	2012	2013	2014	2015	2016	2017
170 Violation of labor protection rules	1	0	0	0	3	0
240 Violation of safety rules while executing mining, construction or other works	13	0	1	2	0	1
240 ¹ Violation of safety rules on electric or thermal energy, units, gas, oil or petroleum product units	0	0	0	0	0	0
241 Violation of safety rules on atomic energy units	0	0	0	0	0	0
242 Violation of safety rules in enterprise or workshop vulnerable to explosion	0	0	0	0	0	0
243 Violation of fire safety rules	0	0	0	1	0	0
244 Violation of safety rules of registration, preservation, transportation, sending or use of explosive, inflammab inflammable, corrosive substances or pyrotechnic ware	0	0	0	1 (with article 244)	0	0
245 Violation of safety rules of using nuclear material, radioactive waste, radioactive substance or other source of ionising radiation	0	0	0	0	0	0
						Total: 23 cases

The Tbilisi Court of Appeals did not provide the requested information

Chart 5. The number of cases heard by the Supreme Court, sorted by year and articles of the Criminal Code of Georgia

Supreme court of Georgia						
Article	2012	2013	2014	2015	2016	2017
170 Violation of labor protection rules	0	0	0	0	0	0
240 Violation of safety rules while executing mining, construction or other works	0	0	0	0	0	0
240 ¹ Violation of safety rules on electric or thermal energy, units, gas, oil or petroleum product units	0	0	1	0	1	0
241 Violation of safety rules on atomic energy units	0	0	0	0	0	0
242 Violation of safety rules in enterprise or workshop vulnerable to explosion	0	0	0	0	0	0
243 Violation of fire safety rules	0	0	0	0	1	0
244 Violation of safety rules of registration, preservation, transportation, sending or use of explosive, inflammable, corrosive substances or pyrotechnic ware	0	0	0	0	0	0
245 Violation of safety rules of using nuclear material, radioactive waste, radioactive substance or other source of ionising radiation	0	0	0	0	0	0
						Total: 3 cases

New regulation

The aim of the new draft law on labor safety is the protection of safety and health of employees at workplaces, namely:

- Defining the rights, duties and responsibilities for the state agencies, employer, employee, representatives of the employees and other persons in the workplace.
- Improving management and organization related to providing labor safety in the workplace
- Reducing and preventing workplace accidents and occupational diseases

The explanatory note states that the material and institutional mechanisms for labor rights are part of [Agreement between the European Union and the European Atomic Energy Community and their Member States, and the Association Agreement between Georgia and the European Union](#)⁷. The Appendix XXX of the Association Agreement includes 26 directives on labor safety, which should be harmonized within the Georgian legislation on a periodic basis, from four to nine years⁸.

According to the initiators, the draft law fulfills some of the requirements of [Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work \(89/391/EEC\)](#), which should be fully harmonized in the Georgian legislation by 2019.

Assessment and recommendations

The government's steps towards improving labor safety and fulfilling the international commitments should be assessed as positive; however the draft law requires precise regulation and more detailed definitions, namely:

- **There are no main principles to define what constitutes hazardous work at the level of law**

The draft law states that it is applicable to hazardous work and that the Government of Georgia is to define the list of heavy and dangerous occupations. It is important for the draft law to have a unified legislative terminology and thus include a definition for the heavy and dangerous occupations, which will serve as the basis upon which the Government of Georgia will create a list.

The [Order](#) issued by the Ministry of Labor, Health and Social Affairs on May 3, 2017 includes a list of hazardous occupations, however the introduction of regulation on what constitutes hazardous work on the level of legislation requires the drafting of principles and guiding standards.

⁷ On behalf of the European Union, and provisional application of the 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: https://eeas.europa.eu/sites/eeas/files/association_agreement.pdf , Article 228, 229

⁸ **Article 229: Multilateral labour standards and agreements:** 1. The Parties recognise full and productive employment and decent work for all as key elements for managing globalisation, and reaffirm their commitment to promote the development of international trade in a way that is conducive to full and productive employment and decent work for all. In this context, the Parties commit to consulting and cooperating as appropriate on trade-related labour issues of mutual interest. 2. In accordance with their obligations as members of the ILO and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in 1998, the Parties commit to respecting, promoting and realising in their law and practice and in their whole territory the internationally recognised core labour standards, as embodied in the fundamental ILO conventions, and in particular: (a) the freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation.

- **The ineffectiveness of fines for unregistered businesses and occupations left beyond regulation**

According to the draft law, all persons, who conduct activities defined by the Order of the Government as hazardous work, are obliged to register their business at the registry of economic activities⁹. Following the registration, it is possible to conduct oversight over the business. Moreover, it is forbidden to conduct hazardous works without registration at the registry. Violation of this rule will entail a fine of 500 GEL for the first offense, and 1000 GEL for a repeat offense. The regulations presented in the draft law are ineffective due to the lack of oversight mechanisms and ineffective tools of detecting unregistered activities.

- **Lack of clear regulations on administrative punishments**

According to Article 18 of the draft law, the following type of administrative punishments are envisaged: Warning, fine, suspension of business.

According to the draft law, a fine is issued when the respective activity is conducted without registration. Moreover, a warning is issued if there are no critical breaches of labor safety norms¹⁰, *while in critical breaches a fine and/or suspension of business may be issued.*

The draft law doesn't define what may constitute a critical breach of labor safety norms, even though the distinction implies either a warning or a 5000 GEL fine. It is important for the draft law to define the category for critical breaches on the principle level, and allow any supporting criteria to be determined by other normative acts. Therefore the administrative organ's discretion to issue punishments in this regard should be spelled out in much more detailed definitions in the draft law.

- **Lack of assessment of the financial and economic impact**

According to the explanatory note of the draft law, the adoption of the new regulation on labor safety will not generate additional costs (budget revenue, expenditure, necessary costs). It is noted that the draft law may incur additional financial costs on the employers, since it envisages the organization and management labor safety in the workplace:

- **Implementing new technologies**
- **Buying labor tools, individual and collective protective materials**
- **Training for respective qualified staff and insuring employees from workplace accidents**

The draft law also envisages the obligation of employers to appoint a labor safety specialist(s) or create a department on labor safety on the basis of the document on labor safety organization and prevention. The labor safety specialist and the employer can be the same person. In case of workplaces with 20-100 employees, the employer is obliged to appoint at least one labor safety specialist. In case of 100 and more employees, the employer is obliged to create a labor safety department.

There is no justification of expected costs for the persons whom this draft law will have an effect on. This type of draft law requires relevant justification on the impact its adoption will have on the country's economic and business environment.

While discussing labor safety, it is important, on one hand, for the legislative regulation to envisage effective mechanisms, and on the other hand, to minimize risks of corruption. It is to be noted that the vague wording of the contents of the draft law may leave space for instances of corruption.

⁹ Article 4 (19) of the Draft Law

¹⁰ Article 21 of the draft law: If there are no critical breaches of labor safety norms, the business will be issued a warning. However, the draft does not define what constitutes a critical breach.

Findings

It is important for the state to use all of their mechanisms to ensure labor safety. It is clear that there is no political will to effectively use the punitive mechanisms that already exist in the country's legislation. This is the reason that the investigations into violation of labor terms are ineffective and untimely.

Clearly, even with regulations in place today in the field of labor safety, it is possible to adopt measures that would better protect life and health of employees. The adoption of new legislation and norms by the government will surely serve as an additional preventive mechanism for ensuring labor safety. Nevertheless, if the wording of the legislation is vague, as it is the case in the current draft law, the intended aim of bolstering the protection of life and health of employees won't be achieved. As a result, we will get additional regulations and a favorable environment for corruption.



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