



Protection of Rights  
Without Borders NGO

# ABSTRACT

The Characteristics and the  
Problems of the Functions of the  
Health and labor Inspection Body in  
the Sphere of Labor Rights

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## ABSTRACT

The Government of the Republic of Armenia considers the establishment of an extrajudicial body by labor disputes as one of its priorities. Even though, currently, the Health and labor Inspection Body of the Republic of Armenia through supervision order responds to individual complaints submitted by the employees, according to the Government, the latter is not considered a mechanism for solving the disputes.

As shown by the outcomes of the monitoring, by the majority of the cases, the three-month deadline envisaged by the legislation for the examination of the labor disputes is not maintained, as a result of which, the cases are examined in up to 2 years and more. 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. In the sphere of labor rights, the efficient implementation of state supervision should contribute to the insurance of the rights and the prevention of the violations.

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, after the enforcement of the Labor Inspection Convention No 81 for the Republic of Armenia, adopted by the International Labor Organization, 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.

However, 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 condition changed only after July 1 of 2021, when the legislative amendments enabling relevant powers to the inspectorate body entered into force.

As shown by 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 of the International Labor Organization. By the Charter of the Inspectorate Body, the latter can conduct supervision towards the employers both in public and private sectors, respectively. However, the appeals filed against the state or community bodies are few. The majority of the appeals 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.

As shown by the outcomes of the analysis, the applicants revoked the application mainly because of 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.

Despite the fact that by the amendments enforced from July 1 of 2021, the powers of the inspectorate body were essentially enlarged and the status was clarified, a number of problems still exist, particularly the failure to envisage the powers by the law, carrying out of administration, maintenance of the deadlines, the risk of arbitrariness in terms of firing the employees, who are appointed in executive or administrative positions in inspectorate body, taking into consideration the lack of clarity of discretionary powers of the RA Prime Minister, etc.

Thus, even though in practice, the inspectorate body applies different methods while carrying out the procedure, by the current legislation, the methods through which the latter has the rights to detect the violations and carry out supervisory powers are not clarified. Besides, the information about the powers of the employees of the inspectorate body is not transparent, as a result of which abuses are possible in this regard. The powers of the inspectorate body are envisaged by the Charter and the powers to conduct inspections/examinations or to detect violations through other activities are not directly envisaged in any act.

While appealing the outcomes of the inspections carried out by the inspectorate body, the same issue is raised also by the applicants and the judicial practice in this regard is not unified.

In practice, in all the cases when there is no confirmed checklist, the employees of the inspectorate body carry out inspection. The issue of conducting inspection by the inspectorate body in the scope of the proceeding is problematic. The inspectorate body, conducting investigative activities instead of inspection, also violates the deadline as envisaged by Article 37 of the RA Code of Administrative Offences. By the monitored cases, the Court recorded, that in contrast to examination, inspection is not an independent proceeding, rather an assignable action during its regular stage, upon necessity.

Besides, under the conditions of the lack of relevant legislative grounds regulating the powers of the inspectorate body, the orders to eliminate the violation recorded in the scope of the administrative proceeding are problematic, when the relevant inspections were not conducted for the business entity.

On the other hand, the Charter clearly defines the cases of providing checklists, where the provisions defining the information on labor relations or the security and health conditions of the employees are missing.

Another problem was recorded, when the inspectorate body examines the cases of the administrative offences on the ground of the RA Code of Administrative Offences and subjects the citizens 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.

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 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.

As shown by the analysis, the citizens 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.

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.

## RECOMMENDATIONS

### ***In legislation***

- Legally clarify the powers of the Health and labor Inspection Body and the scope of their implementation, taking into consideration the powers being implemented in practice.
- In the scope of the bodies solving the extrajudicial/judicial disputes, conducting state supervision towards the labor relations, clarify the functions and the role of the Health and Labor Inspection Body by separating the later from the functions of the bodies in charge of solving disputes.
- Clearly define the legislative grounds for appointing and dismissing the head/ the deputy head of the inspectorate body, excluding the arbitrariness.
- Define what kind of decisions the Health and labor Inspection Body can adopt and in the scope of what kind of actions, excluding the arbitrariness in practice.
- Define the powers of the labor inspector.
- Clearly envisage by legislation the mechanisms for revealing the labor violations detected by the Health and labor Inspection Body, the conducting of inspection, which excludes the implementation of the proceeding through other means: examination, inspection, etc.
- 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”.



### ***In the legal aspect 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.
- Exclude the practice of detecting the violations through conducting inspection.
- 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.

### ***In awareness raising sphere***

- 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.