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EUROPEAN UNION FOR ARMENIA



Labor action: Collaborative Effort for Accountable and Inclusive Employment



Decent Work Now



EU for Labor Rights: Increasing Civic Voice and Action for Labor Rights and Social Protection in Armenia

## LABOR RIGHTS PROTECTION IMPROVEMENT

### POLICY PAPER

#### Recommendations of civil society organizations

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## Introduction

Labor rights violations have a continuous systemic nature in Armenia, irrespective of the employment sphere. Reports of the RA Human Rights Defender, as well as international and local organizations address, in particular, issues of proper remuneration, the right to form trade unions, elimination of discrimination.

Protection of labor rights significantly impacts fundamental human rights, since, as practice shows, victims usually refuse to protect their fundamental rights due to the real risk of being dismissed. Thus, while human rights organizations strive to raise awareness about all the aspects of labor rights, the legal support requested by citizens concerns, except for very few cases, unfair dismissal or non-provision of the final settlement prescribed by law. To understand this situation, we need to consider it in the context of the unemployment level and labor underutilization.<sup>1</sup> Serious violations of labor rights also concern enjoyment of other rights, in particular, participation in electoral processes or other political rights.

The main obstacles to labor rights protection are as follows:

- Unregistered employment, i.e., absence of employment contracts, signing a different contract in the conditions of factual labor relations or non-compliance of the contract with the job description and remuneration, which, in its turn, results in
  - Lack of legal grounds and mechanisms for restoration of rights in case of being arbitrarily dismissed,
  - Non-counting of work experience and income in the pension fund and non-operation of social guarantees,
  - Arbitrary provision of vacation and other benefits, etc.
- Flawed state policy of labor rights protection and institutional toolkit, as a result of which the state does not conduct proper oversight of employers except judicial acts in the frame of separate cases, or liability measures applied by SRC or HLIB,
- Lack of trade unions in numerous spheres and ineffectiveness or inaction of existing trade unions,
- Difficulty in the process of restoring violated labor rights in court, and shortage of and ineffective non-judicial mechanisms, as a result of which the volume of infringement of rights is mostly covert.

Protection of Rights without Borders NGO conducted a study of around 500 judicial cases that were lodged with courts in 2019-2021 with respect to labor rights disputes.<sup>2</sup> The Court upheld 72% of

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<sup>1</sup> The "aggregate indicator of labor underutilization" according to the Statistics Committee report "The socio-economic situation of the Republic of Armenia in January-November 2022", page 55  
[https://armstat.am/file/article/sv\\_11\\_22a\\_141.pdf](https://armstat.am/file/article/sv_11_22a_141.pdf)

<sup>2</sup> Report: Study of judicial practice of labor rights cases; labor rights problems

applications of the observed cases. The highest rate (95%) of granting applications was recorded in the cases concerning recognition of facts of legal significance (work experience). The lowest rate was recorded in cases concerning dismissals on disciplinary grounds in administrative cases. The following are some of the recorded problems: lack or incomplete indication of legal and/or factual basis in dismissal orders; the formal nature of redundancies when dismissing people on the basis of redundancies; not providing a notice in the event of redundancy or essential changes in employment conditions; not proposing a different job; not informing about the impossibility to propose a different job; not providing the contract or the dismissal order; not observing the terms during which the employee can withdraw a dismissal notice; dismissal on the basis of expiry of the contract signed for a definite period of time in the event that the contract should be considered as signed for an indefinite period; termination of the contract based on reaching the pension age in the event that no such ground is prescribed in the employment contract; dismissal on the ground of non-compliance with the job without conducting the relevant assessment; making public servants redundant without conducting the relevant attestation; not ensuring the right to appointment preference in case of redundancy; dismissal from discretionary or administrative positions without observing the terms set by law or without specifying the basis; applying norms deteriorating an employee's situation; transferring an employee to a lower position without the employee's consent; not reinstating an employee in the position in the condition of a relevant judgment that entered into force, etc.

After the revolution, a number of documents were developed, including the MLSA Strategy of Employment, RA Government's Program, draft concept of "RA Labor Code reforms" and "Work, Armenia" Strategy. These documents assumed improvement of state regulation and oversight of labor relations, increasing the role of trade unions, raising public awareness about labor relations, contributing to the establishment of corporate social responsibility, which, in its turn, would lead to the enjoyment of citizens' right to decent work. However, the Covid-19 pandemic and the second Artsakh war seem to have changed the priorities, and adoption and implementation of those documents were pushed to the background.

At the same time, according to the RA Prime Minister's decision<sup>3</sup> of 3 July 2021, since 1 July 2021, in line with provisions ensuring observance of labor legislation requirements and other normative legal acts comprising labor rights norms, new powers were enshrined for the Health and Labor Inspection Body. While the organization is meant to conduct state oversight of implementation of labor legislation requirements, it should be mentioned that the HLIB has problems related to equipment with the legislative framework and oversight toolkit ensuring their operation in the labor legislation sphere, as well as filling their vacancies and developing their personnel's capacity.

Results of quantitative surveys conducted among employers and employees by the APR Group NGO during May-June 2021 and September 2022 can serve as baseline data in the oversight of labor rights sphere.<sup>4</sup> In particular, 16.7% of the respondent workers do not have an employment contract, 13.9% were

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[https://drive.google.com/file/d/1OM04JDssloqVI7pD51RAIBiQPrrUU\\_EI/view](https://drive.google.com/file/d/1OM04JDssloqVI7pD51RAIBiQPrrUU_EI/view)

<sup>3</sup> RA Prime Minister's decision N 768-L of 3 July 2020 on "Making amendments and addenda to the RA Health and Labor Inspection Body" <https://www.arlis.am/DocumentView.aspx?DocID=143993>

<sup>4</sup> Results of the study of labor rights situation, APR Group

[https://www.aprgroup.org/images/Library/Decent\\_work/report\\_labour%20rights\\_apr%20group\\_eu\\_arm.pdf](https://www.aprgroup.org/images/Library/Decent_work/report_labour%20rights_apr%20group_eu_arm.pdf)

employed only on the basis of an employment order. To the question “what percent of employees work based on employment contract”, about 80% of respondent employers responded “all employees”, 7% of employers mentioned “more than half of employees”, 5% of employers mentioned “less than half of the staff”, and 8% of employers mentioned “no-one works based on an employment contract”. According to the surveys conducted among employees, only 28,4% of 7,2 % respondents doing overtime work receive overtime payment. 3.5% of respondent employers mentioned that employees do overtime work every day, 10.6% mentioned 1-2 days a week, 12.7% mentioned 2-3 times a month. Only half of the said 27% of employers mentioned that employees received overtime payment. For most of 26,8% who “sometimes” work on holidays and 27.5% who “almost always” work on holidays, holidays were considered regular days and they were not provided with overtime pay. A high level of exposure to harmful factors in the workplace is reported by 6.8% of employees, while this is reported by 3.6% of employers. 79.2% of workers do not receive any compensation for working in such working conditions, which is also stated by employers. And half of the 8.7% respondent workers who had health problems due to their profession, job characteristics or poor working conditions, did not receive compensation from their employer. 9.8% of workers are not aware that they have the right to annual paid leave. Only 90.3% of employers report that all employees take paid annual leave, 3.9% report that more than half take paid annual leave, 2.9% report that half of the staff takes paid annual leave, 1.9% report less than half, and 1.0% report very few. 9.4% of employers are against being obliged to send employees to compulsory annual leave. As a result of in-depth interviews with employers, they expressed opinions that the RA Labor Code is focused more on employees’ rights rather than employers’s rights. Indeed, employee-employer relations are often contradictory, which is also manifested in their responses in social networks.

Under the EU-Comprehensive and Enhanced Partnership Agreement, Armenia undertook a number of obligations, including an obligation to strengthen their dialogue and cooperation on promoting the International Labour Organisation (‘ILO’) Decent Work Agenda, employment policy, health and safety at work, social dialogue, social protection, social inclusion, gender equality and anti-discrimination, and thereby contribute to the promotion of more and better jobs, poverty reduction, enhanced social cohesion, sustainable development and improved quality of life (Article 84, 85). In this regard, it is also appropriate to mention the importance of the "Guiding Principles on Business and Human Rights" adopted by the UN Human Rights Council in 2011 for the effectiveness of the protection of labor rights in the field of entrepreneurial activity, however, Armenia has not yet made any effort to apply them.

Below are the problems recorded by a number of labor rights non-governmental organizations, which are based on the results of studies carried out by these organizations, as well as the recommendations regarding the legislative framework of labor rights, state oversight mechanisms and collective protection measures.

## The legislative framework of labor rights

The Ministry of Labor and Social Affairs initiated a number of amendments to the Labor Code and published them on e-draft.am. The declared aim of draft amendments is to align the Constitution with the international obligations undertaken by the RA, as well as to eliminate contradictions and ambiguous provisions. The study of the drafts indicates that after reaching the discussion stage, draft legal acts are not adopted for a long time and are not reflected in the Labor Code, which leads to continuous problems in the law enforcement practice.

Constitutional changes of 2015 separated the main goals of legislative safeguards and state policy in economic, social and cultural spheres from fundamental rights and freedoms, as a result of which citizens were deprived of the opportunity to lodge matters related to labor conditions and the minimum salary with the Constitutional Court.

### *Recommendations:*

- Enshrine the right to work in the Constitution.
- In the frame of constitutional reforms, restore constitutional safeguards of ensuring labor rights, thus contributing to the formation of human rights-based attitude towards employees in Armenia and establishing safeguards for the protection of employees from arbitrariness of the employers, including the state.

In the frame of the Comprehensive and Enhanced Partnership Agreement, Armenia undertook approximation of legislation with the EU legislation and international standards within specific terms in the context of employment, social policy and equal opportunities. No information is publicly available regarding implementation of the activities under the Agreement, as well as the road map of its implementation.

### *Recommendations:*

- In the justification of the RA labor legislation amendments, make a clear reference to the obligations undertaken under the Agreement and its implementation road map.
- Ensure proper public awareness raising about the legal documents being drafted, and implemented.

One of the main causes of violation of labor rights is discrimination based on this or that condition. The Labor Code prohibits discrimination, while the Criminal Code envisages a relevant punishment for discrimination, considering official or service powers or the influence conditioned thereof as an aggravating circumstance. At the same time, there are no effective measures for restoring the rights of persons affected by discrimination.

### *Recommendations:*

- Adopt the comprehensive law on ensuring legal equality.
- Conduct awareness raising activities among employers and comprehensively present the acting regulations, as well as the regulations being prepared in the logic of reforms, including the requirements on prohibition of discrimination on the basis of gender, disability, religious or political views. In the frame of the importance of eliminating discrimination based on disability, this awareness raising activity shall also address regulations on reasonable accommodations.
- Taking into account international regulations regarding the violation of fundamental human rights and the limits of effective remedy, envisage in the Labor Code the opportunity to get non-pecuniary compensation in case of violations of the fundamental right to be free from discrimination, and the procedure of distribution of the burden of proof in favor of the plaintiff in all cases concerning manifestations of discrimination in labor relations.
- Introduce additional mechanisms of protection from gender discrimination, including elimination of direct or indirect negative impact of changes in remuneration (salary rise or reduction) or working conditions.

The main guarantee of ensuring labor rights is the existence of the related obligations, namely, the employment contract. Signing a definite-term employment contract gives the employer an opportunity to manifest greater arbitrariness, taking advantage of the employee's dependence and will to keep the employment. This problem is particularly pronounced in the general education field.

*Recommendations:*

- Specify, in the Code, the legal substance of the terms "nature of work" or "performance conditions", by giving an as exhaustive as possible definition of the jobs that can be considered temporary in their nature or performance conditions, and give an exhaustive list of the grounds that shall eliminate employment contracts with definite terms. Also, limit the maximum terms or number of signing or resigning a definite-term contract with one person (reviewing the existing exceptions).
- Enshrine clear and objective legislative criteria that the employer shall take into account in case of rescinding the employment contract concluded with the employee for an indefinite time limit, as well as the employment contract concluded for a fixed time limit before the end of the validity period due to reduction of the number of employees and/or staff positions as a result of the changes in volumes of production and/or economic and/or technological and/or work organisation conditions and/or production needs (Article 113, part 1, clause 2 of the RA Labor Code) in order to eliminate the employer's discretion and arbitrariness in this matter.

In 2012 and 2016 conclusions on Armenia, the European Committee of Social Rights recorded the non-conformity of the pension age as grounds for terminating the employment contract (established under Article 113 of the Code) with the Charter requirements, while in 2020 conclusions, the Committee noted

that Article 24 of the Charter provides for an opportunity to terminate employment relations in case of only two groups of valid reasons, connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service (economic reasons). Dismissal of an employee based on the pension age at the initiative of the employer contradicts the Charter requirements, as long as termination of employment relations is not conditioned by the above-mentioned reasons.

*Recommendations:*

- Review the provision established under Article 113, part 1, clause 11 in order to eliminate the employer's opportunity to terminate the employment contract solely based on the pension age.
- Make a subject of discussion the justification and legality of the provision regarding termination of powers of persons in the position of the executive body of educational institutions which are state or community non-commercial organizations based on reaching the age of 65, taking into account the requirements of the revised Social Charter.

In its "Challenges of teleworking: organisation of working time, work-life balance and the right to disconnect" opinion, the European Economic and Social Committee finds that teleworkers have the same individual and collective rights as comparable workers in the companies. The EESC recognises that it is important for all issues relating to equipment, responsibilities and costs to be clearly defined before commencing telework. As a general rule, the EESC deems employers to be responsible for providing, installing and maintaining the equipment necessary for telework. The employer should cover directly the costs incurred in teleworking, in particular those in relation to communication (e.g., mobile phone, internet).

*Recommendation:*

- Establish that all issues related to compensation for the costs of equipment, materials or their purchase necessary for telework or hybrid work be determined in the employment contract prior to commencing telework or hybrid work.

According to interpretation of the European Committee of Social Rights, there must be an adequate statutory framework to identify potentially hazardous work, which either lists such forms of work or defines the types of risk (physical, chemical, biological) which may arise in the course of work.<sup>5</sup> According to the Committee, young workers under the age of 18 years may perform hazardous types of work for not more than four hours a day on condition that existing sanitary and health norms on labour protection are strictly observed.

*Recommendation:*

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<sup>5</sup> Prohibition of employment under the age of 18 for dangerous or unhealthy activities <https://hudoc.esc.coe.int/eng#%7B%22sort%22:%5B%22ESCPublicationDate%20Descending%22%2C%22tabview%22:%5B%22document%22%2C%22ESCDcIdentifier%22:%5B%222019/def/UKR/7/2/EN%22%5D%7D>



- Establish that students undergoing practical on-the-job training with a work-based learning model as part of a vocational education program and students performing a specific job can perform heavy, harmful, particularly heavy, particularly harmful work for not more than 4 hours a day.

The regulation of Article 265 of the Code is such that the employee has an opportunity to apply for judicial protection in not all cases of labor rights violations, and is limited to challenging in court only violations of labor rights that concern the conditions established in the employment contract signed by the parties.

*Recommendations:*

- Formulate the title of Article 265 of the Code as “Settlement of labor disputes” and establish an employee’s opportunity to appeal to Court in case of other cases of violation of their rights enshrined under international agreements, labor legislation, as well as collective contracts.
- Specify the concept of labor dispute in Article 263 of the Code, not limiting the dispute to the dispute between the employer and the employee, and include, inter alia, disputes regarding confirmation and recalculation of length of service. In addition, expand the Civil Procedure Code provision defining labor dispute and make it comply with the Labor Code provisions.
- Review the three-month terms established for labor disputes by the Civil Procedure Code, replacing it with more reasonable terms, for instance, a 6-month term.
- In the Administrative Procedure Code, envisage a procedure for labor disputes in the frame of special proceedings by ensuring safeguards equal to those in place for cases investigated in the frame of civil procedure.

In the vast majority of studied judicial cases, the plaintiffs had representatives. The circumstance of incurring additional court expenses can be an additional obstacle for workers to file a lawsuit to restore their violated rights.

*Recommendation:*

- Envisage public defenders’ specialization in labor disputes by increasing the funding of the Public Defender's Office and the number of relevant trainings.

The RA Labor Code defines the maximum limit of the amount to be compensated in case of illegal dismissal of a worker, which contradicts the requirements of the Revised European Social Charter on account of the disproportion of the maximum amount of compensation provided in case of illegal dismissal. In addition, the legislation does not define the legal grounds for compensating non-pecuniary damage caused to the employee in case of illegal dismissal, which excludes the possibility of receiving compensation for non-pecuniary damage, among other things, in case of being subjected to discrimination by the employer, and having this fact confirmed by the court.

*Recommendation:*

- Abolish the regulation setting the maximum compensation limit in case of illegal dismissal (in case of impossibility of reinstatement) and introduce an adequate compensation mechanism for both material and non-pecuniary damage caused to the employee.

The provision of dismissal on the basis of loss of confidence implies limited subjects and grounds. It is necessary to review the provisions defining grounds for disciplinary responsibility on this basis.

*Recommendations:*

- Review the regulations of dismissing an employee on the basis of losing confidence envisaged under clause 6 of part 1 of Article 113 and Article 122 of the Labor Code and expand the list of cases, grounds, subjects of losing confidence, and also include such violations of working duties or disciplinary rules by employees, as a result of which the employer has incurred material damage, or reputation damage, or which resulted in a threat to people's life or health. In addition, distinguish subjects performing educational, administrative, pedagogical functions in educational institutions, concept of actions incompatible with implementation of educational, administrative, pedagogical functions in educational institutions, specify the subject of a disciplinary violation while dealing with funds or goods.
- At the same time, expand the list of guarantees established under clause 3 of part 4 of Article 114 of the Code and establish that the following cannot be considered a legal ground for terminating an employment contract: submitting requirements (not only to the employer) not only with respect to laws, normative legal acts or a collective contract, but also other violations or participation in an investigation against the employer or applying to the competent administrative body. Also, establish that in case of terminating the employment contract in the mentioned cases, the employer shall be held liable in a prescribed manner.

In terms of disciplinary violations, regulations of the Labor Code are not clear, as a result of which they give rise to abuse and can be arbitrarily used.

*Recommendations:*

- Specify the regulations enshrined in clause 5 of part 1 of Article 113 of the Code and in other related laws regarding dismissing an employee based on regular disciplinary violations. In particular, align labor legislation and laws of different fields regulating labor relations, by ensuring a unified approach.
- Make amendments aimed at guaranteeing, in case of dismissal based on regular violations, that the mentioned measure be used only based on a justified decision, taking into account the principle of proportionality, in case of recording the third disciplinary violation.
- Make amendments in the RA Labor Code, establishing ways of demanding an explanation in case of being held disciplinarily liable, as well as a requirement to provide a reasonable time period to present an explanation.

- Make an addendum to Article 226 of the RA Labor Code, establishing that in addition to providing a reasonable time limit for presenting a written explanation, the employer shall take into account the nature, gravity and consequences of the alleged disciplinary violation, circumstances of the disciplinary violation, and the employee's possibility to present a written explanation.
- Establish an obligation for the employer to make an individual legal act on subjecting an employee to disciplinary liability and penalty, which shall meet the preconditions of legality, justification and proportionality, including by establishing a requirement to address the arguments presented in the employee's explanation, mention the legal and factual grounds for subjecting a person to disciplinary liability, and substantiate the proportionality of the penalty to the disciplinary violation (its seriousness, consequences, etc.).
- Make an addendum to Article 224 of the RA Labor Code, establishing that the disciplinary penalty shall be proportionate to the disciplinary violation. The gravity of violation and consequences thereof, the guilt of the employee, the circumstances behind the violation and the work that the employee has previously performed shall be taken into consideration in case of application of a disciplinary penalty.

Cases continue to be recorded in the RA when employment contracts are not made with actual employees, and employees are not properly registered. As a result, in the event of a labor dispute, the employee claimant is deprived of the possibility of effective protection of labor rights, because the legislation provides such an opportunity in court only in case of confirmation of the fact of being in an actual working relationship with the employer. In such cases, the burden of proving the fact of the working relations with the employer is put on the plaintiff. Study of labor case law has shown that courts largely reject claims in these cases based on the lack of evidence. Often, the plaintiff does not objectively have any evidence due to the lack of a contract or other written evidence / according to the rules of civil procedure, in such cases, the person is also deprived of the opportunity to invite witnesses/, and in case of other evidence, the court practice is ambiguous.

*Recommendation:*

- Put the burden of proof of absence of actual employment relations on the party using the performed work, i.e., the employer, which will encourage an employee to implement protection of their rights through judicial recognition of employment relations.

The study of judicial cases shows that in 95% of the cases brought to the general jurisdiction court regarding the confirmation of facts of legal importance in labor matters were satisfied / for example, based on the testimony of witnesses, statements of employers and other evidence, 114 cases were studied/. As a result of burdening citizens with formal requirements by the Ministry of Labor and Social Affairs, citizens spend material resources to apply to court, on the other hand, the Court, in accordance with the established practice, confirms the above-mentioned legal facts in a simplified manner. The acting legislation allows notaries to confirm certain legal facts, interrogate witnesses, make inquiries and examine documents, etc.

*Recommendation:*

- Establish a procedure at the legislative level, so that the confirmation of the facts of legal significance, such as length of service, be carried out extrajudicially by notaries, taking into account their powers established by legislation.

## State mechanisms of labor rights protection and oversight

The RA Law<sup>6</sup> on making amendments and addenda to the RA Labor Code adopted by the NA on 4 December 2019 enshrined new powers for HLIB, giving them the power of “Implementing state oversight of employers’ observance of labor legislation, other normative legal acts comprising labor rights norms, collective and employment contract requirements, by using liability measures in cases established by law”. The new powers established for HLIB entered into force on 1 July 2021. HLIB activity is regulated by 1974 Convention on Labour Inspection in Industry and Commerce (hereinafter referred to as “the Convention”), as well as domestic legislation, in particular, RA Law on Inspection Bodies, RA Law on Organizing and Conducting Inspections in the Republic of Armenia, RA Law on Administration and Administrative Fundamentals, HLIB statute approved by the RA Government’s decision N 755-L of 11 June 2018, etc.

HLIB implements oversight of observance of labor legislation requirements through inspections and studies. According to the RA Law on Organizing and Conducting Inspections in the Republic of Armenia<sup>7</sup> (hereinafter referred to as the Law on Inspections), inspection bodies conduct inspections of the activity of economic entities in labor rights sphere by the methodology based on the risk of economic entities and risk assessment criteria and checklist. HLIB also conducts inspections of economic entities based on received written applications. Whereas, according to the RA Law on Inspections and RA Law on Inspection Bodies, anonymous applications with no information on facts established by law are no ground for conducting an inspection. They are mainly grounds for changing the risk assessment of the economic entity. Inspections are implemented as necessary, only in case the threat level is high or if several complaints are received with respect to the same economic entity for a short period of time. From that point of view, HLIB’s [www.employeeprotect.am](http://www.employeeprotect.am) electronic system for receiving anonymous complaints from economic entities and employees does not function in the absence of legal regulations. In the conditions of the mentioned legal regulations, citizens are deprived of the right to submit anonymous applications-complaints, which makes them vulnerable from the point of view of submitting anonymous applications-complaints to HLIB in order to protect their labor rights.

### *Recommendation:*

- Make amendments and addenda to paragraph 2 of clause 9 of part 3.1 of Article 4 of the RA Law on Organizing and Conducting Inspections, clause a of part 1 of Article 31 of the RA Law “On Fundamentals of Administration and Administrative Proceedings”, envisaging a legislative opportunity of submitting anonymous applications-complaints.
- Develop HLIB recommendations regarding submission of anonymous applications by economic entities and employees to [www.employeeprotect.am](http://www.employeeprotect.am) system, establish procedures of quick response, the scope of the minimum information included in the application-complaint, as well as processes of further proceedings and inspections based on the information HLIB received.

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<sup>6</sup> RA Law on Making Amendments and Addenda to the RA Labor Code <https://www.arlis.am/DocumentView.aspx?DocID=170577>

<sup>7</sup> RA Law on Organizing and Conducting Inspections in the RA <https://www.arlis.am/documentview.aspx?docid=164935>

Although the Labor Code of the Republic of Armenia provides HLIB with supervisory authority over observance of the Labor Code and legal acts, HLIB actually sometimes performs a dispute resolution function, thereby resembling a dispute resolution body, i.e., a court. As an inspection body, HLIB is authorized to carry out inspections and to issue instructions to the employer to eliminate the offenses identified during the inspection. At the same time, the acting legislation does not prohibit inspection bodies from exercising oversight powers without conducting inspections/within the framework of administrative proceedings/. The RA Law "On Inspection Bodies" also regulates issuance of orders by inspection bodies in the frame of their powers. In accordance with the HLIB, HLIB can issue orders for the elimination of violations in the field of healthcare. "Practically, in all cases where there is no approved checklist for monitoring the observance of labor legislation norms, the employees of the inspection body carry out an inspection within the framework of the RA Law "On Fundamentals of Administration and Administrative Proceedings" and issue orders to employers to eliminate the recorded violations, even in the event that the authority to issue an order in this area is not provided for by any law or by the charter of HLIB. As a result, in practice, it is problematic to issue an order to employers to eliminate the violation in case of detecting violations by methods other than inspections.

*Recommendations:*

- In the context of the extra-judicial/judicial dispute resolution body, state oversight over labor relations and alternative dispute resolution body proposed by the RA Government, clarify the functions of HLIB, clearly defining HLIB's oversight powers and tools, in order to exclude the latter going beyond the limits of their powers and implementing dispute resolution.
- Clarify, at legislative level, the scope of HLIB's authority to issue orders in the context of implementing oversight over the observance of labor legislation and other legal norms regulating the sector, to exclude the practice of HLIB issuing an order to employers to eliminate an offense without having a legal basis, including without carrying out an inspection.

The RA Laws on "Public service" and "Inspection bodies" do not establish for inspectors the prohibitions enshrined in ILO Convention, "b) shall be bound...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". Moreover, the provision "giving a written notice to the economic entity regarding inspections in advance" contradicts the Convention's requirement of "entering freely and without previous notice at any hour of the day or night any workplace liable to inspection".

*Recommendations:*

- Make amendments and addenda to the RA Laws on "Inspection bodies" and "Public service" to ensure that the following provisions of Article 15 of the Convention are legislatively enshrined: "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 "labor inspectors 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 complain".

- Discuss amendments and addenda to the RA Law on "Organizing and conducting inspections" to ensure it is purposeful for HLIB inspectors to observe ILO Convention's provision "to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection".

Noteworthy, ILO Convention's prohibition from having any direct or indirect interest in the undertakings under inspectors' supervision is not established in HLIB inspection procedures. In the absence of legislative regulations, HLIB does not use the instruments of written statements and recording of circumstances of situational conflict of interests of inspectors in practice.

Lists of possible circumstances (risk situations or factors) of conflict of interests (direct or indirect interest of an inspector) related to inspectors' activity, as well as potential or probable connection with the economic entity have not been developed. When issuing inspection orders or instructions, HLIB management, including department heads who are a superior person or a direct supervisor, do not verify whether there are circumstances indicating overlapping or conflicting interests of inspectors and economic entities overseen by them or economic entities that have made an application. In addition, giving the functions of HLIB human resource management and integrity officers to the Department for Personnel and Human Resources Management of the RA Prime Minister does not give HLIB an opportunity to ensure requirements of incompatibility of inspectors, observe conditions of other restrictions, as well as disclose situations comprising conflict of interests.

*Recommendations:*

- Together with the Corruption Prevention Commission, make amendments and addenda to the Law on Inspection Bodies and ensure new requirements for inspections. In particular, it is recommended to prohibit inspectors from conducting oversight of companies and organizations wherein they or their family members have a share, and signing civil legal contracts with economic entities overseen by the inspector, except if they are of general nature.
- Together (with the agreement) of Corruption Prevention Commission, ensure, through amendments and addenda to the RA Law on Inspection Bodies, that the function of inspection bodies' integrity officer is transferred from the RA Prime Minister's Department for Personnel and Human Resources Management to the Quality Assurance Department of Inspection Bodies, and the head of the department is given the functions of the inspectorate's integrity officer.
- Together (with the agreement) of Corruption Prevention Commission, ensure, through amendments and addenda to the RA Law on Inspection Bodies, that the main provisions of

conflict of interests be compliant with the requirements established by the RA Law on Public Service.

- Ensure, through making amendments and addenda to HLIB inspection procedures, prior to the inspection procedure, the requirements that the inspector shall present information on him or his family member having a share in a commercial organization, a register shall be established in HLIB regarding “inspectors (their family members) having a share in commercial organizations”, specialization of inspectors per their oversight area, and prohibition of inspection in companies they have a share in.
- With regard to inspections in HLIB, enshrine a legislative requirement that officials of HLIB management, including department heads who are superior persons or direct managers, who make and sign inspection instructions or orders, shall make sure, in advance, if there are circumstances of any conflicting or overlapping interests with the economic entity during oversight, inspections or discussion of applications.

There is a problem regarding filling vacancies and training of HLIB department of labor legislation and territorial centers. In particular, as of 1 April 2022, the staffing of the positions of HLIB employees authorized to conduct oversight in the field of labor law, including in the field of health care and safety of employees, was only 55.4%.

With respect to training of personnel, public servants' trainings organized by the RA Prime Minister's Department for Personnel and Human Resources Management do not ensure capacity building for HLIB labor legislation inspectors, they are not in line with assessment of the needs and implementation of trainings of public servants. In addition, the implementation of oversight functions by civil servants, including inspectors of inspection bodies, is associated with high corruption risks, in particular, the possibility of immediate inspections of economic entities, personal contacts, and the emergence of some legislatively discretionary factors.

*Recommendations:*

- Legislatively provide HLIB with the authority to investigate complaints based on psychological violence, sexual harassment, lack of reasonable accommodations in the workplace and similar basis, and discuss the purposefulness of establishing a relevant specialized department in HLIB structure.
- Initiate a study of assessment of needs of positions in HLIB labor legislation department and territorial centers based on ILO standards.
- In cooperation with the RA Prime Minister's Department for Personnel and Human Resources Management, ensure the process of filling the vacant positions in HLIB labor legislation oversight area.



- Jointly with the RA Prime Minister’s Department of Personnel and Human Resource Management, and Inspection Bodies’ Coordination Bureau, discuss the matter of transferring the functions of HLIB inspectors’ professional training needs assessment and development of training program from the RA Prime Minister’s Department of Personnel and Human Resource Management to HLIB.
- Include training modules and course programs programmed and implemented in the frame of cooperation of HLIB and international organizations in the sphere of labor legislation oversight in compulsory programs of inspectors’ training and marks of calculated credits.
- In addition to periodic training, develop and implement guides for inspectors that will be accessible and allow for continuous self-education.
- Envisage training base module development and implementation for inspectors conducting functions of oversight of psychological violence, sexual harassment and reasonable accommodation.
- In the 2023 and subsequent years of activity programs of HLIB, plan measures to reduce the ratio of appeals brought against the inspection body and its employees based on the results of inspections in the field of labor law, in particular, through raising awareness of economic entities, preliminary discussions and explanations of inspection results, annual training of inspectors, improving the quality of inspection conclusions.
- Development by the Civil Service Bureau of the RA Prime Minister’s Staff of a draft law on making amendments and addenda to the RA Law on Civil Service to ensure standards of filling vacant positions of civil servants, performance assessment, criteria of integrity assessment of the candidate in the training process by including integrity indicators in professional knowledge and competency assessment forms, establish a requirement to use test tasks and a questionnaire for testing the candidates’ integrity, and a requirement to use situational tasks for checking the candidates’ integrity during the interview stage.

At the same time, ILO Convention requirements of “...stability and independence, as well as protection and guarantee against external influence” imposed on HLIB personnel directly contradict the conditions established by the RA Law on Public Service for administrative positions, including Head of HLIB and deputy heads. In particular, the requirements established by the Law of the Republic of Armenia "On Public Service" for the positions of inspection bodies, including the head of HLIB and their deputies, directly contradict the requirements of Article 6 of the Convention, since, in particular, the person holding the said position may be dismissed from the position in the event of a change in the superior (or) direct manager of that official, and also as a result of a change in the ratio of political forces. In addition, the RA Prime Minister can dismiss them from their positions without any reason, at his discretion. Such regulations do not guarantee stability and independence to the head and deputy heads of HLIB, nor do they provide adequate protection from external influence.

*Recommendation:*

- Develop a draft law on making amendments and addenda to the RA Law on “Public Service” to ensure that heads of inspection bodies, including positions of the head of HLIB and administrative positions of deputy heads “are assured of stability of employment and are independent of changes of government and of improper external influences”.

Article 14 of the RA Law<sup>8</sup> on Inspection Bodies specifies that “an electronic informative system (oversight unified electronic log and information exchange system) shall be established under the RA Government’s staff to ensure effectiveness of information exchange between oversight bodies and to make oversight information available to economic entities and public in one place”. Article 5 of ILO Convention also specifies that the competent authority shall make appropriate arrangements to promote (a) effective co-operation between the inspection services and other Government services and public or private institutions engaged in similar activities. While the RA Government’s decision<sup>9</sup> N 678-N of 18 June 2015 approves “The procedure of establishment and use of the electronic informative system of inspection bodies, and information exchange between oversight bodies, as well as provision of information to the public”, the electronic system of information exchange has not been formed. Moreover, the regulations determining introduction of the electronic system (platform) for registering employment contracts do not specify, with sufficient clarity, the scope of discretion vested in state authorities and its implementation conditions, employee’s participation in that process, therefore, the minimum level of data protection is not guaranteed for employees.

*Recommendations:*

- Within the framework of the development of the technical task for the creation, use, exchange of information and the formation of the electronic management system between HLIB and other state oversight bodies, discuss the best practice of management of similar information in China and other countries.
- Envisage proper guarantees aimed at preventing any kind of use of personal data that is not in line with the goal of introducing the relevant platform. According to the ECtHR, the need for such guarantees is greater when personal data protection is automatically processed: it is necessary to guarantee, at the domestic legislation, that the data be relevant and effectively protected against misuse and abuse.
- Make regulations on introduction of the electronic system (platform) for employment contracts in line with Article 8 of the European Convention on Human Rights (Right to respect for private and family life) and the ECtHR positions regarding the Article.
- Envisage that every employee shall have an account, where all of their employment history will be uploaded, including job change, position change, any change in the employment contract, leaves. This means that any change related to a citizen’s labor activity shall be

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<sup>8</sup> RA Law on Inspection Bodies <https://www.arlis.am/documentview.aspx?docID=137062>

<sup>9</sup> RA Government’s decision N 678-N of 18 June 2015, <https://www.arlis.am/documentview.aspx?docID=115070>

visible on the platform. Ensure employees' participation in the process of using the electronic system (platform) for registration of employment contracts, taking into account the principles of equality before the law and prohibition of discrimination, ensure the same rights and freedoms for persons in the same legal situation, without any discrimination.

- In the electronic platform of oversight of employment contracts, envisage an opportunity to make contracts through the platform, which will also give an opportunity to collect complete information on employment contracts, their implementation, observance of labor rights, as well as labor rights violations. This platform shall have functions of conducting oversight of labor rights, and results monitoring and risk assessment opportunities.
- Publish information on the platform about the main (frequently repeated) violations revealed by the inspection body during the control and cases of restoration of workers' rights through appropriate administrative intervention, and statistical data on employers' risk.
- Publish information on the platform regarding the main (frequently) repeated violations identified during the oversight of the inspection body and cases of restoration of employees' rights as a result of relevant administrative intervention, and statistical data on employers' riskiness.

In practice, there is a lack of effective cooperation between HLIB and other state bodies. Taking into account that HLIB initiates proceedings also based on communication and recording of inspections of other state bodies /regarding non-observance of the procedure of concluding employment contracts and non-registered employees, as well as other cases / implementation of such communication later than the relevant terms can lead to violation of the terms of HLIB's proceedings. As a result, due to a procedural violation, the employer, who made an offense, avoids liability.

*Recommendation:*

- In the context of mutual assistance of state bodies, develop clear procedures of information exchange between state bodies in case of identifying violations in labor relations in order to also ensure observance of the terms and other legislative requirements established under Article 37 of the RA Law on Fundamentals of Administration and Administrative Proceedings.

## Opportunities and means of collective protection of labor rights

Armenia has ratified the Revised European Social Charter (not completely), but has not ratified the Protocol to the Charter so far. The Additional Protocol enables other actors involved in the protection of labor rights, such as trade unions, organizations representing interests of employees and employers, and other stakeholders, to participate in ensuring the realization of the rights set forth in the Charter and in bringing domestic legislation in line with them, monitoring the application in law enforcement practice, by submitting collective complaints about violations of the rights enshrined in the Charter.

While Armenia ratified the revised European Social Charter back in 2004 and adopted 67 out of 98 paragraphs, the provision on launching the system of collective complaints has not been adopted.

According to the acting legislative regulations, an employee's violated rights can be restored either by court or HLIB decision, which is not enough for effective protection of labor rights.

Amendments to the Law on Trade Unions, put for public discussion in November 2022, can partly eliminate the problems in this sphere, including legislative restrictions of formation of trade unions, collective negotiations and strikes.

Nonetheless, results of the quantitative research conducted by APR Group in June-July 2021 show that currently this organization engaged in protection of the rights and interests of employees is rather weakly developed in Armenia. Only 28.3% of the respondents had trade unions in their workplace, and only 1/3 of those respondents were a member of trade unions. At the same time, only a small part of the respondents consider trade unions as a means to restore violated rights.

The parties to the social partnership, namely, employers' and workers' unions, do not represent the majority of workers and employers in the country and speak only on behalf of their members when negotiating. In light of the high unemployment rate (20.7% in 2021<sup>10</sup>), employees refrain from defending their fundamental rights for fear of losing their jobs.

Along with legislative problems, slow generational change, passive work, non-public nature of trade unions' work, insufficient level of public awareness, lack of trade unions' initiativeness for policy development, low rate, trade union members' unawareness of the real goals of trade unions in many cases, as well as considering trade unions as a fund of mutual assistance contribute to the ineffectiveness of trade unions' functioning.

### *Recommendations:*

- Initiate discussions with stakeholders regarding the need for adopting a comprehensive law on social partnership.
- In the Labor Code principles, establish collective negotiations as a right. This amendment is not only in line with ILO recommendations, but will also contribute to clarifying obligations of the parties in collective negotiations.

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<sup>10</sup> Armenia: Unemployment rate from 2002 to 2021, <https://www.statista.com/statistics/440639/unemployment-rate-in-armenia/>

- In the Labor Code, specify the obligation of the labor dispute parties to participate in negotiations and establish effective sanctions for avoiding participation in negotiations, i.e., reconciliation procedures.
- Make amendments to the RA Law on Trade Unions, including changes in trade unions' structural system, and envisage mechanisms for developing internal democracy (changeability of the head) in separate organizations.
- Make the Law on Trade Unions in line with the requirements of ILO N 87 Convention on Freedom of Association and Protection of the Right to Organise, in particular, establish the terms "impeding" or "interfering" in the work of trade unions.
- Make amendments to the RA Law on Trade Unions, envisaging mechanisms for raising transparency and accountability of trade unions' activity, which will lead to a rise in public trust in trade unions, involvement of new members and new resources.
- Make amendments to the RA Law on Trade Unions, envisaging tools for individual and collective protection influencing the employer's decisions, including
  - Authority to present and protect labor interests and rights of employees before the employer and (or) a third person by providing an advisory opinion,
  - Facilitating the mechanism for announcement and organization of various types of strikes,
  - Introduction of the authority to protect an employee's interests in court as a third party, i.e., a trade organization representing common interests, without his/her consent (*actio popularis*), for the purpose of protecting more vulnerable groups, and other purposes.
  - In the RA Draft Law on Making Amendments and Addenda to the Law on Trade Unions, remove the regulation specifying that the employer shall no longer be obliged to provide conditions necessary for the organization and implementation of the work of a trade union.
- Take steps aimed at ratification of the additional protocol, which will be an important tool for the trade unions and organizations representing interests of employers and employees, thus raising their role in protection of labor rights. This is particularly important in the context of reforms of trade unions, which is currently an issue on the agenda of the RA Ministry of Labor and Social Affairs.

- Contribute to the establishment of unions of employers by supporting awareness raising works conducted for employers, participation of those unions in legislative changes, and protection of employers.
- For the sake of strengthening social partnership, involve social partnership parties in the preparatory stages of legislative changes in the labor rights sphere, providing them the right to an advisory vote.

## **Participating organizations**

Helsinki Citizens' Assembly Vanadzor Office

Transparency International Anti-Corruption Center

Protection of Rights without Borders

UEICT

APR Group

OxYGen Foundation

Armavir Development Center

Education and Solidarity Trade Union

Socioscope NGO