



Comments of the GAP Institute on the Draft Law on the Labor Inspectorate

December 2020

GAP Institute has contributed to the drafting process of Labor Law¹, as well as regularly published reports on the implementation of the Labor Law², capacities of the Labor Inspectorate³, regulation of maternity leave, etc.

As provided in the explanatory memorandum on the Draft Law on the Labor Inspectorate, GAP Institute has been one of the civil society organizations which has been consulted throughout the drafting process.

However, GAP Institute has identified a number of remarks on the content of the Draft Law, commented below. We hope that these issues, which have been observed from the current practice of the Inspectorate and which are not addressed by the Draft Law on the Labor Inspectorate, will be avoided.

¹ GAP Institute. Regulation of Labor Relations in Kosovo. June 2010. Source: https://www.institutigap.org/documents/86240_AnalizaLigjiPunes.pdf

² GAP Institute. Labor law: six months after entry into force. June 2011. Source: https://www.institutigap.org/documents/33549_GAPLigjiPunes.pdf

³ GAP Institute. Inspectorates in Kosovo: organization and functioning. March 2014. Source: https://www.institutigap.org/documents/34615_ALB-Inspektoriatet.pdf

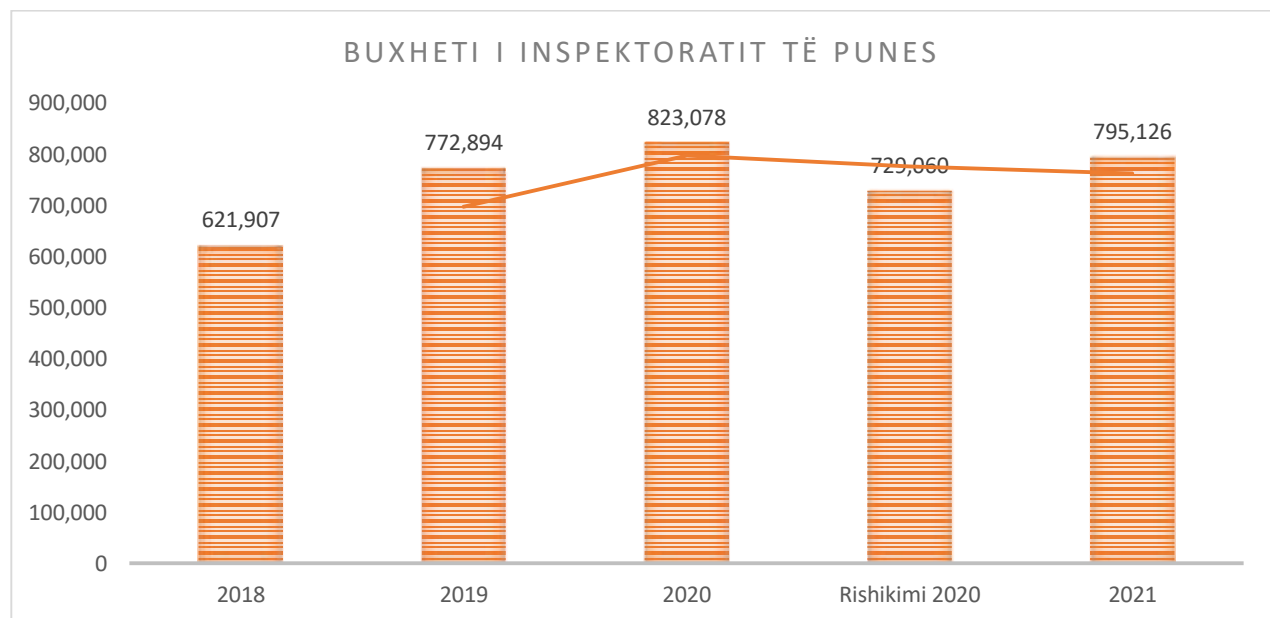
Budget cost

Obligations arising from the new Law on Labor Inspectorate do not have sufficient budgetary coverage. The explanatory memorandum of the Draft Law of the Labor Inspectorate states that *“This institution will prioritize the fight against informal employment, monitoring and inspecting all businesses operating in Kosovo, as well as creating a new work culture in our country”*.⁴

However, the Budget Impact Assessment⁵ provides that the new Law will not create additional budgetary costs. It is not possible to make regular inspections of all businesses with the current budget of the Labor Inspectorate and the current number of inspectors. There are 35,269 active businesses in Kosovo.⁶

In addition, the budget impact assessment statement, drafted in August 2020, provides that 831,386 Euro are needed for the implementation of the Law in 2021. However, only two months later, the Draft Budget of Kosovo for 2021 reduced the budget of the Labor Inspectorate to 795,126 Euro.

The budget for wages and salaries in the Labor Inspectorate for 2021 is 612,826 euros, around 16 thousand Euro less than the revised budget for 2020. The maximum number of staff in the Labor Inspectorate is expected to be the same as in 2020, with 90 employees.



⁴ Explanatory memorandum on the Draft Law on the Labor Inspectorate. Source: http://www.kuvendikosoves.org/Uploads/Data/Documents/Memorandumishpjegues_t5VjssvKCL.pdf

⁵ The Budget Impact Assessment of the Draft Law on the Labor Inspectorate. Source: http://www.kuvendikosoves.org/Uploads/Data/Documents/28Deklaratabuxhetore_nddtgT3nSr.pdf

⁶ KAS. Structural Business Survey Results, 2019. Source: <https://bit.ly/3mZGpPM>

Professional criteria for inspectors

Article 10 defines the professional criteria for establishing employment relations as a labor inspector, requiring candidates to have, among others, relevant university qualification in law, mechanical engineering, civil engineering, electrical engineering, chemical engineering, occupational safety and health, and other similar fields.

Although the Labor Inspectorate should have professionals in the field of construction and occupational safety, it is unrealistic to expect a mechanical engineer to be able to make a legal interpretation of the inspection. In the past, there have been problems in writing and interpreting the decisions of the Labor Inspectorate, as chemists also wrote legal reports. Therefore, the law should specify the cases when the chief inspector is not a lawyer, the inspection case to be reviewed by more than one inspector, with one being a lawyer.

Article 10 also provides that inspector candidates must have also passed the state professional exam for labor inspectors. GAP Institute considers that this is an unnecessary bureaucratization and that induction trainings for inspectors can be provided by the Kosovo Institute for Public Administration. Therefore, the paragraph on the state exam for labor inspectors should be removed.

Initiation of the Inspection Procedure

Paragraph four of Article 14 states that prior to initiating the procedure at the request of the party claiming that its rights have been violated, the party must have exhausted all complaint rights within the employer, as per the Labor Law in force.

This discourages workers' complaints in the private sector, as employers may dismiss workers or create conditions to legally terminate contracts for those workers who complain and claim their rights. Therefore, this paragraph should be removed, and the possibility for the complaining party to submit a complaint directly to the Labor Inspectorate must remain.

Furthermore, paragraph 4 of Article 14 also contradicts **paragraph 2 of Article 15** which states that the complainant may choose to remain anonymous.

Inspection procedures

Paragraph 6 of Article 15 states that “the labor inspector issues a decision and imposes a fine, after the completion of the inspection or reinspection procedure, if violations of legal provisions are found, within 30 days after the drafting of the official report.”

This wording creates ambiguity because it is not clear whether the decision is issued 30 days after the inspection, or 30 days after the drafting of the official report? How many days after the inspection should the official report be written? If this wording remains, a practice can be created where decisions take too long after the inspection, as the drafting of official reports may be delayed. To avoid these ambiguities, this paragraph should be changed to provide that the decision is issued no later than 30 days after the inspection or reinspection.

Serious disciplinary violations

Article 22 lists the serious disciplinary violations by labor inspectors, but the law does not provide for the measures to be taken for violators of these rules. Therefore, the law should impose punitive measures on inspectors and the procedures that the parties should follow in case they have complaints about the work of inspectors.

Fines

Article 25 provides for fines from 1,000 to 10,000 Euro. There is a significant difference in fines, which should not be left to the discretion of the inspector. Whether a business is fined with 1,000 or 10,000 Euro is a vital issue for a business. Moreover, such a large difference in the minimum and maximum opens way for the possibility of bribery of inspectors, as businesses, to only receive a minimum fine of 1,000 Euro, can bribe inspectors and avoid the maximum 10,000 Euro fine.

Therefore, the law must accurately identify which violations are punishable by 1,000 Euro, which by 2,000 Euro, and so on.

The Right to Complain

Paragraph 2 of article 26 sets the deadline of eight days for submitting an appeal on the decision of the Inspectorate. This should be changed into 8 working days. GAP Institute had the opportunity to observe decisions of the Inspectorate delivered to parties at the end-of-the-year holidays, with only two days effective working days given. This may render it impossible for the parties to file a complaint.

The second instance appeal

Article 26 also gives instructions on how the parties can file an appeal in the second instance of the Inspectorate, which instance shall decide on the appeal within 60 days. However, the Draft Law does not state whether the decision of the second instance is final, and what happens if the second instance decides in favor of the party: 1. Is the second instance decision final?, or 2. Does the second instance decision return the case for review to the first instance inspector?

The practice so far has been as follows: The party dissatisfied with the decision of the first instance may file an appeal in the second instance. If the second instance upholds the appeal of the party, the case is returned to the same inspector for reconsideration. GAP Institute has seen decisions where the second instance returned the case for review to the first instance twice, and the same first instance inspector took three decisions on the same case, causing considerable delays for more than a year.

In addition, it is not clear how many times can the second instance take a decision and when does the case go to court? GAP Institute has seen cases when the second instance, in the third hearing, took a final decision, instructing the appellant to address the court if he/she is not satisfied with the decision.

The new law should specify that the second instance must review the case from the beginning and that the decision of the second instance is final, after which the party has the right to go to court.

Complaint procedures

The complaint procedures are not clear neither in the applicable law nor the Draft Law under review. There was uncertainty in the current practice as to the branch where the party should file the complaint: in the region where the company/business is registered, or in the territory where the violation occurred? Therefore, the complaint procedure should be specified by law.

GAP Institute suggests that the complaint is made to the regional offices covering the territory where the violation took place. This way the inspectors will be closer to the areas they will be inspecting.

Complaint form

The law should provide for a standard template of the complaint to be defined through a sub-legal act. Not all complainants have knowledge on how to fill in a complaint. The Law should oblige the Labor Inspectorate to create an Online platform providing concrete explanations on the complaint, examples of the complaint, and the electronic complaint must be accepted. A good example of Online complaints is the Police Inspectorate platform.

GAP Institute expresses its readiness to provide reasoning of these comments in a direct meeting or public hearing organized by the parliamentary review committee.