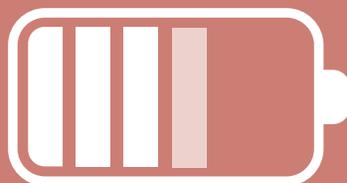


THE (IN)EFFICIENCY OF THE STATE LABOUR INSPECTORATE IN THE PROTECTION OF WORKERS' RIGHTS

Analysis and recommendations for improving the work of the State
Labour Inspectorate

- Public policy document -



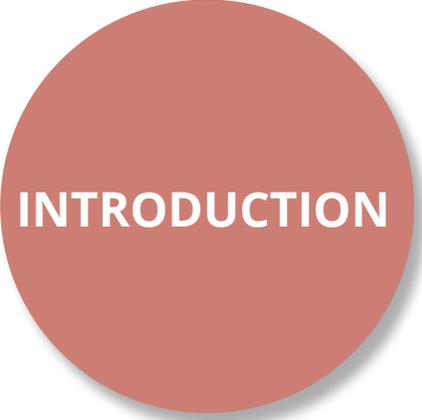
Author: Igor Jadrovski

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LIST OF ACRONYMS

SLI	State Labour Inspectorate
LLO	Law on Labour Relations
LI	Law on Inspection
LLI	Law on Labour Inspectorate
LGAP	Law on General Administrative Procedure
LM	Law on Misdemeanours
MLSP	Ministry of Labour and Social Policy
SSHI	State Sanitary and Health Inspectorate
RNM	Republic of North Macedonia
HC	Helsinki Committee
DPMGRNM	Deputy Prime Minister of the Government of Republic of North Macedonia
ADMLSP	Additional Deputy Minister of Labour and Social Policy
DMLSP	Deputy Minister of Labour and Social Policy



INTRODUCTION

This public policy document was prepared within the project “Increasing productivity by improving the legal framework for labour relations in North Macedonia (II)” and refers to the period from August 2018 to September 2020. The project provides a comprehensive review of labour rights, including measuring citizens’ satisfaction with the protection mechanisms against discrimination and violations of workers’ rights. Furthermore, the project provides recommendations for improving the legislation in accordance with international standards. In addition, the activities include monitoring the labour inspection and constantly informing the public about the situation with workers’ rights, which contributes to raising pub

lic awareness about access to protection mechanisms. One of the project’s key activities is monitoring the work of the State Labour Inspectorate (SLI).

SLI is the primary and most important mechanism in the protection of workers’ rights. SLI supervises the implementation of the legislation regarding labour relations, employment, and occupational safety. The Inspectorate also controls the compliance with collective agreements, employment contracts, and other acts that regulate and exercise the rights, obligations, and responsibilities of workers and employers in the area of labour relations, employment, and occupational safety. Considering the easily accessible and free administrative procedure, SLI is the most commonly used protection

mechanism through which the citizens of Macedonia seek institutional protection of employment rights. As part of the working group for drafting the new Law on Labour Relations (LLR), the SLI plays a vital role in advancing domestic labour legislation and its harmonisation with international labour legislation. Primarily, this refers to the European Union (EU) directives and the conventions of the International Labour Organization (ILO).

The pandemic caused by COVID-19 led to a health and labour crisis and, as never before, tested the functionality and effectiveness of SLI. Workers were the first to be affected after a state of emergency was declared in the country to deal with the effects of the coronavirus. The crisis for them meant a struggle to preserve

their own and the health of their families and a struggle to provide for their survival. This situation produced a gross violation of workers' rights, the cases of which was increasing daily and required a quick and efficient response from the SLI.

The aforementioned finding points to the need and importance of an efficient and functional SLI, which will continuously provide promotion and timely protection of workers' rights. For that purpose, this public policy document will provide recommendations for overcoming the challenges and problems that SLI faces, registered through continuous monitoring of its work in the period from August 2018 to September 2020. The objective is to contribute to improving the work of SLI.

METHODOLOGY

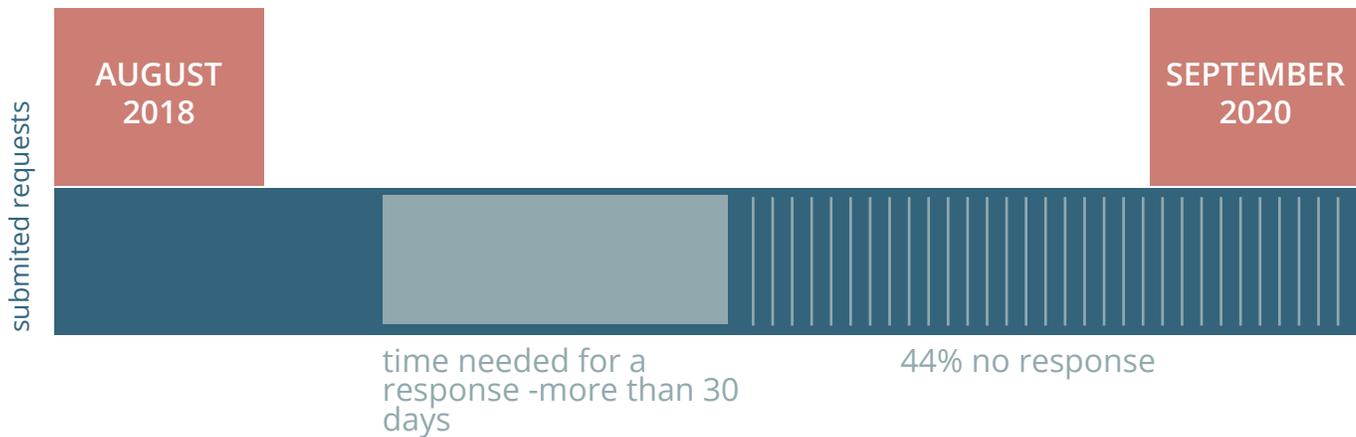
The document's methodological framework includes desk research, interviews with labour inspectors, and weekly meetings with the director of the SLI. The desk research will analyse the domestic legislation and the primary data on administrative practices and actions of the inspectorate, obtained through the initiated procedures for extraordinary inspection by the Helsinki Committee (HC). The desk research is based on a review and analysis of the secondary data sources from available surveys, reports, analyses and infographics regarding the operation and functionality of the SLI. Furthermore, the methodological framework includes data obtained from interviews with labour inspectors from various regional offices of the SLI, regarding the manner and duration of inspections and the actions taken by the inspectors while performing the inspections. Finally, the methodology includes summarised data obtained by continuous weekly coordination meetings with the Director of the SLI, related to the inspectorate's actions in the state of emergency regarding specific cases and observed trends of violation of workers' rights.

EXECUTIVE SUMMARY

The conclusions from the primary data obtained from the desk research show that the SLI in the period from August 2018 to September 2020 did not act efficiently and promptly on the submitted requests for extraordinary inspection by HC.¹ The SLI did not submit a response in 44 percent of the submitted requests for inspection by HC, and in almost half

1 Helsinki Committee on human rights – Does the State Labour Inspectorate efficiently safeguard labour rights? – infographic available at: https://mhc.org.mk/wp-content/uploads/2019/04/infografik_ENG.pdf
Helsinki Committee on human rights – Does the State Labour Inspectorate efficiently safeguard labour rights? – infographic no. 1, available at: <https://mhc.org.mk/wp-content/uploads/2019/07/INFOGRAFIK-ANG-novo.pdf>
Helsinki Committee on human rights – Does the State Labour Inspectorate efficiently safeguard labour rights? – infographic no. 2, available at: <https://mhc.org.mk/wp-content/uploads/2019/11/3-infografik-ang.pdf>
Helsinki Committee on human rights – The (in)efficiency of the State Labour Inspectorate in the protection of workers' rights – infographic no.3, available at: <https://mhc.org.mk/wp-content/uploads/2020/02/infografik-ang1.pdf>
Helsinki Committee on human rights – The (in)efficiency of the State Labour Inspectorate in the protection of workers' rights – infographic no.4, available at: <https://mhc.org.mk/wp-content/uploads/2020/06/dic-en.pdf>
Helsinki Committee on human rights – The (in)efficiency of the State Labour Inspectorate in the protection of workers' rights – infographic no.5, available at: <https://mhc.org.mk/wp-content/uploads/2020/10/dit-5-en.pdf>

of the cases in which they submitted a response, the response took more than 30 days.



SLI does not have sufficient human capacities. Precisely, SLI has a total of 103 inspectors for the fields of labour relations and occupational safety and health located in 30 areas, of which 88 inspectors can independently inspect.² Regarding the data of the total number of performed inspections, it would mean that in 2017, the last year for which data is available on an annual basis, a total of 31,690 inspections were performed; precisely one inspector performed 1.2 inspections per day. The number of employed inspectors at the disposal of SLI has insignificantly changed during the first half of 2020. According to the SLI work report for the period January – June 2020³, SLI had 105 inspectors for the fields of labour relations and occupational safety and health located in 30 areas. During this period, SLI performed 16,892 inspections; precisely one inspector performed 1 inspection daily.

From August 2018 to January 2020, SLI had problems with accessibility and openness to workers. During this period, not all regional offices of SLI had functional telephone lines and there was no possibility to submit anonymous electronic requests for initiating an extraordinary inspection. This practice has improved since February 2020, when the SLI introduced the option of anonymous filing on its website. Additionally, the SLI has significantly improved accessibility to workers during the state of emergency, providing functional telephone lines in all regional offices.

The conclusions from the interviews with the inspectors show that they usually perform

² Strategic plan of the State Labour Inspectorate 2018-2020, available in Macedonian at: <https://bit.ly/2DCoQQv> last accessed at: 15 December 2018

³ Report on the work of SLI for the period January – June 2020, No. 02-3641 from 14.07.2020, available in Macedonian at <https://dit.gov.mk/?p=6725>.

the inspections no later than 15 days after receiving the cases. The duration of the inspections and the actions taken depend on the subject of the inspection. In almost all interviews, the inspectors stated that during the inspection, they talked to the workers about the inspection subject without the employer's presence, which can be noted as a positive practice. On the other hand, the difficulties in scheduling and conducting interviews with inspectors, most often due to their busy schedule, once again point to the lack of human resources in the SLI and the lack of a clearly established system of cooperation with civil society organisations.

The conclusions from the weekly meetings with the director of the SLI show that this ad hoc tool works as extremely effective in protecting workers' rights during a state of emergency. During these person-to-person meetings between the Director of the SLI and civil society organisations that work in the area of protecting and promoting workers' rights, the acting on specific requests for inspection by the SLI was discussed. Additionally, the trends of violation of workers' rights during the state of emergency were discussed and measures for protection of workers' rights were proposed. The safety and health of workers during the pandemic were also discussed at the meetings. Considering that these meetings are attended by representatives of the Ministry of Labour and Social Policy (MLSP) and the State Sanitary and Health Inspectorate (SSH), they have improved the cross-sectoral cooperation of all protection mechanisms for protection of workers' rights.

The SLI has shown a positive trend of fast, up-to-date, and efficient processing of the submitted requests for extraordinary inspection during the state of emergency and great flexibility during the recent situation. Mechanisms for telephone and anonymous reporting of labour rights violations functioned well and the Inspectorate acted quickly and efficiently on such reports. However, there is still an impression that the SLI should ensure complete and consistent compliance with the preventive measures and recommendations for protection of workers at the workplace. That would especially apply to maintaining necessary distance during performance of work tasks, disinfecting the places where work is performed and wearing personal protective equipment at work. Furthermore, SLI should ensure consistent implementation of salary and compensation payments to workers who have been released from work duties by the preventive measures of the Government due to the spread of COVID-19 and ensure that there is no misinterpretation of the preventive measures and recommendations of the Government for releasing certain categories of workers and their misinterpretation in light of the articles of the Law on Labour Relations regulating the inability to perform work due to force majeure and use of forced leave.

LEGISLATION AND PROCEDURE FOR INSPECTION

The legal framework for labour inspection is set by the procedural laws: the Law on Inspection (LI)⁴ and the Law on Labour Inspection (LLI).⁵ In addition, the misdemeanour procedure is regulated by the Law on Misdemeanours (LM).⁶

LI as *lex generalis* establishes the general framework for performing inspections. LI determines the rights and duties of inspectors, the bases for organisation and work of the inspection services, the basic rights and obligations of the subjects of the inspection, the manner and the procedure for performing inspection and other issues regarding the inspections. On the other hand, LLI, as *lex specialis*, regulates the legal framework of labour inspection. The authorisations and competences of SLI are further regulated by the substantive laws concerning labour relations, employment, and occupational safety.

The inspection procedure begins with an initiative for initiating an inspection, which can be submitted by any legal and natural person, and it can also be submitted anonymously. A citizen whose right is violated or who is prevented from exercising his/her right from or in relation to the employment can submit a request with the SLI. The request can be submitted in writing or orally with a statement given in front of a labour inspector. After receiving a request, the labour inspector must act upon it and conduct an inspection procedure. The extraordinary inspection is carried out immediately, but no later than 10 working days from the receipt of the request for extraordinary inspection. In such situations, the labour inspector is authorised, without prior notice, to enter the employer's premises at any time of the day and night and to conduct the inspection.

While carrying out the inspection, the inspector is obliged to take all legal actions that are necessary to determine the factual situation, i.e. in accordance with the abovementioned to inspect, collect necessary data, request personal documents, take statements of persons found at the employer etc. When the labour inspector determines that the exercise of the right of the citizen who submitted the request has been violated or impaired, the inspector will impose appropriate inspection measures to eliminate the irregularities that led to the violation or incapacitation of the right, in accordance with the law. In a situation like that, the inspector will issue a decision ordering the employer to take appropriate ac-

4 Law on Inspection, Official Gazette of the Republic of North Macedonia No. 102/19

5 Law on Labour Inspection, Official Gazette of the Republic of North Macedonia No. 35/97, 29/02, 36/11, 164/13, 44/14, 33/15, 147/15 and 21/18.

6 Law on Misdemeanours, Official Gazette of the Republic of North Macedonia No. 124/15.

tions within a certain period of time, with the goal of eliminating the identified irregularities. The inspector is obliged to inform the submitter of the inspection results within 15 days after completion of the extraordinary inspection. When the irregularity determined by the substantive laws is defined as a misdemeanour, the inspector will initiate an appropriate misdemeanour procedure before a misdemeanour authority, more precisely, a competent court. If the law envisages issuing a misdemeanour or mandatory payment order, the inspector will issue the appropriate order to the employer before initiating a misdemeanour procedure. The misdemeanour procedure is initiated at the request of an authorised authority or the injured worker's request.⁷ The authorised authority for initiating a misdemeanour procedure is the State Labour Inspectorate, and the worker himself/herself appears as damaged party. The laws envisage fines for a committed misdemeanour, which are prescribed and proclaimed as the main sanction consisted of payment of a certain amount of money, expressed in a fixed amount in accordance with the legal provisions.⁸

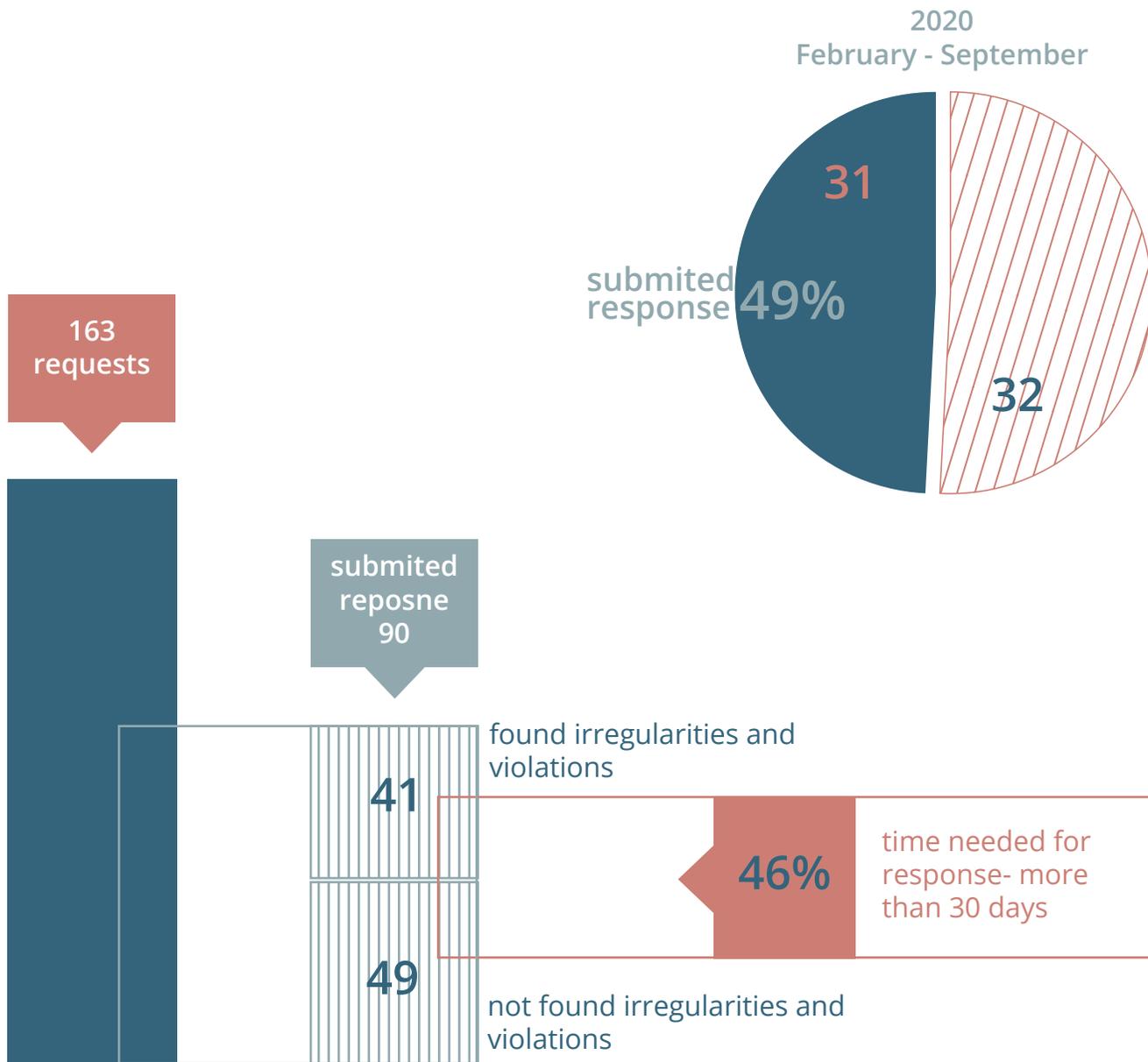
REQUESTS FOR EXTRAORDINARY INSPECTION BY THE HC

In the reporting period, HC has submitted 163 requests for extraordinary inspections to 21 regional SLI offices. The SLI submitted a response to only 90 of them, finding irregularities and violations of workers' rights in 41 of them, while not finding any irregularities in 49 of them. Additionally, in 46% of the requests for extraordinary inspections in which there was a response, the SLI took more than 30 days to submit the response. There is a slight improvement in this practice in the period February 2020 - September 2020, especially during the state of emergency, when the SLI responded to the submitted requests for inspection much faster and more promptly; however, there was no improvement in the percentage of requests to which SLI responded. During this period, the percentage of

7 Law on Misdemeanours, Official Gazette of the Republic of North Macedonia No. 96/2019.

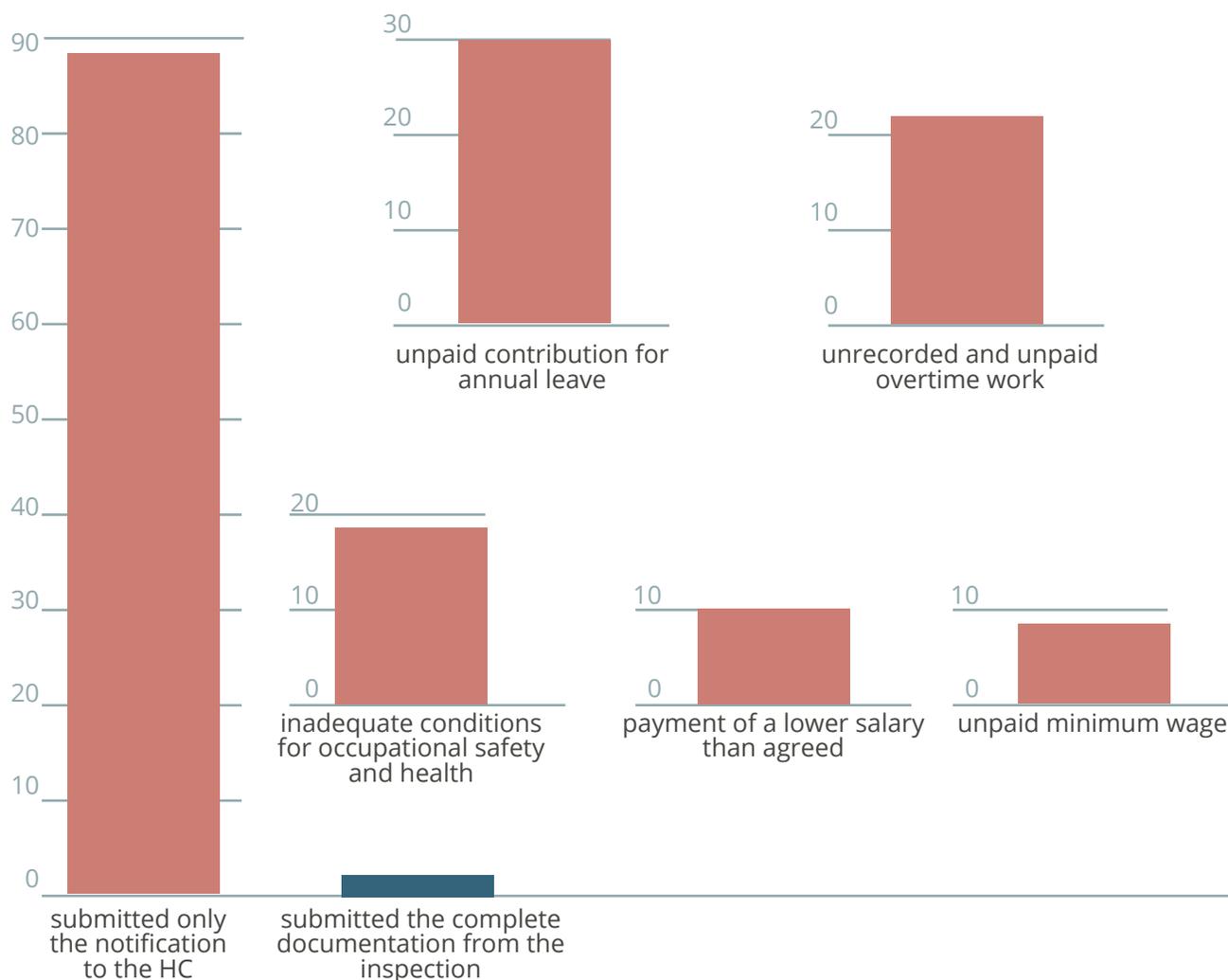
8 Law on Misdemeanours, Official Gazette of the Republic of North Macedonia No. 96/2019.

responded requests was 49%, which means that SLI responded to 31 out of 63 submitted requests for extraordinary inspection.



In only 1 out of 90 responses to requests for extraordinary inspection, the SLI submitted the complete documentation from the inspection (notification, minutes of the inspection, decision, payment order, etc.) and in 89 responses, the SLI submitted only the notification to the HC.

Regarding the cases of inspection, the most common are the requests related to unpaid contribution for annual leave (30), unrecorded and unpaid overtime work (22), inadequate conditions for occupational safety and health (18), payment of a lower salary than agreed (10), unpaid minimum wage (8) etc.



In the period from January to June 2020, there is an evident increase in the number of extraordinary inspections, primarily due to the situation caused by the COVID-19 pandemic. Therefore, in this period, out of a total of 16,892 inspections, 12,246 were extraordinary inspections.⁹

⁹ See reference No. 3.

It should be noted that in the period from February to April 2020, precisely in the period after the declaration of the first state of emergency, most of the requests for extraordinary inspection (7) referred to non-compliance with the Government measures for prevention and protection from COVID-19 regarding maintaining a distance of two meters at the workplace, disinfection of work surfaces and lack of personal protective equipment for work. The efficiency of the SLI in handling these requests for extraordinary inspection is remarkable; thus, in all seven cases the SLI identified irregularities within 15 days from the submission of the requests for inspection and obliged the employers to eliminate the irregularities. It is also characteristic that the SLI conducted ex officio control over these cases and informed the HC as the submitter of the requests for extraordinary inspection that the employers acted upon the indication of the SLI and removed the irregularities. This is a positive exception from the standard practice in the cases of determining irregularities upon a submitted request for extraordinary inspection, when HC does not receive ex officio notification for the control inspection from the SLI, and it usually re-applies with a request for extension of the inspection, in order to determine whether the employer has acted on the instructions of the SLI.

INTERVIEWS WITH STATE LABOUR INSPECTORS

The interviews with state labour inspectors were conducted with two objectives. The first objective was to obtain a detailed and accurate factual situation on the conducted inspections upon the submitted requests for extraordinary inspection by the HC. The second objective was to determine the needs and challenges that the state labour inspectors face during the inspection.

The interviews were conducted in the period from February 2019 to August 2020. During this period, a total of 7 interviews were conducted with inspectors from 4 regional offices of the SLI. Two of these interviews were conducted person-to-person, and 5 interviews were conducted by telephone.

The main challenge in scheduling and conducting the interviews was the general large workload faced by state labour inspectors and the lack of time to conduct interviews. The restrictions on physical movement and holding indoor meetings caused by the COVID-19 pandemic were an additional obstacle.

The interviews were conducted in accordance with a previously prepared questionnaire¹⁰ which contains the following data:

- regional office of the inspectorate;
- inspector;
- date of the interview;
- place of inspection;
- date of inspection;
- duration and subject of inspection;
- how much time has passed from the receipt of the request for extraordinary inspection to the performance of the inspection;
- what actions have been taken during the inspection;
- whether interviews were conducted with the workers regarding the subject of the inspection, if so, whether the interviews were conducted in the presence of the employer;
- whether violations of workers' labour rights have been identified, and
- what measures have been taken concerning the determined violations of workers' rights.

In most of the conducted interviews, the inspectors answered that the duration of the inspections ranges from 30 to 60 minutes. The time elapsed from the receipt of the request for extraordinary inspection does not exceed 15 days. This efficient handling of the requests for which the interviews were conducted is an exception to the general impression of inaccurate and inefficient handling by the SLI observed in the reporting period. It is a positive practice that was stated by all interviewed inspectors that during the inspection, they had conversations with the workers without the employer's presence. During the interviews, five inspectors stated that they have determined irregularities and violations of workers' rights during five inspections. In one of the five cases, the inspector instructed the employer to provide copies of the employment contracts to the workers, and the employer acted immediately upon the instruction. In two out of five cases, the inspectors instructed the employer to pay a payment for annual leave to the workers and, during a control inspection, determined that the employer had acted upon the instruction. In one of the five cases, the inspector obliged the employer to return to work a worker whose

¹⁰ The questionnaire is available in an annex of this public policy document.

employment contract was illegally terminated and, after a control inspection, determined that the employer had acted upon the instruction. In one of the five cases, the inspector instructed the employer to issue payroll calculations to the employees, but at the time of the interview, no control inspection had been conducted to verify whether the employer had acted upon the instruction. In two of the interviews, the inspectors stated that they did not find any irregularities in the inspections conducted in two cases.

WEEKLY COORDINATIVE MEETINGS WITH THE SLI DIRECTOR

Weekly coordinative meetings were held from early May to early July 2020. The purpose of these meetings was to improve the coordination of civil society organisations with the SLI in terms of protection and promotion of workers' rights during the state of emergency and to discuss the measures of the MLSP during the state of emergency. The meetings were mostly attended by the former DPMGRNM Mila Carovska, the former ADMLSP Sanela Skrijelj, the former DMLSP Gonul Bajraktar, the former director of SLI Alajdin Havziu, representatives of the SSHI, and representatives of civil society organisations, including representatives of HC.

These meetings have demonstrated that this ad hoc tool has been extremely useful in protecting workers' rights during a state of emergency. At such person-to-person meetings between the Director of the SLI and the civil society organisations that are working on protection and promotion of workers' rights, the topics of discussion included acting on specific requests for inspection, tendencies of violation of workers' rights during the state of emergency, and proposed measures for the protection of workers' rights, as well as the safety and health of workers during the pandemic. This is evidenced by the improvement of the efficiency of the SLI in this period in processing the submitted requests for extraordinary inspection by HC. Considering that these meetings were attended by representatives of the MLSP and the SSHI, they have improved the cross-sectoral cooperation of all protection mechanisms for the protection of workers' rights.

In addition to the faster and more efficient resolution of individual cases, the openness of the SLI on discussing and accepting suggestions for ensuring consistent implementation of the payment of salaries and benefits of workers who are released from work duties by the Government's preventive measures due to the spread of COVID-19 is also to be commended. The SLI has committed to ensuring that there will be no misinterpretation

of the preventive measures and recommendations of the Government for releasing specific categories of workers and their misinterpretation in light of the articles of the Law on Labour Relations regarding the inability to perform work due to force majeure and use of forced leave. However, the impression remains that the SLI has failed to ensure the full and consistent implementation of these measures, nor have the various regional offices of the SLI had a unified position on how much compensation should be paid to employees who are absent from work due to isolation and/or incapacity for work due to COVID-19.

During this period, the increased number of ex officio extraordinary inspections of SLI, which the Director of the SLI has reported at the coordination meetings, is to be commended.

Concerning the human capacities of the SLI, the coordination meetings confirmed the impression that the SLI does not have sufficient human capacities, which can bear the increased workload from the labour crisis caused by the COVID-19 pandemic. Additionally, the workload of state labour inspectors is growing with the increase in number of infected persons, including some state labour inspectors.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions:

- SLI does not act efficiently and promptly upon the submitted requests for extraordinary inspection. In almost half of the submitted requests for inspection, the SLI needed more than 30 days to act upon them and notify the submitter of the request for the outcome, and for most of the submitted requests for extraordinary inspection, the SLI did not inform the submitter of the outcome at all. The SLI practice in notifying the submitter is to provide only the notification without the additional documentation (minutes of inspection, decision, payment order, etc.).
- SLI does not have sufficient human and material capacities to promptly and efficiently act on the submitted requests for extraordinary inspection. Based on the information obtained at the weekly meetings with the Director of the SLI and the interviews conducted with the state labour inspectors, it can be concluded that the current number of employees in the SLI is not sufficient to deal with the workload of the SLI, which is additionally increased during the COVID-19 pandemic.
- SLI rarely uses the possibility to initiate extraordinary inspections ex officio, as enabled by law.¹¹ This practice has improved during the state of emergency, especially for employers who worked during curfews.
- At the beginning of 2020, SLI managed to improve its accessibility and openness to the citizens by introducing the possibility for anonymous and telephone submission of requests for extraordinary inspection and by introducing functional telephone lines in all regional offices.

11 Helsinki Committee on human rights – Does the State Labour Inspectorate effectively safeguard labour rights? – infographic No. 2 available at: <https://mhc.org.mk/wp-content/uploads/2019/11/3-infografik-ang.pdf>

The (in)efficiency of the State Labour Inspectorate in the protection of workers' rights – infographic No. 3, available at: <https://mhc.org.mk/wp-content/uploads/2020/02/infografik-ang1.pdf>

The (in)efficiency of the State Labour Inspectorate in the protection of workers' rights – infographic No. 4, available at: <https://mhc.org.mk/wp-content/uploads/2020/06/dic-en.pdf>

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- SLI has improved its practice and implemented fast, timely and efficient handling of the submitted requests for extraordinary inspection during the state of emergency and excellent flexibility in the recent situation. The mechanisms for telephone and anonymous reporting of labour rights violations worked well and the inspectorate acted very quickly and efficiently on those reports.
 - Despite this positive direction, the SLI has failed to ensure full and consistent compliance with the preventive measures and recommendations for protecting the workers in the workplaces during the pandemic.
 - The SLI faced problems in ensuring consistent implementation of salary and compensation payments to the workers who have been released from work following the Government's preventive measures due to the spread of COVID-19 and/or who are in isolation or are absent from work due to COVID-19.

RECOMMENDATIONS:

- SLI should improve its efficiency in timely and up-to-date handling of the submitted requests for extraordinary inspection and notification of the submitter of the request, in accordance with the legal deadlines from LI, LIS and LGAP.
- SLI should increase the frequency of utilizing the possibility to initiate extraordinary inspection ex officio, as enabled by the law
- SLI should improve its transparency in its actions and operations by submitting the complete documentation (notification, minutes for performed inspection, decision, payment order, etc.) of the performed inspection to the submitters of the request for extraordinary inspection.
- It is necessary to provide a larger budget for increasing and improving the SLI's human and material capacities, in order to enhance the operation and ensure more efficient and prompt processing of the submitted requests for extraordinary inspection. This should be a priority issue due to the increased workload of SLI during the COVID-19 pandemic.
- SLI should necessarily establish a mechanism for providing information about the procedures initiated by parties with anonymous requests for extraordinary inspection. SLI should inform the submitters that they should leave a phone number or e-mail address for contact, data which will be available only to the State Labour

Inspectorate and will not reveal their identity.

- SLI must ensure full and consistent compliance with preventive measures and recommendations for protecting workers in the workplace. SLI should pay special attention to the organisation of transportation of workers to and from the workplace, maintaining the recommended distance during the performance of work duties, providing and wearing mandatory protective equipment by the employer, and disinfection of the premises where the work process is performed.
- SLI should ensure consistent implementation of the salary and compensation payment to workers who have been released from work according to the Government's preventive measures due to the spread of COVID-19. The SLI should guarantee that there is no misinterpretation of the preventive measures and recommendations of the Government regarding the release of certain categories of workers and their misinterpretation in light of the articles of the Law on Labour Relations regarding the inability to perform work due to force majeure and use of forced leave. The recommendation for ensuring consistent and uniform application also refers to the salary and compensation payment to workers in isolation or prevented from going to work due to COVID-19.
- SLI should maintain frequent and continuous cooperation with civil society organisations, trade unions and all other relevant stakeholders working to promote and improve workers' rights. These meetings have proven to be extremely useful and have increased the SLI's efficiency in dealing with requests for extraordinary inspections, as well as improving the cross-sectoral cooperation of the SLI with the SSHI as safeguarding mechanisms in the promotion and protection of workers' rights.



British Embassy
Skopje



**IMPROVED
PRODUCTIVITY
THROUGH
BETTER LABOUR
LEGISLATION
IN MACEDONIA**



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