Inga Kazarian[1]

THE RIGHT TO SAFE AND HEALTHY WORKING CONDITIONS: REGULATION AND IMPLEMENTATION OF OCCUPATIONAL SAFETY AND HEALTH IN GEORGIA (EXAMPLE OF THE CONSTRUCTION INDUSTRY)

Abstract

In 2019, after years of deregulation and continuous criticism by international partners and labour rights advocates, Georgia initiated occupational safety and health (OSH) policy reform by adopting a statutory law on OSH and strengthening the mandate of labour inspection to bring it in compliance with the standards of International Labour Organization (ILO). In its Human Rights Protection Action Plan (2018-2020), Georgian government defined promotion of safety culture at work as its main labour rights policy goal. While regulatory changes recently enacted formally comply with international standards, in construction and mining industries the number of injuries and deaths remains high. This article focuses on discrepancies between Georgia's OSH regulation and implementation on the example of construction site, as a workplace with increased risk. The research identifies and analyzes challenges the employers, workers' representatives, and health and safety specialists face, and evaluates the role of the state in promotion of positive OSH culture among all stakeholders. The analysis includes OSH legal overview and is based on the results of interviews conducted with the parties involved in implementation on site.

Keywords: construction safety, law on occupational safety and health, labour rights, safety culture

Introduction

For years, occupational safety and health was excluded from Georgia's social policy and political agenda. In an attempt to liberalize economy and attract investments, the government in early 2000s took measures that prioritized business interests over labour rights and almost completely 'deregulated' the latter. This policy was long a subject of criticism by human rights activists and NGOs (Human Rights Education and Monitoring Center (EMC) 2016). In 2014, when EU-Georgia Association Agreement was signed, labour rights were brought to the agenda and efforts were made by Georgia to bring national laws into conformity with international standards, to comply with its treaty obligations and EU Directives. As a result, Occupational Safety and Health (hereinafter OSH) Law was adopted and amendments were made to the Labour Code (ongoing). The new OSH Law strengthened labour inspection's role and its mandate.

Despite positive legislative changes, mines and construction sites are still among workplaces that cost the lives and health of workers. Challenges to workers health and safety in these sectors demand special attention and measures in terms of regulation, enforcement, and implementation. In its Human Rights Protection Action Plan (2016-2017; 2018-2020), government defined promotion of safety culture among businesses and workers to be the main OSH policy goal. However, the policy and program for achieving it are yet to be clarified.

While specifically focusing on health and safety in Georgia's construction industry, this research, firstly, analyzes existing OSH regulations[2] and evaluates effectiveness of implementation; secondly, identifies

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[2] Research was conducted in 2020-21 during pandemic. However, the focus is on prevention of accidents and exposure to dangers specific for construction, Covid regulations are out of the scope of current article

measures necessary for promotion of positive safety culture among workers and employers. Enforcement is limited to the functions of labour inspection; adjudication, arbitration, and remedies are not addressed. Content and requirements provided by technical regulation (e.g., use of scaffolds, safety equipment) are also out of the scope of current research. Article consists of theoretical, legal, and practical parts, and includes author's recommendations.

Theoretical framework is based on the discourse between the proponents of general principle-based regulation (so called compliance school within a broader libertarian perspective) and those arguing in favour of more 'aggressive' state regulation (or deterrence school, based on a combination of legal positivism and principles of Marxism). Legal research includes analysis of Georgia's national OSH law and policy, its compliance with universal standards and international obligations. The last part is dedicated to fieldwork and problems in implementation.

Fieldwork is based on author's observations and interviews with several companies/contractors on a major construction site in Georgia. Overall, fourteen persons were interviewed, including four project managers of different specializations (construction engineers, electrical and mechanical engineers), two safety and health specialists, eight workers' representatives/foremen and site engineers. The interview comprised of fourteen questions (five closed- and nine open-ended) and general conversation on the protection of safety and health, including personal stories and observations.

Theoretical Discourse and Universal Standarts

The right to safe and healthy working conditions (Art. 7), along with other economic and social rights recognized in the International Covenant on Economic, Social and Cultural Right (ICESCR) (UN 1966), is guided by the principle of gradual and progressive realization with an emphasis on availability of resources (Art.2). Taking into consideration the complexity of the subject, which involves rights of the employees, economic interests and responsibilities of the employers, and obligations of the state, OSH has generated a range of theoretical and philosophical debates regarding adequate regulatory approaches. Main discourse, however, is within the scope of Marxist and Neoliberal theories and addresses the role of the state in regulation of economic activity—proponents of strict state regulation on one side, and advocates of self-regulation and weak state control on the other.

Ogus (2004) defines three main regulatory characteristics in what he calls public interest theory of regulation and private interest theory of regulation respectively. In case of the former, regulation and enforcement are public and centralized (exercised by the state and its agents), and have a 'directive function' (the state achieves desired goals through regulation and sanctioning). The latter, on the contrary, is characterized by decentralized regulation, enforcement style that Ogus defines as 'private' (meaning the enforcement is more voluntary and individual), and 'facilitative function'.

Two schools diverge significantly in terms of enforcement techniques—some call for deterrence by using fines and prosecution (deterrence school) (Pearce, Tombs); others insist on achieving compliance through persuasion, negotiation and training (compliance school). From this perspective, researchers primarily juxtapose the US and UK models—the former exercises stringent OSH policy based on rules, the latter applies compliance techniques based on principles. Canciani (2019), however, argues that for many countries a combination of these two approaches is the most common choice.

Within compliance school, researchers argue that:

1) With regard to complex matters such as OSH, principles are 'more likely to enable legal certainty' and consistency when the goal is to achieve compliance rather than to prosecute (Braithwaite 2002).

2) Principles allow to avoid regulatory unreasonableness (imposition of "regulatory requirements in situations where they do not make sense", namely they are inefficient in terms of application and/or costs) (Bardach and Kagan 1982).They claim overinclusive rules to be ab initio ineffective, because, firstly, anticipation of all possible situations on site is hardly achievable, secondly, bureaucracy is 'policy-centered' and oriented on rule adherence rather than on action or actual pursuit of the goal (Baldwin 1990).

3) Cost-benefit analysis is necessary in regulatory policy making. Cass Sunstein (2005) asserts that cost-benefit approach is an effective alternative to precautionary principle (aggressive regulation), traditionally

common for European (in terms of OSH, even more for American) regulatory policy. He argues that precautionary principle is too vague ('how much precaution is enough precaution?'), unreasonable and 'incoherent'. However, according to Sunstein, decision on whether the law or regulation shall be adopted must not depend on the results of cost-benefit analysis solely. Being closer to social libertarianism, Sunstein believes that distribution matters, and the 'regulation is justified' if those paying are the rich, while those benefiting from it are the poor (Ibid. 225). Boyum (1983), on the other hand, emphasizes that it should be a subject of an open political process and public debate to decide which values are suitable for cost-benefit calculation and which should be beyond it.

Opponents of the compliance school, on the contrary, claim that:

1) It is the inherent character of the capitalist system that justifies deregulation, limits the state regulation and extends corporate freedom (Pearce and Tombs 1991). Corporations look for opportunities to get rid of any control, minimize costs and maximize profit.

2) Laws are commands which impose obligations backed by a threat, whereas the failure to fulfill the obligation inflicts sanctioning. Violations can be effectively prevented only through 'punitive regulation', as it is the fear of legal and economic sanctions that can make the corporate management to be 'safety-conscious' and socially responsible (Pearce and Tombs 1990).

3) Health and safety violations are under-criminalized. Authors (Pearce 1976); (Canciani 2019) argue that criminal system reacts differently on 'real' crimes and safety crimes. In order to understand failures in health and safety, one must first answer whether the given legal system treats safety crimes as crimes. Too often workers' careless actions are presented as triggers for unintentional safety incidents, whereas the employers' 'careless' attitude to health and safety rarely becomes a subject of proper examination (Tombs and Whyte 2007). Whenever workers' health and safety is endangered, it is either permitted or caused by the employer (Pearce and Tombs 1990).

4) Behind the health and safety violations stand certain individuals who make decisions; therefore, it is important that where the company is being prosecuted, particular decision makers and executives shall be kept accountable in the first place (Pearce and Tombs 1990).

The right "to just and favourable conditions of work" (Art. 23) along with the related "right to rest and leisure, including reasonable limitation of working hours" (Art. 24) is addressed in the Universal Declaration of Human Rights (UDHR) (UN 1948) and enshrined in the Article 7 of the ICESCR (UN 1966), to which Georgia has been State Party since 1994[3]. The Covenant defines "just and favourable conditions of work" in terms of fair remuneration (Art. 7, (a)), equal opportunities (Art. 7 (c)), health and safety (Art. 7 (b)) and reasonable limitation of working hours (Art. 7 (d)).

The main standards and principles for protection of health and safety at work are formulated in ILO's conventions, protocols, and recommendations, which, along with the manuals and codes of practice represent the basis of occupational health and safety policy. Main instruments of ILO include Occupational Health and Safety Convention (1981) and Protocol (2002), Safety and Health in Construction Convention (1988) and Recommendation No. 175, Occupational Health Services Convention (1985), Labour Inspection Convention (1947) and Protocol (1995), Asbestos Convention (1986), Radiation Protection Convention (1960) and others.

Within the regional framework, the right to just, safe and healthy working conditions is provided by the European Social Charter (Council of Europe 1996). Article 2—just conditions of work—provides for 'reasonable' limitation of working hours, which shall be 'progressively reduced' (especially in the 'inherently dangerous or unhealthy' occupations), paid public holidays and paid four weeks of annual vacation with special measures and benefits for night work. Article 3 stipulates that states shall 'formulate, implement and periodically review a coherent national policy' on occupational safety and health in cooperation with employers and workers' representative organizations, establish appropriate laws and regulations and enforce them, primarily through supervision mechanism, such as inspection (which states are obliged to maintain in accordance with Part III, Article A (4)), and develop occupational health services with 'preventive and advisory functions'. Article I (Part V) specifies that provisions of the Charter shall be implemented through state regulations and laws, agreements between employers and workers, or both. Similar to the ICESCR system of communications, the European Social

[3] Georgia has not ratified the Optional Protocol allowing for Communications to be submitted to the Committee by groups and individuals claiming to be victims of violations of the rights under the ICESCR

Charter allows for collective complaints to be submitted with regard to implementation of the provisions by the state party who has ratified the 1988 Additional Protocol. While the European Social Charter is a legally binding treaty, which Georgia signed back in 2000 and ratified in 2005, it allows the parties to declare themselves bound only by some of the articles and paragraphs and to decline others (Part III Article A). With regards to conditions of work, as of the time of writing, Georgia has accepted Article 2 partially (4 paragraphs) and has not accepted Article 3[4] on safe and healthy conditions of work, neither has it ratified/signed the 1988 Additional Protocol. Among the accepted paragraphs, which Georgia is obliged to ensure by amending national labour regulations, are: limitation of daily and weekly working hours with progressive reduction of the working week (Art. 2 (par. 1)), provide for paid public holidays (Art. 2 (par. 2)), provide for reasonable weekly rest coinciding with the traditional rest days (Art. 2 (par. 5)), regulate the night work in a way that allows the workers to benefit from the special nature of their work (Art. 2 (par. 7)).

Limitation of working hours is an important aspect, which directly influences health and safety, life quality, and work performance. Both ILO (ILO Recommendation No. 116 1962) and the Covenant (CESCR General Comment 23 2016, 9) establish a forty hours weekly labour standard with a steady reduction tendency, whereas part-time work is defined as less than established full-time working hours (ILO Converntion No. 175 1994). However, national legislations often define part-time work more specifically, i.e., less than 35, some less than 30 hours (Messenger 2018, 5). In their research, Tucker and Folkard (2012) found a direct connection between working schedules and health (including in a long-term perspective), emphasizing that night shift workers are more likely to face occupational diseases and accidents at work. Therefore, shift work, on-call work, seasonal work, etc. shall also be regulated to offer a work – personal life balance (e.g., longer off-season leaves for seasonal work).

Occupational Safety and Health Statutory Law, Regulations and National Policy

After the 2003 revolution in Georgia, government launched economic reforms aimed at eradicating corruption, attracting investments and boosting economy. New liberal laws and regulations were adopted to reduce taxes and create a business-friendly environment. The country became one of the top ten reformers in the world and ranked 15th on ease of doing business in 2009 (World Bank 2009). These initiatives led to the unprecedented for Georgia 12 percent of economic growth in 2007.[5] The new tax code (2004) and labour code (2006) were adopted creating favourable conditions for businesses to start and operate, leading to influx of investments and construction booming particularly in Tbilisi and Batumi. The laws and regulations, however, failed to address human rights obligations (Human Rights Watch 2020) of business entities and the state itself.

The UN Working Group on Business and Human Rights (2019) defined this period as a decade of almost complete deregulation and emphasized the need for a new comprehensive regulatory approach for promotion of ‘responsible business conduct’.

In his research, Tchanturidze (2018) finds that the number of injuries and deaths at workplace increased drastically since the abolition of labour inspection in 2006. In 2014, the number of fatal accidents per 100 000 workers was almost three times higher in Georgia (5.5) than on average in EU (1.8) (with lower than average in Croatia, Greece, Slovakia, Poland, Germany, the Netherlands[6]). It shall be noted that statistical data on the number of injuries and deaths in Georgia varies depending on the source. While the UN Working Group on Business and Human Rights (2019) reports about 1183 injuries and 418 deaths between years 2010-2018, Tchanturidze’s (2018) research shows that in eight years (2010-2017) 678 workers died at workplaces in Georgia (the number does not include self-employed workers). Considering that the main sources for statistics shall be labour inspectorate and insurance companies—the former abolished and the latter not required by law back then—it can be assumed that real numbers can be higher than presented.

[4] Reservations and Declarations for Treaty No.163 – European Social Charter (revised) https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/163/declarations?p_auth=m9juXUNO

[5] World Bank GDP growth (annual %) – Georgia https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=GE

[6] By the time of publication, data on fatal accidents at work in EU in 2018-2019 was available: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Fatal_accidents_at_work,_2018_and_2019_(standardised).png

In 2014, Georgia signed the Association Agreement with EU, which, among others, stipulates changes in the 'employment, social policy and equal opportunities' (European Union and Georgia 2014, 261) regulations and enforcement, including amending the labour code and OSH policy, to bring them in line with European standards within a determined period of time. According to the Agreement, Georgia shall, amongst other fields, undertake the following changes in the Labour Code: require employers to provide the employees with exhaustive information on working conditions in a written form within two months after the commencement of employment; adopt legal measures to improve safety and health at work and ensure the same level of protection for workers with both fixed-duration and open-ended employment agreements; bring the regulation of working time in line with the provisions of Directive 2003/88/EC, namely minimum daily and weekly rest, annual leave, maximum allowed weekly working hours, and regulation of 'night work, shift work and patterns of work'.

With regard to health and safety specifically, Association Agreement (2014) provides for measures to encourage improvements in health and safety according to the Council Directive 89/391/EEC (1989) and in conformity with the EU laws. Minimum health and safety requirements shall be established for: the use of personal protective equipment (Council Directive 89/656/EEC, 1989) and work equipment (Directive 2009/104/EC); operation of temporary or mobile construction sites (Council Directive 92/57/EEC); protection of workers from risks related to asbestos (Directive 2009/148/EC), carcinogens and mutagens (Directive 2004/37/EC), and chemical (98/24/EC), physical (2003/10/EC; 2002/44/EC; 1999/92/EC) and biological (2000/54/EC) agents; provision of marks and signs at workplace (Council Directive 92/58/EEC, 1992).

Georgia's other undertakings include an obligation to ensure effective implementation of ratified ILO conventions and commitment to ratify at least priority conventions—i.e., Labour Inspection Convention, Labour Inspection (Agriculture) Convention, Employment Policy Convention, and Tripartite Consultation (International Labour Standards) Convention (Article 229). With an aim to ensure sustainable development and high level of labour protection, it is recognized that

> [...] it is inappropriate to encourage trade or investment by lowering the levels of protection afforded in domestic environmental or labour law (Association Agreement 2014, 92)

The state shall also avoid encouraging investments through failure to enforce the labour law by its action or inaction (Art. 235 (par. 3)). In cooperation with the European Union, Georgia shall take measures to promote corporate social responsibility, including 'awareness raising, implementation and dissemination of internationally recognised guidelines and principles' (Art. 239 (g)). The Agreement emphasizes the necessity to improve national statistical system, i.e., production of adequate data, and making it more user friendly (Art. 287 (a)).

In 2019, the Law on Occupational Health and Safety (hereinafter, the Law) (2019) was adopted by Georgian Parliament. It shall be noted that the right to safe and healthy working conditions is guaranteed by the Labour Code of Georgia too (2010) (Art. 45). The new Law, however, is aimed at establishment of preventive measures and bringing the national legislation in line with international standards and international state obligations. The Law introduces measures for accident prevention, protection of health, requirement for training and education, procedural measures, as well as enforcement mechanisms and penalties for violations. It addresses obligations of the state and of employer, rights and responsibilities of the employee and other persons at the working area.

With regard to the states' obligations, the Law specifically provides for the adoption of national occupational safety and health policy by the government, as well as its periodic assessment, review, and implementation (Art. 16 (1,2a)). Minimum requirements and technical standards shall be adopted by the Ministry of Internally Displaced Persons from the Occupied Territories, Health, Labour and Social Affairs of Georgia (hereinafter, the Ministry) to regulate personal protection and work equipment, temporary and mobile construction sites, application of marks and signs, protection from hazards such as asbestos, carcinogens and mutagens, physical, chemical and biological agents, explosion risks, as well as research, training, consultations, and annual reporting on the situation (Art. 16 (2b)). The mentioned standards and requirements ('technical standing') shall be adopted by the government within the timeline defined in Article 25.

Some technical standards and requirements regulating risk factors and work with increased danger were adopted by the government earlier in 2013 and 2014 (GTUC Website). Most of them, however, need to be changed or updated to comply with the standards provided by EU Directives (as required by the Association Agreement), European Social Charter, and ILO.

According to the Law, responsibility for implementation lies primarily with the employer. The employer is required to elaborate a written health and safety policy document providing for risk assessment and management—namely, defining and reducing risk factors, and, where possible, replacing the sources with less dangerous options; arrangement of working area; responsibilities and obligations of employees; training plans; working methods and equipment; collective protection measures. The document shall also provide for health and safety implementation budget (Art. 6). Other significant provisions include requirement for compulsory 'health insurance from the work accidents' for the employees (an accident insurance, not to be confused with health insurance, the latter is not required by the national law) (Art. 5 (9)); prohibition on employment of persons younger than 18 years old, pregnant or breastfeeding women on the positions which contain increased risk to health (the Law Art. 5 (6,7); Labour Code Art. 10 (5)). The Law provides that an employer shall bear all costs arising from implementation of health, safety and hygiene measures (the Law Art. 5 (10)), including training, safety equipment, and insurance.

Another important measure is compulsory appointment of health and safety specialist. The Law of Georgia stipulates that the employer shall hire one health and safety professional if the number of employees is between 20 and 100, two specialists, or a special unit consisting of at least two specialists, if the number of workers is higher (Art. 7 (2)). The Law alternatively offers to invite organizations specialized in OSH services (Art. 7 (4)). Either way, those responsible for OSH should have attended relevant programs at accredited institutions (Art. 7 (6)) and their qualification must be 'confirmed by the special document' (Art. 7 (5)). Accreditation requirements for OSH study programs were adopted by the Ministry in 2018 (Order 01-25/N). Nowadays, a number of accredited OSH programs at universities, as well as special OSH and training centers offer approximately a three-month course for a tuition fee from 1500 to 2500 GEL (350 to 600 EUR).[7]

The Law strengthens the role of labour inspection (supervisory body) (Art. 16 (4)) and emphasizes promotion of OSH culture. While the Labour Conditions Inspecting Department (LCID) within the Ministry's structure was established in 2015, the regulations allowed only for the inspection of specifically hard, harmful and hazardous workplaces[8] and required a prior notice to be sent to the employer before visiting (EMC 2016). The Ordinance of the Government № 682 (2018) provides that an employer will be informed about the inspection procedure five calendar days prior to the stating date (Art. 2 (8)). The new Law, in contrast, authorizes the supervisory body 'to inspect any work area [...] without prior notice, at any hour of the day or night', interrogate any person responsible for OSH implementation (e.g., employer, employees, health and safety personnel), require and copy OSH related documents, take photos, videos, and substance samples for testing (Art. 16 (5,6)).

The Labour Code (Art. 24) provides that a standard working week shall be forty hours. Enterprises with 'specific operating conditions' (subject to specification by the Ministry) may have a longer working week of up to 48 hours and a working day longer than eight hours, whereas the period of rest between working days shall not be less than twelve hours. The latter also applies to shift work and working two shifts in a row shall be prohibited (Art. 25). Part-time job in the Labour Code is defined in "less than a standard" terms, meaning that employees working less than forty hours per week are considered to be part-time workers (Art. 16). Overtime work (especially for accident prevention purposes) shall be remunerated for a higher hourly rate than standard working hour (Art. 27). The same remuneration rule applies for working on official holidays (Art. 30). Employees working at least three hours within a period from ten in the evening until six o'clock in the morning are classified as night workers (not to be confused with shift workers), whose working hours shall not exceed eight hours within 24 hours. Recent changes in the Labour Code allow the night workers to request a medical examination before and during employment at employer's expense (procedure to be clarified by the Ministry) (Art. 28 (5)).

The opening words of Georgia's occupational safety and health statutory law are the '[p]urpose of this law is to define general principles [emphasis added] of basic requirements and preventive measures that are related to occupational safety and health (OSH)'. The sentence not only defines the purpose of the law, but is also an indicator of a regulatory style characterized by lack of precision. The wording of the legal text—e.g., depending on the size of the enterprise, considering the nature of the work, the requirement to raise awareness, ensure cooperation, and take necessary measures—similar to the concept of 'so far as reasonably practicable' found in the UK 1974 health and safety act, falls short of precision and, in terms of implementation, depends largely on the employer's risk assessment policy. In case of the UK, however, the concept of reasonable practicability was

[7] As of year 2021

[8] About the Labour Conditions Inspecting Department (LCID) https://moh.gov.ge/en/723/

interpreted in a number of court judgments, that became case law (e.g., Edwards v National Coal Board 1949).

On the level of statutory legal acts, broader OSH principles may help to avoid ‘overinclusiveness’ (or unreasonableness), which can be harmful (i.e., expensive) for the employer in terms of implementation, and can negatively impact the workers as well, if the employer in its attempt to compensate the loss of expected profit cuts other expenses, including payments to the employees—an extremely irresponsible, but possible scenario. From this perspective, general principles sound like a reasonable legal choice, especially for low income or developing countries, where workers can become the ones paying the price.

In order to make general principles of statutory law implementable, they shall be supported by sufficiently detailed guiding regulation, which might be in the form of other legal acts of lower hierarchy (unlike statutory laws, not requiring parliamentary approval), or officially approved guidelines. In Georgia’s case, it is technical standing approved by the government. From the perspective of responsibility, violation of either technical standing or the provisions of the Law are governed by the administrative law and shall equally result either in warning, fine, or termination of works. It shall be noted however, that the EU legislation is rather precautionary than general. Hence, in order to comply with the requirements of the Association Agreement, Georgia shall switch from general principles to precautionary measures.

Within the last decade, Georgia’s OSH approach has evolved from a libertarian style minimum regulation policy towards the promotion of responsible business conduct, adoption of laws, and attempt to regulate the field. Signing of the Association Agreement with EU became a trigger point for changes not only in Georgia’s labour regulation agenda, but the social policy in general. The Agreement provides for clear deadlines for certain regulatory changes to be implemented, which Georgia has been complying with by now.

Implementation of law and Policy and Promotion of Safety Culture in Construction. Key Findings

In her “Working construction: Why White Working-Class Men Put Themselves–and the Labor Movement–in Harm's Way”, Kris Paap (2006) analyzes the realities of construction safety in America and identifies four main rules which are determinants for a so-called safety culture in the construction industry. Paap argues that being an industry dominated by men and associated with physical work, construction is to great extent determined by ‘hypermasculinity’ culture.

The first cultural rule is that work in construction is associated with pain, or, as defined by Paap, “expect pain and take it like a man”. The risk of injury in construction is anticipated, and, arguably, workers believe, that it is not a matter of ‘if’ it happens, but rather of ‘when’ it happens. And when it happens, the pain shall be taken with courage, like a man. Secondly, akin to a military logic, workers are expected to put themselves at risk in order to protect others, or “protect others over yourself”. Thirdly, “getting the job done” is believed to be the top priority for everyone, not only for the employer, but also the site workers. And, lastly, workers are expected to “carry the boss’s burden and shoulder the costs of safety” (Paap 2006, 164-8).

Another observation by Paap suggests that in construction there are two safety policies—formal, aimed at supporting the company’s image as prioritizing safety and worker’s well-being, and actual, where the formalities can be put aside to “get the job done”, preferably as cheap and fast as possible (Paap 2006, 158-9). These are main characteristics of safety culture related to ‘fast construction’ very much relevant for Georgia today, and patterns that need to be tackled fundamentally. Shift in the burden of proof shall be prioritized, in order to break the vicious circle of blaming the workers for negligence and misconduct for the accidents in the first place. First of all, the responsibility of an employer shall be tested, and it shall be proved that the circumstances were out of the employer’s control and impossible to foresee. Another problem is a subject of accountability—the legal system shall address not only corporate responsibility, but personal accountability of those responsible for decisions that have led to loss and damages. It shall be within responsibility of the state to make employers realize that taking all necessary safety measure are more affordable than loss of a worker.

Promotion of a safety culture is a fundamental and long-term process in a sense that tangible positive effect will be observed not immediately, but over the years following the measures taken. And, needless to say, the earlier the measures are taken, the sooner improvements will be seen. In recent years, Georgia has taken positive steps to improve the situation and fill the gap in the OSH and labour regulation. However, at this point

the problem is not so much regulation, but rather functioning. It is important that the decisions, if not with regard to statutory legal acts, but at least on the technical regulation and action plan are not made in vacuum by bureaucrats, but in cooperation with and with participation of the business, workers' representatives (i.e., trade unions), and highly qualified safety professionals. And this shall not be mere a formality and remain on the paper, but have a character of systematic meetings and discussions. The policy aimed at production of good rules and 'noble texts' in isolation from reality jeopardize implementation and, eventually, has a negative effect on safety culture and social responsibility of business entities. Hence, safety culture promotion strategy needs to be action oriented.

According to Georgia's law, the only effective enforcement mechanism remains labour inspection. While trade unions, NGOs and the Public Defender can conduct monitoring, issue reports, recommendations and proposals, it is only the labour inspectorate whose mandate allows for an intervention into the working process, to impose sanctions (i.e., warnings, fines, or termination of works) and make the regulations work. Expansion and strengthening of the inspectorate's mandate by the Law, according to the labour inspection's 2019 annual report, has had a positive impact on reduction of injuries and fatalities, compared with the 2018 statistics, by 16 and 24 percent correspondingly (2019 Labour Inspection Department Activity Report 2019, 4). The number of specialists within the inspectorate's structure is forty (Ibid. 10). The labour inspection department conducted, overall, 1264 inspection visits at 558 different workplaces, out of which 298 were construction sites (Ibid. 12). The report indicates that the major problem is lack of a comprehensive risk assessment mechanism, absence of individual protective gear, absence of adequate training, inadequate documentation and reporting of incidents and accidents, lack of control over work equipment, absence of accident insurance, 6 percent of the inspected workplaces did not have a safety specialist on site, presence of people under the influence of alcohol and other substances was detected at 9 percent of workplaces, etc. (Ibid. 14-6).

As for financing, the Law of Georgia on Labour Inspection provides that the sources of funding of labour inspection shall be the state budget and the grants (Art. 6 (2)). A positive tendency is being observed from the perspective of financing—government has increased funds for its labour inspection program. While in 2018 it was 910 000 GEL, in 2019 the funding constituted 1 500 000 GEL. The Decree of the Government №668 provides for the 2020 labour inspection program funding to increase up to 3 210 000 GEL. For comparison, budget support for popularization of mass sports in 2020 was 130 million GEL (Transparency International Georgia 2020). The Public Defender sees lack of financing and human resources to be one of the main obstacles in labour inspection's effectiveness (Public Defender (Ombudsman) of Georgia 2019) (2020).

During interviews conducted by the author on the construction site, when asked whether they have ever witnessed an accident at their current or previous workplaces, all respondents said 'yes', including fatalities. The main accident causes include electric shock, fall from the height, being struck by an object, and during the operation of work equipment and mechanisms, with electric shock and fall from the height named as the most common causes. Exposed wires, poorly installed or low-quality scaffolds and insufficient protection while working on the height are the main safety problems. Site observation also showed the need for improved sign and tag system.

Preventive measures, according to project managers, require time and money, however, for companies in a long-term perspective, it is an important investment—eventually, dealing with accident consequences is more expensive not only in terms of time and money, but, most importantly, in terms of human pain and company's damaged reputation. In the era of fast construction, unfortunately, the latter is way too often overlooked.

After the adoption of new safety regulations, the Ministry, in cooperation with German partners developed a construction safety app[9] aimed at providing information and popularization of safety culture. While the application is a very useful source of information, it needs more active promotion itself (since its establishment in 2019 within a year and a half, overall, 1000 users downloaded the application).

During the interviews, when asked how many workers' safety can ensure one health and safety specialist, answers varied between twenty and forty. The majority emphasized that it shall depend on the type of the works performed—plaster and paint works are, obviously, less dangerous than dismantling or steel construction works. However, the maximum number of workers named was fifty, whereas Article 7 (2) of the OSH Law allows the companies to have one health and safety specialist for up to 100 workers, and at least two for more. The

[9] Construction Safety Application –
Google Play: https://play.google.com/store/apps/details?id=ge.gov.moh.apps.chs&hl=en_US&gl=US
App Store: https://apps.apple.com/us/app/construction-safety/id1467215620?ls=1

respondents stressed that they are not being guided by this particular provision when making decision on how many health and safety specialists to hire, but rather rely on their own experience.

When speaking about the role of the law, the majority of respondents believed that it was aimed at prevention through sanctioning rather than guiding. One of the forms of sanctioning is restriction to participate in public procurement tenders for those with negative safety and health records, and, on the contrary, encouraging those who prioritize safety and health of the workers. The state procurement agency has its whitelist and blacklist of enterprises, as well as the list of warned companies on the website.[10]

In situations when the state is involved in economic activity (i.e., when the state is an employer), it shall provide a good example for the private sector. Managers emphasized that in public procurement tenders the tendency is clear—the one offering the lowest price wins. Therefore, the bidders are interested in cutting expenses and giving low prices. At the same time, attention in the bill of quantities is on price of the materials, while safety and health become secondary to the offer. The respondents believe that the participants of the state procurement tenders for construction projects should be required to upload, along with the bill of quantities, a risk assessment document or a health, safety and environment protection policy with indicated safety and health expenses, which shall be evaluated fairly when deciding on who wins. The state shall ensure higher standards of safety and health protection first and foremost in public construction projects, thus being a role model for others.

The OSH Law obligates the employers to formulate and issue a written risk assessment document (Art. 6 (2)), general rules for which will be elaborated by the Ministry (Art. 6 (1)) based on ILO methodology (Art. 3 (u)). General methodology for risk assessment in the workplace was established by the Ministry's Order №01-15/N from January 30, 2020. While this is a step forward, the interviews showed that the managers were unaware of it. One of the respondents clarified:

> Risk assessment is the most important task in the health and safety in construction. Having general understanding about it, or a guidance in broad terms will not help to improve anything. Construction companies have always been doing risk assessment in one way or another. What we need now is to have separate forms and detailed guidelines for each sector in construction. We need to learn how to do it right and how to make it work.

A closer cooperation with the state is key at this stage, according to the interviewees. A visit by the labour inspection shall not mean only fines and sanctions, they say. The role of the state, along with the control over implementation, shall be provision of information and consultations, if necessary, training for the management and health and safety personnel. "And, why not, to consult with the state agency, the labour inspection or other, about the risk assessment and organization of the workplace before the actual works start on site", offered one of the respondents. He also added that consultations with the state representatives will have a positive impact on the quality of services provided by the health and safety specialists as well.

The interviewees specialized in health and safety spoke about problems in OSH attitude in general: workers believe the training is more of a formality than necessity, and the mindset described as "nothing will happen to me". They explain the dilemma they face in terms of construction works deadlines, on the one hand, and the trainings and on-site instructions which are time-consuming, on the other hand. They believe their mission is to ensure safety and health of the workers without interruption of works. Nevertheless, all respondents stressed that the attitude to safety and health among both the workers and the employers is slowly improving (from low towards average) if compared to the situation two years ago, although in Tbilisi the improvements are more noticeable than in other locations. The safety attitude varies from company to company, too, particularly, in terms of professionalism of the health and safety specialists, management's attitude to safety, personal responsibility of those who disregard the rules, training and education.

Some of the respondents with international work experience, while sharing their opinions on best practice, emphasize an effectiveness of detailed regulation bringing in the example of American approach to accident prevention. Although, preventive measures can be exaggerated sometimes, they can be lifesaving, too, which is worth the effort.

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[10] State Procurement Agency http://www.procurement.gov.ge/Home.aspx?lang_id=GEO&month=08&page=184&sec_id=16&year=2008&lang=ka-GE

> In most of the developing countries, broad regulations don't work; they don't fit in our mentality either. People tend to think: "if something was dangerous, it would be prohibited". Therefore, speaking in a manner of recommendations will never be effective. If something is merely recommended, fifty percent will ignore it. It's a cultural problem, too. Therefore, firstly, the state shall not say "you should", but rather "you must" or "must not".

When it comes to such a risky subject as safety in construction, lack of regulation and existence of unregulated 'gray zones' can be particularly dangerous.

> One can be comparatively safe while sitting in the office, but as soon as you step in to the territory of construction site, your safety and life are at risk. This shall be the logic and the cornerstone of safety culture. In issues such as safety there can only be black [dangerous and requiring regulation] or white [safe], there is no something in between.

The interviewees emphasize that effective preventive policy and measures shall be based on practices of a specific country or region with consideration of cultural features inherent for that area. For this, the drawbacks in practices shall be closely observed and circumstances of accidents in retrospect recorded and taken into consideration when introducing regulations, policy changes, and, especially, while drawing up risk assessment and safety training programs. When it comes to trainings, along with the induction training, a weekly safety training shall be compulsory for everyone on site, as stressed by one of the respondents. The safety rules are being easily forgotten, therefore, those involved in construction shall be regularly retrained, which means 'weekly half an hour safety reminder training'. One of the practices applied by larger companies to improve safety performance among workers is a reward system, according to which, based on the health and safety supervisors' records, the workers are being periodically awarded for the best safety performance at work.

"Our attitude to risk and safety is being formed at home", says one of the managers. "The way we change a light bulb or hammer a nail, drive a car, or explain existence of risks and rules to our children has an impact on our understanding of what is dangerous", he adds. However, while everyone comes to the site with his/her own understanding of safety and personal experience, the employer along with the safety personnel shall ensure that these factors do not jeopardize safety and health of those at workplace.

Finally, as inappropriate as it may sound, 'cost' of human life has to be reconsidered. While money is, indeed, important for business, human life shall be put above any cost-benefit analysis. Promotion of positive safety culture shall be based on and guided by this logic. "Looking back at my long experience in construction," said one of the interviewees, "I can now say with confidence that every single death and injury I have witnessed could have been prevented. They were all foreseeable. [...] There is no measurement for human pain and loss. No money is worth it ...."

The interviews showed that the employers in construction (medium size business entities in this particular case) are, overall, well-intentioned, but lack knowledge, information and supervision. Workers, consequently, too, need to be better informed not only about their work-related responsibilities, but also their rights and safety obligations. While provision of the OSH-related information, consultation and training both to the employers and the workers is a direct obligation of the hired health and safety personnel or service providers, on practice often times the qualification of the safety and health professionals and quality of provided services raise concern. That is one of the main reasons why the construction management believes that the role of the labour inspection shall be also consultative. The mission of the state in this case shall be to raise awareness and promote safety culture among all involved parties, especially among the OSH professionals, including by raising educational standards.

In implementation, switching from formality to quality shall be facilitated. Observations showed that, except for the induction training (which is required by the Law), no effective training is being conducted during the works. The principle of formality applies to the safety equipment as well, which creates the vision of safety, rather than actually protects.

The third cycle of the UN Universal Periodic Review (2017-2022) (United Nations Human Rights Council 12 November 2020) refers to the protection of labour rights in Georgia with consideration of recent improvements in the policy and law. The report of the High Commissioner on Human Rights emphasizes that protection of workers' rights, especially in construction and mining industries, is weak. Workplace safety in those sectors raise serious concerns (Ibid. C 1 (40, 41), p. 4), while effectiveness of accident investigation is low, rarely leading to legal accountability of business entities (Ibid. A 2 (17), p. 2).

Recommendations

With consideration of the above-mentioned, it is recommended that:

1. Changes to Article 7 paragraph 2 of the Law on Occupational Health and Safety are made, by providing for compulsory presence of at least one qualified occupational safety and health specialist on construction site, regardless of the number of workers; to appoint at least one safety and health specialist in case of up to fifty workers, at least two when the number of workers is up to one hundred, etc.

2. Accept Articles and paragraphs of the European Social Charter (Revised), which have not been accepted, i.e., Article 3 (the right to safe and healthy working conditions) and paragraphs 3, 4, and 6 of Article 2 (the right to just conditions of work).

3. Ratify ILO Conventions, namely Labour Inspection Convention No. 81, Occupational Safety and Health Convention No.155, Safety and Health in Construction Convention No. 167 and Recommendation No. 175, Occupational Health Services Convention No. 161. Ban use, import and production of asbestos containing products.

4. Adopt construction safety guidelines and manuals, which help to promote better understanding of standards, measures and importance of safe work, such as those introduced by ILO—"Safety and health in construction: An ILO code of practice" (1992), "Safety, health and welfare on construction sites: A training manual" (1995); or manuals sharing best practice approach, such as those offered by the Institution of Civil Engineers, e.g., "ICE manual of health and safety in construction" (2010), others.

5. Develop a state-run user-friendly website for distribution of information and safe culture popularization in several languages, which will offer the business, workers, and health and safety professionals a whole range of existing regulations, guidelines and publications, apps, educational programs, conferences, trainings, etc.

6. Ensure that the state procurement tenders encourage the bidders to strengthen health and safety protection measures.

7. Progressively increase labour inspection financing and human resources.

8. Establish an agency within the labour inspection department, which will be oriented on cooperation with employers by providing paid consultation, risk assessment and training to the management and the health and safety personnel before the start of works.

Conclusion

In 2019, Georgia took important positive steps to improve its OSH regulation. However, Georgia's existing OSH policy and regulation is characterized by vagueness, lack of precision and guidance for implementation. The Law imposes general obligations on the stakeholders leaving a large unregulated 'gray space' for implementation. The established standards (e.g., required number of safety specialists per number of workers) are low and can be misleading, especially, if employers do not have enough experience, lack knowledge, and are being guided only by provisions of the Law.

In terms of implementation, business representatives define lack of understanding of 'what' to do and 'how' to do it right to be a significant obstacle for them. Secondly, they emphasize the need for closer cooperation with state agencies, as they believe there is a gap between the regulation and reality. Poor safety culture among all stakeholders, including safety professionals, was identified as a major problem by all interviewed parties.

While the role of the labour inspectorate is to 'control implementation', impose sanctions, issue recommendations and take part in accident investigation, business entities, expect the state, and labour inspectorate as its agency, also to take part in promotion of safety culture among safety specialists and the employers through provision of information, spread of knowledge, best practice, and training, if needed. As noted by one of the managers, "before demanding and expecting something, the state shall input something".

Being a sphere of high risk, construction sector consists of works with various risk levels. The interviews showed that the highest number of accidents happen during electrical works, works on the height, fall of objects from height, and operation of machines and work equipment. Consequently, at least these fields require more attention, stricter and more inclusive regulation, more frequent training and control.

The conducted fieldwork showed that managers were informed about their responsibilities only in general terms, i.e., they are responsible for ensuring workers safety and fulfil minimum formal requirements (to have safety specialist on site, provide safety equipment), and that they may be fined for non-compliance.

While all parties recognize importance of safety training and education, the respondents also emphasize insufficiency and inadequacy of conducted training. It has been noted that only induction training is being conducted with due diligence, most of the times for skilled workers and foremen only.

Recognition of the necessity to regulate safety at workplace and to control implementation is already a positive step in the promotion of safety culture by the state. While Georgian government recognizes the need for promotion of positive safety culture and restates its commitment in international treaties and national action plans, not many of the proposed initiatives are being effectively realized.

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