



Проект фінансується
Європейським Союзом



Проект виконується
Міжнародною організацією праці

EU-ILO Project

«Enhancing the labour administration capacity to improve working conditions and tackle undeclared work»

Ukrainian labour inspection legal framework

Main challenges & recommendations

Tripartite workshop
Ukrainian labour inspection legal framework
21 June 2018

Антоніу Сантуш / António Santos
Менеджер проекту / Project manager

www.ilo.org/UkraineEUProject

Contents

1

- Context

2

- Labour inspection key role

3

- SLS mandate, functions, structure and organization

4

- Labour inspectors' functions

5

- Labour inspectors' powers

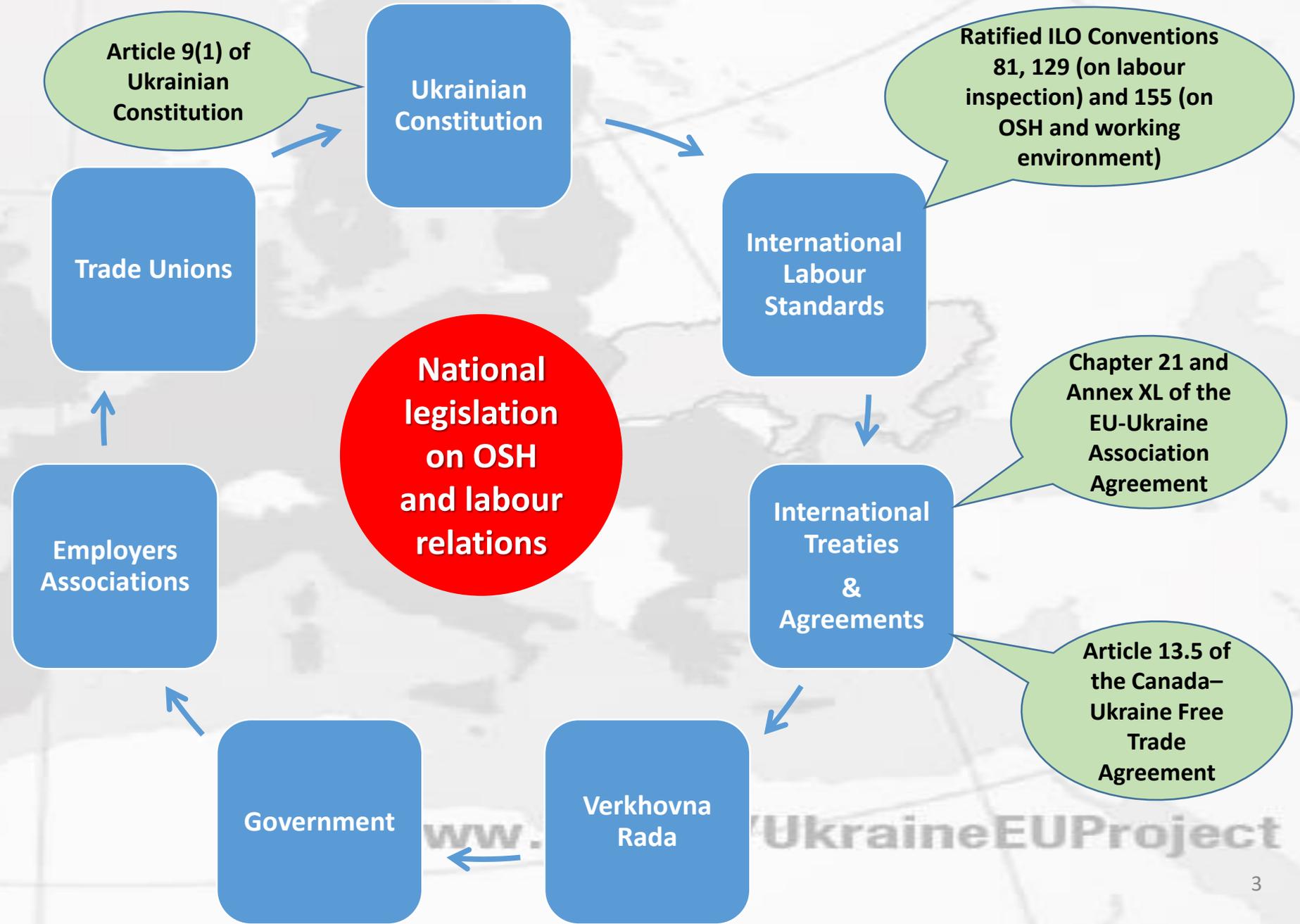
6

- *Moratoriums*

7

- Decentralization process

Context



SLS mandate, functions, structure and organization

SLS very broader and ambitious mandate and functions

- **Fifty-five activities** and legal competencies, **including:**
 - **Labour administration** functions
 - **Non-labour administration** functions (e.g., market surveillance over: gas, mining and objects of technical regulations; issuance of licenses for industrial initiation, alteration or renovation; and supervisory role over the performance of other state entities)
 - **Market operator functions** (e.g., training, medical examinations, workplace & equipment assessments, knowledge testing)

To improve SLS effectiveness and efficiency, it should be considered its focus on labour administration functions and, in particular:

1. **Transfer of non-labour administration functions to responsible ministries (e.g., Ministry of Energy and Coal Mining Industry; Ministry of Trade and Economic Development), whilst maintaining the competencies for labour relations and OSH in these sectors;**
2. **Transfer of market operator functions to the private sector, while maintaining the competencies for definition of legal requirements, licensing procedures, supervision, inspection and control.**

SLS mandate, functions, structure and organization

SLS Structure & Organization

- Too complex structure
- CMU Decree No. 96 (Regulation of the SLS) **do not address**:
 - The internal structure, functions and legal competencies of its logical functional units
 - The geographical organization and structure
 - The consultative and advisory bodies location and competencies
 - The relations between SLS, MSP and other Ministries and entities;
 - The specification of the labour inspection functions and its specialized units' legal competencies

In order to improve the SLS efficiency and effectiveness, it should be ensured (on CMU Decree No. 96):

- 1. A simpler, more horizontal and rational organizational structure and organization, based on a simultaneously functional and geographical departmentalization;**
- 2. A clearer definition of the localization, internal structure, functions and legal competencies of its logical functional and geographical units, as well of its consultative and advisory bodies (“Collegium” and “Public Council”);**
- 3. The localization of SLS within MSP structure and its relations (including with other Ministries and entities);**
- 4. The specification of the labour inspection functions and its specialized structural units legal competencies.**

Labour inspectors' functions

Non-definition of labour inspectors' functions & activities

- Legislation does not specify which labour administration functions are labour inspection functions;
- Legislation entrusts labour inspection functions to “SLS officials” or to “state supervision (control) bodies officials”, and not specifically to labour inspectors (exception: CMU Decree 295);
- Trade unions (when authorized by the employers) and employer’s organizations may be engaged in inspection visits (CMU Decree 295);
- Official inquiries on occupational accidents and diseases performed by “Commissions” and, in certain cases, by the employer and the Fund (c.f. CMU Resolutions 1232 & 294).

In order to improve labour inspection system’s efficiency and effectiveness, the following should be considered:

- 1. Legally provide that only labour inspectors can carry out labour inspection visits;**
- 2. Amend the CMU Resolutions 1232 & 294 to:**
 - Assign exclusively to labour inspectors the legal competencies to conduct official inquiries on occupational accidents and diseases;
 - Eliminate provision that foresees that special investigations can be done by employers and Fund.
- 3. Approve a “Labour Inspection Statute” defining, *inter alia*:**
 - Labour inspection functions and procedures;
 - Labour inspectors’ activities, competencies & powers.
- 4. Approve a “Labour Inspector’s Career Statute” creating the “labour inspector” special career and defining:**
 - Access requirements, recruitment & selection procedures;
 - Professional categories, job profiles & salaries;
 - Career path and advancements;
 - Inception and continuous training;
 - Disciplinary statute.
- 5. Merge the current 3 different types of labour inspectors into just one.**

Labour inspectors' powers

Ukrainian labour inspectors lack the powers foreseen in ILO Conventions 81 and 129 (Law No. 877-V, of 5 April 2007 & CMU Decree No. 295, of 26 April 2017)

- Ukrainian labour inspectors **cannot conduct inspection visits**: (1) **without** meeting its requirements (grounds, order, certificate, register, etc.); (2) **without prior notice**; (3) **at any time** of day or night (but just during “business hours”); (4) **when the employer** (or his representative) **is absent**; (5) **with the frequency, scope and depth** they understand **necessary**;
- Ukrainian labour inspectors **cannot**: (1) **Impose sanctions** when the employers correct infractions; (2) Monitor, promote and **enforce** compliance of **non-registered employers**; (3) **Suspend works**, even in the event of imminent danger to the health or safety of the workers.

In order to have an effective labour inspection system, the implementation of the following measures should be considered:

1. **Legally provide labour inspectors with the powers they need to discharge their duties - as foreseen in ILO Conv. 81 and 129 (on labour inspection) and envisaged by Art. 9(1) of the Constitution of Ukraine;**
2. **Further implement article 9 of ILO Conv. 155 (on OSH and working environment);**
3. **Approach national legislation with Article 4(2) of EU OSH Directive 89/391/EEC;**
4. **Either to revoke or to fully exclude SLS from the scope of the Law No. 877-V, of 5 April 2007 and approve the proposed “Labour Inspection Statute”;**
5. **To substitute the “Procedure for State Control of Compliance with Labour Legislation” by the proposed “Labour Inspection Statute”.**

Moratoriums on inspection activities

Regular practice
of imposing
moratoriums on
inspection
activities

(Law No. 1278-
VIII, of 3
November 2016)

- The practice of banning the inspection activity **prevents labour inspectors from performing inspection activities, inhibiting them from discharging their duties** and, consequently, **hindering the effectiveness** of the Ukrainian **system of labour inspection.**

In order to ensure an effective system of labour inspection, the implementation of the following measures should be considered:

1. To refrain from imposing *moratoriums* to inspection activities, in particular to labour inspection visits;
2. To repeal the Law No. 1278-VIII, of 3 November 2016, “On Temporary Specifics of Implementation of the State Supervision (Control) Measures in the Area of Economic Activities” or, at least, to exclude definitely SLS from its scope.

Decentralization process

Current decentralization process (“Procedure for State Supervision over Compliance with Labour Legislation” - CMU Decree 295)

- The current decentralization process poses **considerable challenges on the effective implementation of ILO Conv. 81 and 129**: (1) Local self-government bodies are autonomous and **not under the authority of the central government, MSP or SLS**; (2) Local labour inspectors are **not civil servants**; (3) It is not ensured that they are **recruited solely on the basis of their qualifications**; (4) Appointments were **not preceded by any training**; (5) Their **working conditions** and recruitment requirements are **not homogeneous** (depends on the concerned local self-government); (6) The **decision to have local labour inspection services rests with the local self-government bodies**; (7) **Unequal territorial coverage**; (8) **Inconsistency of application of legislation and policies**; (9) **Heterogenic compliance** throughout territory.

In order to ensure an effective system of labour inspection, the implementation of the following measures should be considered:

1. Replace the current decentralization process for one based on the organic and sustainable growth of the its territorial bodies and, thus, within the scope of the SLS central authority control and supervision powers;
2. Repeal the CMU Decree 295 (“Procedures for State Control and Supervision over Compliance with Labour Legislation”), as the supervision and control would rest with SLS and the procedures would be defined in the proposed “Labour Inspection Statute”.

CAS (Committee on the Application of Standards) Conclusions

CAS Conclusions on the application of the ILO Conv. 81 and 129 by Ukraine

- Labour inspectorate must be given the necessary means to function effectively and independently
- Labour Inspectorate should be placed under the supervision and control of a central authority

CAS Recommends to Government, the following:

1. Take the necessary measures and appropriate reforms to bring labour inspection services in line with the provisions of ILO Conv. 81 and 129;
2. Provide detailed information about the restrictions on the powers of labour inspectors contained on Law 877 and CMU Decree 295;
3. Promote effective dialogue with employers' and workers' organizations on labour inspection matters;
4. Ensure that the status and conditions of service of labour inspectors guarantee their independence, transparency, impartiality and accountability in line with the ILO Conventions;
5. Ensure that the inspection functions of the local authorities are placed under the supervision and control of the SLS;
6. Ensure that other functions entrusted to labour inspectors do not interfere with their primary duties and impact negatively on the quality of labour inspections;
7. CAS encourages Government to avail itself of technical assistance in order to strengthen the capacity and resources of labour inspection;
8. CAS requested Government to report on the measures taken to implement the above recommendations to the next meeting of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in November 2018.



Дякую за увагу!
Thank you for your attention!
Gracias por su atención!
Obrigado pela vossa atenção!

robalo@ilo.org

www.ilo.org/UkraineEUProject