

LABOUR AND SOCIAL JUSTICE

TOO LITTLE, TOO SLOW

Why Employees in Georgia, Moldova,
and Ukraine Do Not Benefit from the
EU Association Agreements

**Ekaterine Kardava, Kateryna Yarmolyuk-Kröck,
Liliana Palihovici**



Despite commitments to international labor standards through their Association Agreements with the EU, Georgia, Moldova, and Ukraine have great deficiencies in the field of employment.



The implementation of the labor-related directives of the AAs is insufficient. Poor and unsafe working conditions, informal and unstable employment, and discrimination in the workplace remain huge issues. Hundreds of workers die every year as a result of occupational accidents.



The three countries must work towards quick legal approximation and effective implementation of the respective laws, as further stagnation could damage the legitimacy of the EU integration process.

Contents

INTRODUCTION	2
1 BACKGROUND INFORMATION	3
2 LEGAL APPROXIMATION AND IMPLEMENTATION	4
3 LABOR INSPECTION AND ITS EFFECT ON SAFETY AT WORK	5
4 EQUAL OPPORTUNITIES AND ANTI-DISCRIMINATION	7
5 SOCIAL DIALOGUE AND COLLECTIVE BARGAINING	8
CONCLUSION AND RECOMMENDATIONS	9

INTRODUCTION

In their Association Agreements (AAs) with the European Union, Georgia, the Republic of Moldova, and Ukraine have committed themselves, among other things, to EU and international labor standards. To meet these, major reforms in the social sphere are needed in order to provide decent and safe working conditions. The reality is, so far, little has been done to improve the situation in the three countries mentioned above. On the contrary, in some respects, it is even worse than before the signing of the AAs. For example, in Moldova the number of work-related accidents, including fatal ones, has increased in recent years, which is a direct result of weakened labor inspection regimes.

Unfortunately, poor and unsafe working conditions, informal and unstable employment, sometimes bordering modern slavery, and discrimination at the workplace are not uncommon for employees in these three countries.

The labor-related directives of the AAs are supposed to bring the labor legislation and policies of the countries closer to EU norms and those of the International Labour Organization (ILO). However, the pace of the implementation is very slow. Although the European Commission reports annually on the implementation process, the emphasis in their reports is clearly on the achievements rather than on the deficiencies. In the labor regulations and employment sphere, the hard reality is often not sufficiently perceived by policymakers in Brussels.

This paper is the result of a workshop which brought together civil society and trade union representatives, experts and academics from Georgia, Moldova, and Ukraine. It discusses the three most pressing issues regarding working conditions. These are effective labor inspection, anti-discrimination measures, and substantial improvements in social dialogue and collective bargaining.

The aim of the paper is to raise awareness for the partly appalling working conditions in Georgia, Moldova, and Ukraine as well as to formulate concrete policy recommendations for the three countries. These recommendations concern the adjustment of their labor law as set forth in the AAs (legal approximation) as well as a more effective monitoring, including possible sanction mechanisms.

The EU should not only promote both social policies and workers' rights in the region but also use its leverage based

on the conditionality within the AAs. Further ignoring the issue would result in the continued suffering of employees and could damage the legitimacy of the integration process as well. The current situation also poses the risk of social dumping to the EU labor market and could jeopardize the acceptance of the EU association policy among EU citizens. Sustainable economic development must be backed by strong social protection.

1

BACKGROUND INFORMATION

Over the course of the last years, Georgia, Moldova, and Ukraine initiated reforms to increase trade and economic growth. They entered a Deep and Comprehensive Free Trade Area (DCFTA) with the EU with the goal of economic integration. In this context, the EU has provided billions of euros in technical and financial assistance. This financial support has contributed to a more or less steady economic growth of the countries in question. However, despite all economic progress the social impact of these efforts has been rather marginal, as will be shown in the following paragraphs.

Georgia: Over the past decade, Georgia's economy has grown robustly and steadily. To bolster the private sector, Georgia has changed its rules and regulations to make it easier to do business. According to the World Bank, the annual GDP growth rate has averaged 4.0% from 2014 to 2018 and continues to grow with 5.1% for the first seven months of 2019. Unemployment, however, remains high with over 14% in 2018, as employment creation remains low. According to the National Statistics Office of Georgia, the share of informal employment in the non-agricultural sector is 36.2%.

Moldova: According to the World Bank, Moldova's GDP has grown steadily, averaging 3.6% from 2014 to 2018, with the EU accounting for 70% of its total exports. The economic performance for this period includes the 2015 banking industry scandal which led even to negative growth in that year.

According to the National Bureau of Statistics, the unemployment rate in Moldova accounts for 4.5% in the second quarter of 2019. However, this number considers only the people registered with the Employment Agency, while the big majority of the unemployed are not registered. In addition, the number does not include migrants and workers in informal sectors such as daily workers in the agricultural sector. Therefore, in reality Moldova's unemployment rate is much higher. In 2018, 38.5% of the workers were informally employed. It is a huge amount of people who do not enjoy any form of social protection.

Ukraine: Ukraine's economy grew by 3.3% in 2018 and by 4.6% in the second quarter of 2019, recovering from the recession in the aftermath of the events of 2014. However,

the unemployment rate in 2018 was even slightly higher (9.4%) than in 2014 (9.3%). In 2018, 21.6% of workers were employed in the informal sector. Thus, more than one fifth of the Ukrainian workforce do not have an official working contract and are deprived of basic labor rights, such as fair remuneration, protection against unemployment, and financial compensation in case of injury.

Despite stable economic growth in the three countries, there have not been any significant improvements with regard to the creation of jobs, higher wages, and poverty reduction. The number of people who work in the informal sector and therefore have no access to social security is frightening. However, the AAs explicitly include the pledge to achieve genuine progress in this regard.

The chapter »Employment, Social Policy and Equal Opportunity« of the AAs particularly states that the EU and the respective country should strengthen their dialogue and cooperation in promoting the decent work agenda, employment policy, health and safety at work, social dialogue, social protection, social inclusion, gender equality, anti-discrimination, and corporate social responsibility. This effort should contribute to more and better jobs, poverty reduction, enhanced social cohesion, sustainable development, and improved quality of life. In order to achieve these goals, the associated countries shall approximate their laws to EU labor directives, a process which is under way in all of the three states.

2

LEGAL APPROXIMATION AND IMPLEMENTATION

The adaptation to EU standards consists of two steps: the first one is the transposition of the EU directives into national legislation, the second is the practical implementation and actual enforcement of these policies. When studying the adaptation processes in the AA countries, however, one can observe huge discrepancies between EU and national legislation as well as between national law and national practice. Furthermore, the timeframe compliance with the AAs obligations is often breached, which has slowed down the whole legal approximation process in the aforementioned countries.

Unfortunately, the adaptation of EU legislation is often merely characterized by the technical realization of legal provisions. However, if the integration process is supposed to be credible, Europeanisation via legal approximation should have a noticeably positive impact on labor and social rights.

One additional concern in Georgia is that the minimal standards determined by the EU labor directives are not applied equally to all employees. The legal approximation is highly selective: most provisions of directives are transposed into the public service law but not into the Georgian labor code. Consequently, public servants enjoy minimal labor standards, while employees in the private sector do not. Of course, this practice contradicts the requirements of the EU labor directives and creates conditions for a discriminatory approach based on the respective field of employment.

In sum, the main problems constitute an insufficient adjustment to international labor standards in the national legislations as well as the deficient implementation of the conventions adapted. The following chapters show precisely the lack of progress in the fields of labor inspection, social dialogue, and anti-discrimination.

3

LABOR INSPECTION AND ITS EFFECT ON SAFETY AT WORK

In the post-Soviet space, labor inspection is often seen as being corrupt and a barrier to economic growth. Therefore, the region has seen a trend towards abolishing the inspections or at least weakening them significantly. The consequences have been grave. Every year, there are hundreds of workplace deaths due to poor safety measures. However, where properly executed labor inspections have the power to prevent accidents in the workplace or, at least, to timely respond to grievous violations of safety and health regulations. As the statistics show, the three countries are faced with tremendous tasks when it comes to improving the situation of employees.

The AAs oblige the countries to implement internationally recognized core labor standards in national laws and practice as well as the ILO conventions. Georgia has ratified all eight fundamental and two out of four governance (priority), and in total 18 ILO conventions. However, the two priority conventions #81 and #129 on labor inspection have not yet been ratified. Moldova has ratified the eight fundamental, the four governance, and in total 42 ILO conventions, while Ukraine has ratified all eight fundamental, the four governance, and in total 71 ILO conventions. The ratification of the ILO conventions and the commitment to international standards, however, are just symbolic if the directives are not implemented properly.

Georgia: Between 2014 and 2018, 251 employees have died and 544 have been injured in workplace accidents. Fatal accidents have even increased from 45 in 2014 to 59 in 2018, even though the mechanism of labor inspection was formally established in 2015 under the supervision of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health, and Social Affairs. Georgia averages 6.2 deaths per 100,000 workers between 2014 and 2018, a tragic number which has significantly gone up from the average of 3.7 between 2002 and 2005 before labor inspection was abolished.

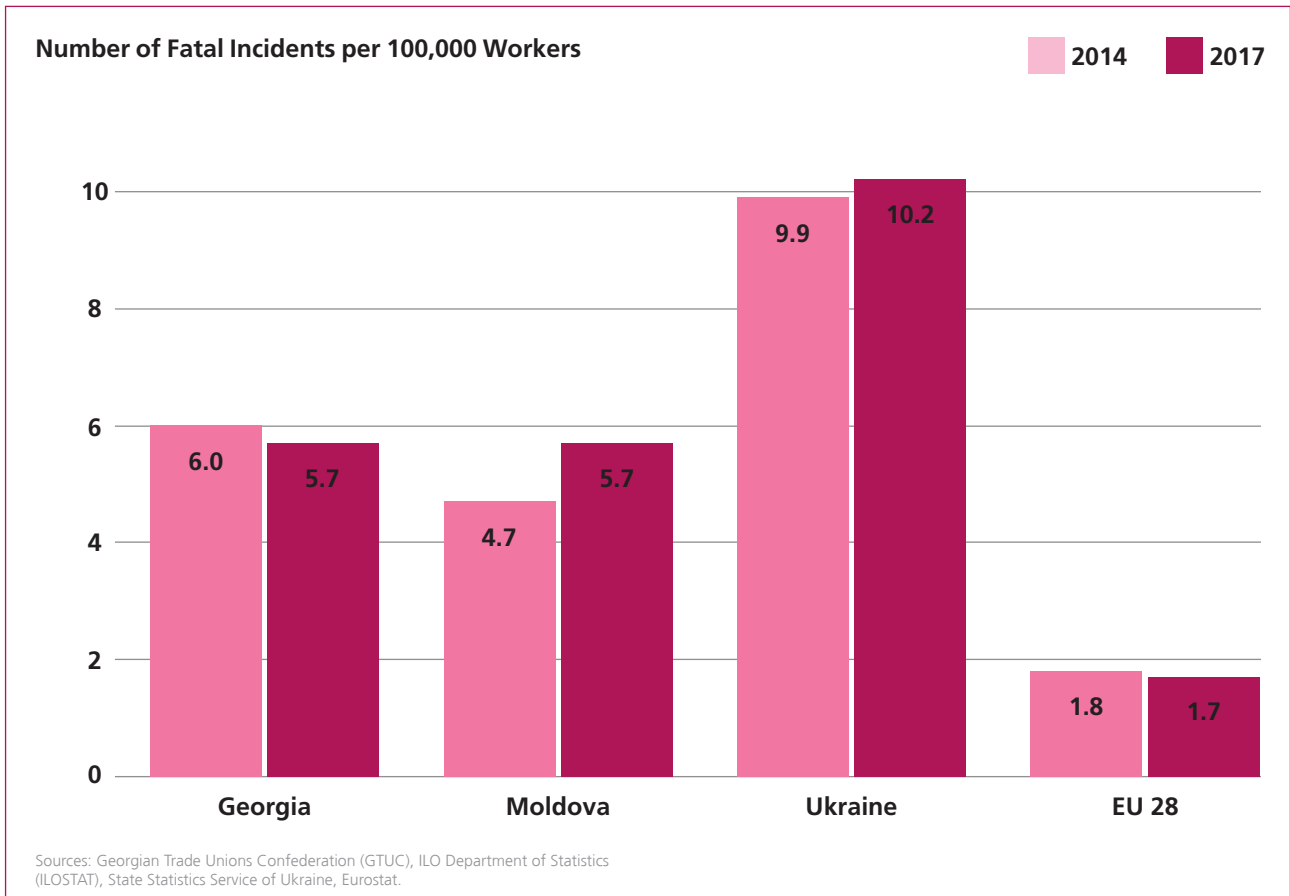
It should be noted that these statistics do not include informally employed workers or cases where employees die years later due to poor working conditions, e.g. miners passing away because of lung disease. Thus, in fact the real number of those injured and deceased exceeds the official statistics by far. In 2019, Georgian society was shocked by two tragic incidents as a result of child labor: a 12-year-old

died while collecting scrap metal and a 16-year-old had a fatal accident while working on a construction site in Tbilisi. Child labor is a systemic problem in Georgia and must be addressed both on the practical and legislative level. In 2018, Georgia adopted a new workplace safety law which entered into force in September 2019. While the law is generally in compliance with ILO standards at the regulatory level, it remains to be seen whether it can and will actually be enforced.

Moldova: A reform of state control in the area of occupational safety and health (OSH) has been under way since 2017, when the Ministry of Economy and Infrastructure initiated legislative changes aimed at reducing the administrative burden for enterprises. During this process, control competencies were transferred from the national Labor Inspectorate to ten sectoral agencies. The reform has seriously jeopardized the state control capabilities in the field of OSH, as the unification of functions, avoidance of duplications, and optimization of resources are key pillars for an effective labor inspection and monitoring system.

The above-mentioned changes to the OSH legislation are in contradiction to Moldova's commitments under the ILO Conventions and the EU-Moldovan Association Agreement. Statistics show that they have led to a worsening in the prevention of occupational injury risks over the past three years. The number of fatal incidents per 100,000 employees went up from 4.1 in 2016 to 5.7 in 2017, and 5.1 in 2018. This trend is unfortunately continuing in 2019. On September 5th, the Labor Inspectorate reported already 296 accidents, out of which 43 were fatal.

Ukraine: A vast spread of undeclared labor and the absence of compliance with international and EU standards have led to a high number of work-related accidents, mostly in mining and construction. Construction sites in Ukraine are in appalling conditions. They often do not have any lighting, safety barriers, or safety lines for harnesses. Effective workplace inspection is hindered by national legislation which does not allow labor inspectors to carry out unplanned workplace visits without a 10-days prior notice to the enterprise in question, which is in conflict with the ILO Labor Inspection Convention 1947 (#81).



In 2018, there were officially 4,126 work-related accidents documented, out of which 409 had fatal consequences. The number of deaths per 100,000 workers averaged 10.3 between 2014 and 2018, an incredibly high number even compared to the other two countries. On top of that, one must bear in mind that these figures do not reflect the large number of accidents in the informal sector and many that go undocumented for other reasons.

The situation in the area of occupational safety and health and the high number of (fatal) workplace accidents is simply alarming. Therefore, the establishment of a strong labor inspection system must be at the forefront of the AA agenda. The three countries must quickly adopt a respective legislative framework in line with the Association Agreement and set up a centralized, unified, resource-efficient administration for labor inspections.

An argument often brought up in this context, according to which labor inspections are detrimental to the economy, does simply not hold. It has been observed that, while having the power to save lives, safety regulations and labor inspection do not hamper the countries' economies. The example of Georgia has shown that the abolition of labor inspection cannot be associated with any noticeable positive effect on investments and economic growth. Accordingly, having less or no regulations is not beneficial to the countries' economies, but extremely harmful to the workers. Labor inspection does not constitute a barrier for investment, on the contrary, its absence is even seen as an obstacle by leading foreign investors.

In conclusion, there is an urgent need for the approximation of legislation, its implementation, and effective monitoring. These measures contribute significantly to the workers safety without being economically harmful. On the contrary, in some cases, they might even help foster the national economy by attracting foreign investors.

4

EQUAL OPPORTUNITIES AND ANTI-DISCRIMINATION

Insufficient workplace inspections have a spillover effect on the topics of gender inequality and discrimination at work. Although the AA countries have made some progress in the adoption of anti-discrimination legislation and the establishment of anti-discrimination mechanisms, discriminatory practices are still alarmingly common. To combat them, more powerful means are required.

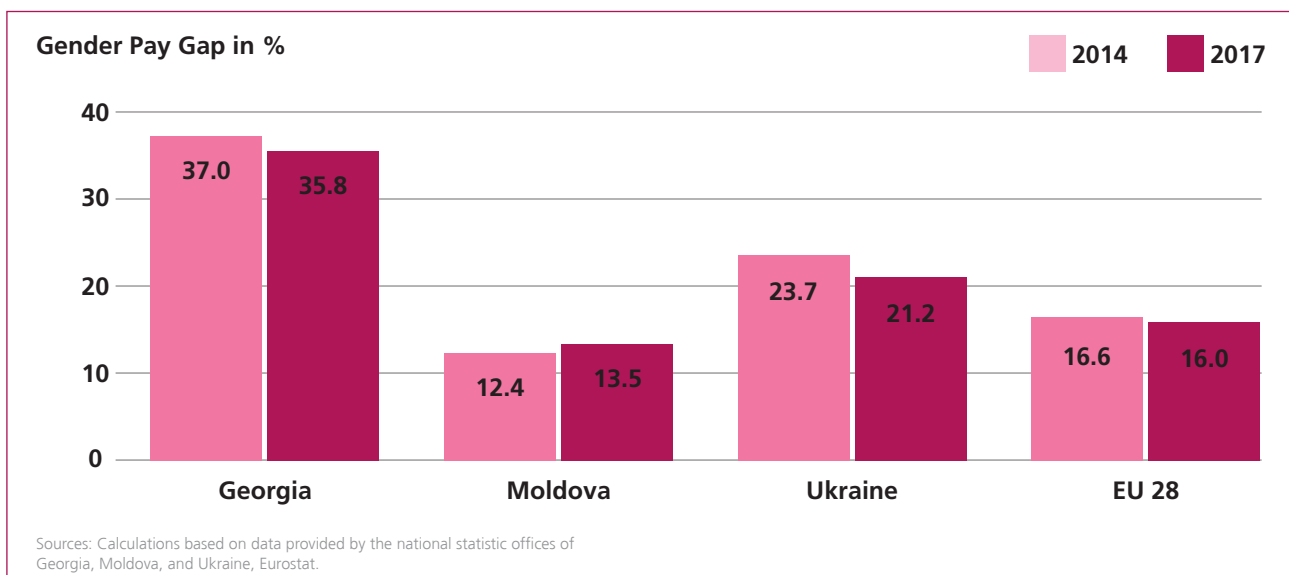
Georgia: Georgia has already made amendments to its labor and gender legislation, regulating various aspects of discrimination, among them sexual harassment and the restriction of discriminatory questions in pre-contractual labor relations. However, despite these efforts, gender inequality remains high: Georgia ranks 99th out of 149 countries in the 2018 Global Gender Gap Report of the World Economic Forum (WEF).

There has been an increase in the number of applications lodged with the public defender’s office concerning sexual harassment. Also, the interference in labor rights of women on account of pregnancy remains problematic. In some instances, the service contract of female workers has even been terminated after the employer learned about the employee’s pregnancy. Financially, female employees in Georgia are highly disadvantaged as well. In 2018, the gender pay gap comprised 35.8%, a figure which is significantly higher than in the other two countries.

Moldova: Gender-based discrepancies in wages are significant in Moldova too and have even increased over the last years. While in 2014 men’s salaries were 12.4% higher than women’s, in 2018 the number was 14.4%. In 2015, according to a UNDP report, the gender pay gap of 13.2% alone led to a loss of 2.3% in the GDP. The discrepancy is also observable when it comes to pensions where the gap between men and women grew from 17.2% in 2014 to 21.6% in 2018.

Ukraine: Ukraine also belongs to the countries with a high level of gender inequality. In the WEF’s Global Gender Gap Index of 2018, Ukraine ranks 65th out of 149 countries. According to the income equality indicator in Ukraine, for every 100 dollars of the income earned by men, women will earn only 63.1 dollars. Furthermore, women continue to be discriminated in the workplace due to pregnancy.

To conclude, gender inequality remains higher in Georgia than in Ukraine and Moldova, but all three countries must increase their efforts to combat discrimination. Although some progress has been made, women still suffer from immense discrimination in the workplace ranging from lower salaries to sexual harassment. Equality before the law does not mean actual equality, as women continue to encounter major obstacles in their everyday life, including in the workplace.



5

SOCIAL DIALOGUE AND COLLECTIVE BARGAINING

The lack of social dialogue in the countries has been largely criticized by various experts, unfortunately up to this day with little success. The national governments simply do not see the importance of social dialogue as an instrument to settle collective labor disputes and a mediation system to avoid strikes and social unrest. Despite the obligations the countries assumed under the Association Agreement and numerous calls by trade unions towards the governments to apply the necessary measures to advance social dialogue, the situation remains unchanged. The concept of tripartite consultations is basically unfunctional. Although a national body with regional branches does exist in all three countries, it is almost completely insignificant.

Georgia: The Tripartite Social Partnership Commission (TSPC) has managed to meet only five times in total from 2013 to the date of this publication, although according to the legislation the meetings should take place at least four times a year. Meetings take place mostly in the working groups which have no decision-making power. Moreover, most of the issues discussed at working group meetings are not even delivered to the commission level. Unfortunately, labor relations in Georgia are governed mostly by individual rather than collective agreements. The issue of collective bargaining is arguably the most difficult as its legal basis is very weak and tripartite bodies are not functional. According to the Georgian Trade Unions Confederation, currently only 54 collective agreements operate in Georgia. The number has dramatically decreased since 2011 when 165 collective agreements were in place.

Ukraine: After more than a decade since its establishment, the National Tripartite Social and Economic Council (NTSEC) has failed to deliver the expected results. It remains a weak and ineffective authority with no real influence on social dialogue, constantly suffering from understaffing and inconsistency in the coordination of its activities. From 2014 to 2019, the body managed to meet only five times in total. In 2019, out of 177 all-Ukrainian trade unions registered by the Ministry of Justice only one third took part in collective bargaining.

Moldova: Over the last years, the situation with social dialogue has deteriorated, moving from coordinated positions of the social partners representing the interests of employees, employers, and the state to decisions and actions tak-

en with violation of the rules and procedures agreed upon by the parties. Consultations have acquired rather a formal character, as the real questions of common interest are not being addressed. The last meeting of the National Commission for Consultations and Collective Bargaining (NCCCB) dates back to November 2018.

With the stagnation of social dialogue, associations established by foreign investors and local employers are increasingly gaining influence in the dialogue between the government and the business community leaders. Thus, there is a form of bilateral dialogue between employers and the government aimed at improving the business climate in Moldova, but it almost completely ignores the social dimension.

Without a systematic approach and institutional support by the governments of the three countries, social dialogue will not improve and cannot guarantee social and economic development. The current ineffective dispute mechanisms have resulted in a decrease in the number and coverage of collective bargaining. In many instances, workers use strikes not as a means of last resort, but rather the only possibility to force employers to even start negotiations at all. Of course, this means an additional economic burden for the countries. As leaders in the region often desperately aim to improve the business climate to attract direct investments and promote economic growth, the EU should make sure that this does not happen at the expense of the workers of the region.

CONCLUSION AND RECOMMENDATIONS

With the signing of the Association Agreements, Georgia, Moldova, and Ukraine promised to approximate national law and national standards to those of the EU. However, despite these commitments, the implementation in the social sphere – especially in the fields of labor inspection, anti-discrimination measures, and social dialogue – is insufficient. Deadlines have been missed and in some instances the developments have been even regressive during the last years. The effects have been catastrophic with hundreds of employees dying at the workplace each year.

If the countries have serious intentions regarding European integration, they must act quickly and resolve the above-depicted issues. At the same time, the EU must hold these countries accountable for their commitments with regards to the social dimension. This is essential to protect the EU labor market from increasing social dumping and to make the association beneficial to both, the EU and the partner countries.

The highest potential for immediate improvements in living standards in the above countries lies exactly in the social field. Stagnation or even regression in this area could lead to disenchantment within the broader population and subsequently endanger the integration process. Moreover, it might delay or even block the development of a just and secure space in Europe's neighborhood for future decades. To enhance the social dimension of the AAs, the issue of labor and social policies in the region must be put on the political agenda in Brussels and the three countries' capitals. To achieve real progress, we strongly recommend the following:

1. The vital core for substantial structural improvement is labor inspection. All three countries must quickly set up or restore fully-fledged inspection systems which include unannounced inspections, proper anti-discrimination mechanisms, and a centralized monitoring scheme for fundamental labor rights, especially in the field of OSH. However, to be effective and credible labor inspection should include modern anti-corruption mechanisms. The countries must also introduce a system of incentives and sanctions to combat the notoriously high numbers of informal employment.
2. The EU and the mentioned countries must work together to strengthen the institutional capacity for monitoring progress in the social field. In this regard, the AAs provide the opportunity to set up a Labor, Employment, and Social Matters Association Committee alongside the existing Trade Association Committee. It is also very important to strengthen and expand the mandates of the Domestic Advisory Groups (DAG) to allow the body a more elaborate monitoring of the implementation in the social field. Furthermore, the EU should establish the position of a labor attaché in the delegations in Chisinau, Kyiv, and Tbilisi.
3. The EU-Commission should be tasked with providing detailed annual progress reports on the implementation of social and labor-related issues of the AAs. It is of particular importance to check not only the transposition of relevant EU directives and norms, but also their actual implementation. The past has shown that assessing only the legal approximation without putting an emphasis on the actual enforcement has little to no impact.
4. Trade unions, as well as civil society organizations, must be involved mandatorily in the implementation of the Association Agreements. Only if the social partners and independent NGOs are represented in the respective DAGs and only if they have the means to instigate action against treaty violations, will the AAs be able to help improve the situation in the social sphere.
5. The EU should embrace proposals of labor experts to introduce a mechanism to sanction the violations of the standards agreed upon. It could also use the disbursement of macro-financial assistance as a leverage or conditionality to force the countries to enhance the labor conditions of their workforce.

EKATERINE KARDAVA is Head of the association *European Time* and Professor of Law in Georgia.

KATERYNA YARMOLYUK-KRÖCK is a Project Coordinator at the FES office in Ukraine.

LILIANA PALIHOVICI is a former Member of Parliament of the Republic of Moldova and an Expert on the Association Agreement between the EU and Moldova.

We would like to thank the following persons who have, in various ways, contributed to this study: Vasyl Andreev, Paata Beltadze, Elena Carchilan, Raisa Liparteliani, Adrian Lungu, Ana Mihailov, Mirjam Schmitz, Marco Schwarz, Marfa Skoryk, Simon Wanka, and Vladimir Zizka.

Imprint

Friedrich-Ebert-Stiftung | Regional Office Dialogue Eastern Europe
Pushkinska Street 34| 01004 Kyiv | Ukraine

Responsible:
Nikolaos Gavalakis
Phone +38 044 234 10 38
<http://www.fes-dee.org>

To order publications:
office@fes-dee.org

Commercial use of all media published by the Friedrich-Ebert-Stiftung (FES) is not permitted without the written consent of the FES.

TOO LITTLE, TOO SLOW

Why Employees in Georgia, Moldova, and Ukraine Do Not Benefit from the EU Association Agreements



The establishment of a Deep and Comprehensive Free Trade Area as well as the technical and financial assistance provided by the EU have contributed to steady economic growth in Georgia, Moldova, and Ukraine. However, employees do not profit from this positive economic development. On the contrary, they often find themselves in poor and unsafe working conditions, in informal and unstable employment, or face discrimination in the workplace. Every year, hundreds of workers die as a result of occupational accidents due to poor safety measures.



With the signing of the Association Agreements, Georgia, Moldova, and Ukraine promised to approximate national law and national standards to those of the EU and ILO. However, the pace of the legal approximation and implementation of the respective directives is very slow and, in the social sphere, remains insufficient. There are still huge discrepancies between the EU and national legislation as well as between national law and national practice.



Georgia, Moldova, and Ukraine must work towards advancing workers' rights while, at the same time, the EU should hold these countries accountable for their commitments in the social sphere. Recommendations include: the setup or recommissioning of labor inspection in Georgia, Moldova, and Ukraine; a strong collaboration between the EU and the three countries in the monitoring of the implementation process in the social field by establishing a Labor, Employment, and Social Matters Association Committee; the provision of detailed annual progress reports on the legal approximation and the actual implementation of the relevant directives and norms; the mandatory involvement of trade unions and civil society organizations in the AA implementation process; the introduction of sanction mechanisms against violations of the standards agreed upon.