

Issues of Legal Regulation in Forensic Expert Researches on Life Safety

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Current state of legal regulation on occupational and life safety in Ukraine is analyzed. It was found that the system of normative legal acts regulating legal relations in the field of life safety and determine technical requirements in various branches of production, has a rather cumbersome appearance and contains laws, by-laws, and technical regulations. General system gaps in the regulatory and technical regulation of the labor activity of certain categories of employees are outlined. The purpose of the work is to highlight individual issues of regulatory framework and outline ways for their solving with the aim of improving the regulatory framework of relations in the field of occupational health and safety, which will have a positive effect on the procedure of forensic expert research on life safety and increase effectiveness of accident investigations. A separate problem is the obsolescence of some acts. Attention is focused on the need to cancel outdated and adopt new documents defining safety rules in dangerous industries. In general, the system of normative regulation of life safety in Ukraine is not sufficiently adapted to international norms of labor regulation, therefore the need to harmonize Ukrainian legislation with international (in particular, European) labor standards is emphasized. In order to improve the legal regulation of labor protection, it is proposed to change the general approach to the

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principles of regulation, emphasizing “preventive actions”. Research methods: formal-logical, systemic-structural, comparative-legal, as well as the method of systemic analysis.

Keywords: *legislation on occupational and life safety, normative regulation, normative legal acts on occupational safety, accident prevention, improvement of normative acts.*

Research Problem Formulation

Constitution of Ukraine recognizes that a person, his life and health, inviolability and security are the highest social value, every citizen has the right to work, proper, safe and healthy working conditions and social protection ¹.

Realizing their right to work, citizens while labor activities are constantly faced with issues of occupational safety. The state takes care of observing and ensuring human right to safe working conditions.

Unfortunately, accidents still happen while production. In order to find out actual circumstances and determine the cause of the accident, a forensic engineering on life safety is appointed. During its implementation, forensic expert methods are used, which provide a toolkit for conducting research, among which information modeling method plays a leading role. It provides for the creation at a certain stage of a model of a safe (normative) situation, containing a list of organizational and technical measures aimed at the safe performance of a specific type of work. In other words, it is a model of “how it should be”, or “how it is necessary to do the work correctly” so that it is safe.

Practice indicates that while creation of such a safe model, forensic experts often have difficulties due to imperfection and certain shortcomings of legal regulation of occupational safety.

Legal regulation of occupational safety is a process of constant and purposeful influence of the state on social relations in the field of occupational safety with the help of special legal means and methods. Such legal regulation is carried out by determining the legal norms and standards of safe working conditions and mechanisms to ensure their observance.

This law-making activity is reflected in certain forms — normative legal acts (hereinafter referred to as *NLA*) in the form of laws and by-laws. A set of legal acts related to organization and regulation of safe work activities forms a system of legislation on occupational safety.

Currently, Ukraine has a fairly extensive system of legislation on occupational safety that can be divided into separate areas:

- general legal norms: laws, resolutions and orders of the Cabinet of Ministers of Ukraine and other central executive bodies that operate throughout the State territory and apply to all fields of economic activity;

1 Конституція України від 28.06.1996 р. (зі змін. та допов.). URL: <https://www.president.gov.ua/documents/constitution> (date accessed: 20.10.2022).

- inter-sectoral acts: normative acts operating within all branches of the economy (labor safety standards, sanitary norms and rules, hygienic standards, rules for handling harmful and dangerous substances, etc.);
- sectoral acts: normative acts, which effect applies only to a certain branch of national economy (metallurgical, chemical, mining, etc.) and have no legal force in other sectors. Such acts are developed and adopted by individual ministries and departments in relation to a particular industry;
- regulatory legal acts of enterprises, institutions and organizations in the form of documents on occupational safety which validity applies to a particular business entity (orders, regulations, instructions, etc.).

Since Ukraine is a social State, its policy is aimed at creating favorable conditions that should ensure the preservation of human life and health during production activities. In the field of social and labor relations, labor protection issues cover a wide range of concepts and directions. Occupational health and safety provide for the safety of life and the preservation of health of the employee during his work and consists of socio-economic, organizational-technical, sanitary-hygienic, treatment-prophylactic, rehabilitation and other measures. Such a place of occupational safety makes it possible to consider it as a special configuration of social relations of people for their protection from negative factors and dangerous conditions of the production process. On the other hand, labor protection should be considered as

a component of labor law that is a set of legal and technical means of ensuring life safety.

Statistics on occupational injuries in Ukraine in recent years indicate a certain tendency to increase in the number of accidents. Thus, the number of victims of accidents that led to disability (including fatalities) in 2018 was 5424 people, 2019 — 4394, 2020 — 6646, 2021 — 12 315 people ².

Therefore, the issues of occupational safety in Ukraine are currently relevant and require an integrated approach to their solution. One of the main directions of increasing the effectiveness of measures aimed at minimizing the negative socio-economic impact of occupational injuries is improvement of the system of occupational safety regulatory framework, identification of systemic shortcomings and problems in this area.

Analysis of Essential Researches and Publications

Research on economic, social, legal and technical aspects of labor protection in modern Ukraine is devoted to the work of domestic scientists. Certain issues of regulatory and legal regulation of life safety (in particular, occupational safety) are thoroughly covered in the works of such scientists and researchers as V. O. Vynohradov, M. P. Handziuk, Ye. O. Hevryk, H. H. Hohitashvili, V. D. Hubenko, M. O. Dei, V. Ts. Zhydetskyi, D. V. Zerkalov, P. O. Izuita, L. P. Kerb, T. A. Koliada, I. I. Koriakina, O. P. Rudnytska, A. V. Rusalovskyi, R. T. Cherniha, et al.

For example, Ye. O. Hevryk notes that the study of worldwide experience of determining economic and social effectiveness of measures to improve

2 Травматизм на виробництві в Україні. 2018–2021 / Держстат України. URL: http://ukrstat.gov.ua/operativ/operativ2007/oz_rik/oz_u/arch_travm_na_vyrob.htm (date accessed: 20.10.2022).

conditions and occupational safety is relevant and important for improvement of current methods, since (despite the large number of research papers devoted to this topic) certain aspects of it are insufficient developed and highlighted³.

For its part, P. O. Izuita reasonably proves importance of international documents that enshrine certain norms in the field of occupational safety that significantly affect development of national legislation on life safety. Thus, Ukraine has ratified a number of acts, including the International Covenant on Economic, Social and Cultural Rights, the European Social Charter (revised), C081 — *Labour Inspection Convention*, 1947 (No. 81), C129 — *Labour Inspection (Agriculture) Convention*, 1969 (No. 129), C159 — *Vocational Rehabilitation and Employment (Disabled Persons) Convention*, 1983 (No. 159). The scientist also proposes to make certain changes to the Code of Labor Laws of Ukraine, which would consolidate the general principles of safety technology, determined by the provisions of international legal acts regarding the implementation of necessary measures so that employers of employees of other enterprises, involved in work at such enterprises or production, receive the appointed for them, information about threats to safety and health, as well as protective and preventive measures at the enterprise or production in general, as well as for each workplace or type of work; the number of workers for providing

first aid, fire fighting and evacuation of workers, their training and equipment at their disposal⁴.

This position is supported by R. T. Cherneha, at the same time asserting that it is necessary to bring the legal provision of labor protection into line with international legislation, changing not the norms of law, but standards and regulations, since the latter do not meet any legal requirements and principles. It is important not only to transfer the legal norm to Ukrainian legal acts, but also to harmonize it with others and adjust it according to the peculiarities of social relations on labor protection in Ukraine⁵.

Worthy of attention is the research of O. S. Varennyk, who defines the content of legal regulation as a system of instruments of state influence, aimed at regulating a specific circle of social legal relations, and their assigning to the legal field that determines legal compliance⁶.

Versatility and diversity of legal acts regulating occupational safety requires a comprehensive approach to identifying problematic issues that exist in this area of legal relations.

Article Purpose

Highlighting individual problems of regulatory regulation and outlining ways to solve them in order to improve the regulatory framework of relations in the field of occupational health and safety that will have a positive effect on the process of

- 3 Геврик Є. О. Охорона праці : навч. посіб. для студ-тів вищ. навч. закл. Київ, 2003. 280 с. URL: http://pdf.lib.vntu.edu.ua/books/2020/Gevrik_2003_280.pdf (date accessed: 20.10.2022).
- 4 Ізуйта П. О. Правове регулювання охорони праці в умовах ринкової економіки : дис. ... канд. юрид. наук. Харків, 2008. 177 с.
- 5 Чернега Р. Т. Практичні проблеми у сфері правового забезпечення охорони праці в Україні. *Соціальне право*. 2019. № 2. С. 93—101. URL: http://nbuv.gov.ua/UJRN/sopr_2019_2_16 (date accessed: 20.10.2022).
- 6 Вареник О. С. Наукова інтерпретація, сутність і значення локального правового регулювання охорони праці. *Ibid*. 2018. № 2. С. 20—25. URL: <https://soclaw.com.ua/index.php/journal/article/view/77> (date accessed: 20.10.2022).

expert research on life safety and increase effectiveness of accident investigations.

Research methods

The article uses such methods of scientific knowledge and research as formal-logical, system-structural, comparative-legal, as well as the method of system analysis.

Main Content Presentation

Currently in Ukraine there is a system of regulatory regulation in the field of labor protection as a system of legal, socio-economic, organizational, technical and other measures aimed at preserving the life and health of a person during his work. The basis of such regulation is *Constitution of Ukraine*⁷, *Labor Code of Ukraine*⁸, the *Civil*

*Protection Code of Ukraine*⁹, *Criminal Code of Ukraine*¹⁰, *Code of Ukraine on Administrative Offenses*¹¹ and the Laws of Ukraine, *On Labor Protection*¹², *Fundamentals of the Legislation of Ukraine on Health Protection*¹³, *On the Use of Nuclear Energy and Radiation Safety*¹⁴, *On Ensuring Sanitary and Epidemiological Welfare of the Population*¹⁵, *On mandatory state social insurance*¹⁶, *On objects of increased danger*¹⁷, *On collective agreements and agreements*¹⁸.

The main RLA in the field of labor protection is the Law of Ukraine: *On Labor Protection* defining the basic provisions for implementation of constitutional right of employees to life and health protection while labor activity, to proper, safe and healthy working conditions, regulates (with participation of relevant state bodies) relations between the employer

- 7 Конституція України ... URL: <https://www.president.gov.ua/documents/constitution> (date accessed: 20.10.2022).
- 8 Кодекс законів про працю України : Закон України від 10.12.1971 р. № 322-VIII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/322-08#Text> (date accessed: 17.10.2022).
- 9 Кодекс цивільного захисту України від 02.10.2012 р. № 5403-VI (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/5403-17#Text> (date accessed: 17.10.2022).
- 10 Кримінальний кодекс України від 05.04.2001 р. № 2341-III (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (date accessed: 17.10.2022).
- 11 Кодекс України про адміністративні правопорушення від 07.12.1984 р. № 8073-X (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/80731-10#Text> (date accessed: 17.10.2022).
- 12 Про охорону праці : Закон України від 14.10.1992 р. № 2695-XII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/2694-12#Text> (date accessed: 17.10.2022).
- 13 Основи законодавства України про охорону здоров'я : Закон України від 19.11.1992 р. № 2801-XII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/2801-12#Text> (date accessed: 17.10.2022).
- 14 Про використання ядерної енергії та радіаційну безпеку : Закон України від 08.02.1995 р. № 39/95-BP (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/39/95-%D0%B2%D1%80#Text> (date accessed: 17.10.2022).
- 15 Про забезпечення санітарного і епідемічного благополуччя населення : Закон України від 24.02.1994 р. № 4004-XII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/4004-12#Text> (date accessed: 17.10.2022).
- 16 Про загальнообов'язкове державне соціальне страхування : Закон України від 23.09.1995 р. № 1105-XIV (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/1105-14#Text> (date accessed: 17.10.2022).
- 17 Про об'єкти підвищеної небезпеки : Закон України від 18.01.2001 р. № 2245-III (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/2245-14#Text> (date accessed: 17.10.2022).
- 18 Про колективні договори і угоди : Закон України від 01.07.1993 р. № 3356-XII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/3356-12#Text> (date accessed: 17.10.2022).

and the employee on safety, occupational health and the working environment and generally establishes a unified procedure for organizing occupational safety in Ukraine. Other regulations on the regulation of legal relations in the field of life safety should comply with this Law.

On the other hand, labor relations in Ukraine are regulated by a codified collection of laws: *Labor Code of Ukraine*, in where chapter XI: *Occupational Safety* is singled out, and separate norms of legal regulation of labor protection are also regulated in other chapters (in particular, *Employment contract*, *Working time*, *Rest time*, *Women's work*, *Youth work*, *Trade unions*, *Supervision and control over compliance with labor legislation*)¹⁹.

The provisions of the Labor Code of Ukraine on labor protection largely duplicate the requirements of the Law of Ukraine: *On Labor Protection*. Such a construction of legislation leads to problems of duality and dispersion of legal regulation, creates inconvenience in the interpretation of norms and difficulties in practical application. The priority of the Labor Code of Ukraine as the main legal act in the field of labor law is also reduced. On the other hand, it is built on morally outdated principles of Soviet legislation and does not meet the requirements of the present and is not adapted to the norms of international law.

A separate issue in Ukraine is the lack of such important legislative acts in the field of labor protection and life safety as the Labor Code of Ukraine, Law *On Industrial Safety*, etc., which should adapt Ukrainian

legislation and harmonize its regulatory functions with international standards.

International legal regulation of labor is a system of labor regulation standards regulated by international treaties, which states that have ratified the relevant international agreement use as a component of national labor legislation. With the aim of protecting rights in the world of work, encouraging decent work, strengthening social protection, strengthening the dialogue on labor issues, developing international standards in the field of labor and supervising their observance, that is, coordinating international labor regulation, a special body was created as early as 1919 — International Labor Organization (hereinafter referred to as *ILO*) that is a specialized agency of the UN.

The ILO aims to solve the following tasks: development of coordinated policies and programs aimed at solving social and labor problems; development and adoption of international labor standards (conventions and recommendations) for the implementation of adopted policies; assistance to ILO members in solving employment problems and reducing unemployment; development of programs to improve working conditions; development of social security; development of measures to protect the rights of socially vulnerable groups of workers, such as women, youth, the elderly, migrant workers; assistance to organizations of employees and entrepreneurs in their work together with governments to resolve social and labor relations²⁰.

19 Кодекс законів про працю URL: <https://zakon.rada.gov.ua/laws/show/322-08#Text> (date accessed: 17.10.2022).

20 Гришук М. В. Нормативно-правове регулювання охорони праці в Україні: реалії та перспективи. *Часопис Національного університету «Острозька академія». Серія «Право»*. 2012. № 2 (6). URL: <http://lj.oa.edu.ua/articles/2012/n2/12hmvrtп.pdf> (date accessed: 03.10.2022).

Noteworthy is the European experience of occupational safety management. Thus, UK law requires that employers have appropriate measures at their disposal to manage and control occupational safety and health in the enterprise. To achieve these requirements, employers must have an effective health and safety management system that is clearly defined and documented. The basis of the management system of labor protection is the model of “plan — action — check — act” and the principle of continuous improvement²¹.

Legislation on labor protection in **Switzerland** is based on two main laws: the labor law defines the technical requirements for the work process (working hours, health requirements, construction and hygiene standards at the workplace, etc.), the law on accident insurance — requirements for the prevention of accidents and their prevention.

In **Germany**, the occupational safety management system also has a dual structure and contains public safety and health regulations on the one hand and accident insurance on the other, regardless of the institution. German occupational health and safety management system is constantly being improved, focusing on encouraging employers to strengthen occupational health and safety measures.

In **Austria**, occupational safety and health is understood as the protection

of the life and health of workers in the workplace. The main idea of this concept is to protect individuals who are financially dependent on their employer. Therefore, usually self-employed persons are not subject to the rules on safety and labor protection²².

The European Commission has adopted a new EU Strategic Framework on Health and Safety at Work 2021–2027. Safety and health at work in a changing world of work, which “is based on a tripartite approach in which workers, employers and governments are actively involved in the development and implementation of these CBRN activities at EU and national level”²³. This strategy aims to mobilize the EU institutions, Member States, social partners and other stakeholders around common priorities to protect the health and safety of workers. Its effect extends to all parties that take care of health and safety at work (national administrations, in particular labor inspection bodies, employers, workers and other subjects in the field of safety and health at work) and forms the basis for actions, cooperation and exchange²⁴.

The EU Framework Strategy states that “in a globalized world, threats to health and safety do not disappear at borders. Countries around the world share best practices and learn from each other’s experiences. Strengthening cooperation with EU partner countries, regional and international organizations and other international forums is of key importance in order to improve

21 Швагер Н. Ю., Заїкіна Д. П. Аналіз систем управління охороною праці зарубіжних країн. Вісник Криворізького національного університету. 2016. Вип. 41. С. 69–73. URL: http://nbuv.gov.ua/UJRN/Vktu_2016_41_17 (date accessed: 17.10.2022).

22 Ibid.

23 Рамкова стратегія ЄС із безпеки та здоров’я на роботі на 2021–2027 роки. Безпека та здоров’я на роботі в мінливому світі праці. URL: https://oppb.com.ua/sites/default/files/files/doc/wcms_811859.pdf (date accessed: 27.10.2022).

24 Ibid.

standards of safety and health at work on a global scale"²⁵. This approach of the EU to the resolution of regulatory issues in the field of occupational health and safety only emphasizes the urgency of adapting Ukrainian legislation to European and international legislation on occupational health and safety.

In 2015, the State Labor Service of Ukraine was established, which is the central body of the executive power and implements state policy in the field of occupational and life safety, carries out comprehensive management of occupational safety state regulation and control of occupational safety and industrial safety²⁶.

The main regulatory acts in the field of labor protection and life safety are regulatory legal acts on occupational safety (hereinafter referred to as LAOS). Since 2004, the State Register of Labor Protection Regulations has been operating in Ukraine — it is a data bank that is maintained in order to ensure unified accounting and the formation of an appropriate information fund of such acts. The register of LAOS²⁷ contains acts approved by the central executive authorities, which ensures the formation of the state policy in the field of labor protection, as well as the NPA of the

former USSR on labor protection that is still in force in Ukraine (for example, the industry standard OST 36-100.3.13-85: *Labour safety standard system. Processing equipment installation. General safety requirements*²⁸).

LAOS is designed to regulate the requirements for the production environment, equipment, technological processes, structure and technical condition of machines and mechanisms, tools, means of individual and collective protection, determining safe methods and methods (procedure) of work. They clarify, deepen and specify the provisions of labor protection legislation. Now in the State Register there are more than 420 LAOS²⁹.

Also important among regulatory acts on labor protection and life safety (except LAOS) are the state (national) standards of Ukraine (DSTU, Technical Regulations), state construction standards (Building code, DSTU B), sanitary norms and rules (sanitary regulations, DSanPiN, DSN, DSP), acts on fire safety (AFS), etc.

The effectiveness of legal regulation in such a socially important and economically significant sphere of public relations as life safety and labor protection primarily depends on a clear system of legislation and regulatory and technical acts of Ukraine. As P. O. Izuita rightly points out,

25 Рамкова стратегія ЄС ... URL: https://oppb.com.ua/sites/default/files/files/doc/wcms_811859.pdf (date accessed: 27.10.2022).

26 Про затвердження Положення про Державну службу України з питань праці : Постанова Кабміну України від 11.02.2015 р. № 96 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/96-2015-%D0%BF#Text> (date accessed: 27.10.2022).

27 Про затвердження Положення про Державний реєстр нормативно-правових актів з охорони праці : наказ Державного комітету України з нагляду за охороною праці України від 08.06.2004 р. № 151 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/z0778-04#Text> (date accessed: 27.10.2022).

28 ОСТ 36-100.3.13-85 ССБТ. Монтаж технологического оборудования. Общие требования безопасности. Москва, 1986. 26 с.

29 Про затвердження Показника нормативно-правових актів з охорони праці : наказ Державної служби України з питань праці від 06.07.2022 р. № 110. URL: <https://zakon.rada.gov.ua/rada/show/v0110880-22#n6> (date accessed: 27.10.2022).

*“the legal regulation of labor protection is based on the fact that the state recognizes the obligation to protect the employee as a party that is actually weaker in the labor legal relationship in order to preserve his life, health and high level of working capacity for a long time”*³⁰.

Current system of normative and legal regulation of occupational and life safety in Ukraine is still far from perfect, it is characterized by certain shortcomings. Currently, main problematic aspects of normative regulation of life safety include, firstly, the obsolescence of a significant number of LAOS which do not take into account the requirements and current realities, as well as modern technologies and foreign experience. This is evidenced by a significant number of acts of the State Register of escalators, developed and implemented even during the USSR, for example: LAOS 0.00-1.06-77: *Rules for the construction and safe operation of escalators*, adopted on December 27, 1977, LAOS0.00-1-51-88: *Rules for the installation and safe operation of freon refrigeration units*, adopted on February 27, 1988 (although the use of freon-containing substances has long been abandoned due to their harmful effect on the ozone layer of the atmosphere), LAOS0.00-1.64-77: *Rules for safety technology and industrial sanitation in industry of building materials* adopted on 21.12.1977, LAOS 0.00-3.06-22: *On the issue of soap at enterprises*, adopted on 06.08.1922 NKT of the RSFSR that is already over 100 years old, LAOS 41.0-1.01-79: *Rules of safety technology for the operation of water supply and drainage systems in populated areas*, adopted on October 4, 1977³¹, etc. These

RLFs contain outdated requirements that ignore new technologies, methods and ways of performing work, do not correspond to modern technical and technological equipment of production.

Unfortunately, almost all current LAOS were built according to the principles or model of the times of the USSR. They were usually developed based on the ideological basis of the time, which was primarily aimed at meeting the needs of the planned economy and was designed for large and powerful industrial enterprises that had extensive production and a large trade union organization. However, current realities require something else, because the outdated system is not able to adapt to regulatory regulation in the conditions of a market economy, the appearance of a significant number of small enterprises of small and medium-sized businesses, where the role of trade unions is reduced to almost nothing, and labor protection services practically do not exist (for example, Art. 15 of Law of Ukraine: *On Labor Protection* specifies that if the enterprise has less than 50 employees, the functions of the labor protection service can be performed by specialists on a part-time basis, or third parties can be involved on a contractual basis³²).

Secondly, weak coordination between the development and entry into force of new or revised regulations, organizational shortcomings of systematization and regulation.

The list of RLFs in the field of labor protection and life safety is reviewed almost annually, certain acts are canceled, corrected, and new ones come into

30 Ізюта П. О. *Op. cit.* С. 17.

31 Про затвердження Показника ... URL: <https://zakon.rada.gov.ua/rada/show/v0110880-22#n6> (date accessed: 27.10.2022).

32 Про охорону праці ... URL: <https://zakon.rada.gov.ua/laws/show/2694-12#Text> (date accessed: 17.10.2022).

force. It happens that a normative act is canceled, and a new one comes to replace it only after a certain time. For example, on 13.12.2016, by order of the Ministry of Social Policy of Ukraine³³, LAOS 0.00-5.18-96: *Standard instruction on safe work for crane operators (drivers) of bridge-type cranes (overhead, gantry, semi-gantry cranes)* was canceled, LAOS 0.00-5.05-95: *Typical instructions for persons responsible for the safe carrying out of work with the movement of goods by cranes*, LAOS 0.00-5.07-94 “*Standard instructions for persons responsible for maintaining load-lifting cranes in good condition*”, LAOS 0.00-5.20-94: *Standard instructions for engineering and technical employees who supervise the maintenance and safe operation of lifting cranes*, LAOS 0.00-5.03-95: *Standard instructions for safe operation of crane operators (drivers) of jib self-propelled (vehicle, crawler, railway, pneumatic wheel) cranes*, LAOS 0.00-5.04-95: “*Typical instructions on safe work for slingers (hookers) who service lifting cranes*” and on 21.05.2017 by order of the Cabinet of Ministers of Ukraine was also canceled LAOS 0.00-1.01-07: *Rules for construction and safe operation of lifting cranes*³⁴. These documents regulated an extremely important field of production activity related to the operation of lifting cranes, defined technical requirements for the design and condition of machines and mechanisms, regulated the procedure for safe work, the organization of supervision and control over cranes, as well as typical duties of a separate category of officials’

persons in order to prevent incidents and accidents. Since the cancellation of these LAOSs, the entire sphere of economic and industrial activity remained without regulatory regulation, which negatively affected the state of labor protection during the performance of loading and unloading operations with the help of cranes. This situation lasted for almost a year, only on 04/10/2018 LAOS 0.00-1.80-18: *Labor safety rules during the operation of load-lifting cranes, devices and related equipment* came into force, which to some extent regulated the issue of safe operation of such equipment.

In our opinion, it will be expedient if the old RLF loses its validity only from the moment the new one enters into force.

The order of the State Committee of Ukraine on Technical Regulation and Consumer Policy: *On Approval of National Standards of Ukraine* provides for the entry into force of international standards as a national method of “confirmation” in the original language with the provision of the corresponding national designation in Ukraine from April 1, 2009³⁵. This order contains, in particular, DSTU EN 749:2008: *Equipment for sports games. Handball goal. Operational requirements and safety requirements, test methods* (international standard EN 749:2008 Playing field equipment — Handball goals — Functional and safety requirements, test methods) and DSTU EN 748:2008: *Equipment for sports games. Football goal. Operational requirements and safety requirements,*

33 Про визнання такими, що втратили чинність, деяких нормативно-правових актів з охорони праці : наказ Мінсоцполітики України від 27.10.2016 р. № 1231. URL: <https://zakon.rada.gov.ua/laws/show/z1494-16#Text> (date accessed: 28.10.2022).

34 Про скасування деяких наказів міністерств та інших центральних органів виконавчої влади : розпорядження КМУ від 10.03.2017 р. № 166-р. URL: <https://zakon.rada.gov.ua/laws/show/166-2017-p#Text> (date accessed: 28.10.2022).

35 Про затвердження національних стандартів України : наказ Держспоживстандарту України від 26.12.2008 р. № 506. URL: <https://zakon.rada.gov.ua/rada/show/v0506609-08#Text> (date accessed: 27.10.2022).

test methods (international standard EN 748:2004: *Playing field equipment — Football goals — Functional and safety requirements, test methods*). However, there is no authentic certified translation of these regulatory documents into Ukrainian. Current Ukrainian-language Building code: B.2.2-13-2003 *Buildings and structures. Sports and physical culture and health facilities*³⁶ does not contain any requirements for the design or installation procedure of football or handball goals. This approach complicates the application of international standards, because interested organizations are forced to independently translate the document, which does not exclude ambiguous interpretation of individual provisions of the standard.

This, so-called, half-hearted approach to the adoption of international regulatory documents negatively affects the effectiveness of the system of regulatory regulation in this important area of legal relations.

It should be noted that the new normative acts that come into force to replace the canceled ones and regulate the issues of life safety and occupational health and safety have certain shortcomings, which greatly complicates their practical application: sometimes entire sections (regarding the regulation of certain technological processes) disappear in the updated acts, or individual RLFs are turned into a collection of references to other acts. There are cases of unclearly written norms and requirements, which allows for

their ambiguous or double interpretation. The RLF on labor protection must be meaningful, logical, regulate really important norms, and also be convenient to use.

Thirdly, the lack of regulatory regulation of certain spheres of production activity, categories of work performers. The order of the State Enterprise: Ukrainian Research Center for Standardization, Certification and Quality: *On the cancellation of interstate standards of Ukraine developed before 1992*³⁷ defines a list of legal acts (in particular in the field of labor protection) that came into force during Soviet times and later expired. Such acts include interstate systems of labor safety standards, for example, GOST 12.1.010-76: *SSBP. Explosion protection. General requirements*, GOST 12.1.004-91: *SSBP. Fire safety. General requirements*, GOST 12.2.003-91: *SSBP. Production equipment. General safety requirements*, GOST 12.2.124-90: *SSBP. Food equipment. General safety requirements*, GOST 12.3.002-75: *SSBP. Production processes. General safety requirements* etc.

Although cancellation of these acts was known in advance, the concerned agencies did not develop Ukrainian standards to replace them. Part of the technical requirements that were regulated by specific documents of the labor safety standards system, are specified in other normative acts. However, they are not systematized, moreover, they are written in fragments. In this case, for the proper organization of occupational safety at the

36 ДБН В. 2.2-13-2003 Будинки і споруди. Спортивні та фізкультурно-оздоровчі споруди. Зміна № 1 : затв. наказом Мінрегіонбуду України від 30.12.2009 р. № 704 і від 15.07.2010 р. № 265. [Чинний від 01.10.2010]. URL: <https://www.minregion.gov.ua/wp-content/uploads/2017/12/62.2.-DBN-V.2.2-13-2003.-Zmina-N-1.-Budinki-i-sporudi.-S.pdf> (date accessed: 27.10.2022).

37 Про скасування міждержавних стандартів в Україні, що розроблені до 1992 року : затв. наказом ДП «УкрНДНЦ» від 14.12.2015 р. № 188. URL: <https://zakon.rada.gov.ua/rada/show/v0188774-15#Text> (date accessed: 27.10.2022).

enterprise, it is necessary to work out a significant number of RLF looking for necessary provisions.

A separate problem of regulatory regulation is the delay in the development of RLF: with appearance of new types of activities, competent departments (institutions) do not have time to develop and adopt a new regulatory act, as a result, at the state level, individual economic and production activities of business entities may not be regulated in any way; each of them the participant at his own discretion determines the rules of conduct, requirements for the arrangement and construction of equipment, the order of execution (safe ways and methods) of certain works, based on his own perception of safety. However, the opposite situation is possible — the subjects of legal relations do nothing, because there are no rules to follow. For example, LAOS 92.7-1.01-06: *Rules for the construction and safe operation of amusement equipment* ³⁸, that does not apply to inflatable attractions and does not contain technical requirements for the construction and arrangement of rope towns and attractions of the “jumper” type, therefore this field of activity remains without regulatory regulation.

In general, LAOS regulate legal relations, first of all, between employers and employees, determine their generalized duties and rights, and

determine certain requirements. As defined by Art. 1 of the Law of Ukraine: *On Labor Protection*”, “employee is a person who works at an enterprise, organization, institution and performs duties or functions in accordance with an employment contract (contract)” ³⁹, the same definition of an employee is provided for in all LAOS (for example, LAOS 0.00-7.14-17: “Requirements for safety and health protection during the use of production equipment by employees” ⁴⁰ and LAOS 0.00-4.12-05: *Standard provision on the procedure for conducting training and testing knowledge on labor protection issues* ⁴¹, operating in categories of employer and employee). However, recently, the performance of work by a specific person (who is not an employee of any enterprise) at the customer's facility under a subcontract or under a civil law agreement has become widespread. Such a person performs certain works for the customer (at his facility, with his tools, on his equipment), but he is not an employee in the sense of the above definition, as a result of which the requirements of the LAOS do not apply to. This applies to self-employed persons.

Such gaps in the regulatory regulation of certain categories of citizens lead to the fact that often unscrupulous employers disguise the performance of work by employees under subcontracts and civil law agreements, removing responsibility

38 НПАОП 92.7-1.01-06 Правила будови і безпечної експлуатації атракціонної техніки : затв. наказом МНС України від 01.03.2006 р. № 110. [Чинний від 18.04.2006]. URL: http://sop.zp.ua/norm_npaop_92_7-1_01-06_02_ua.php (date accessed: 17.10.2022).

39 Про охорону праці ... URL: <https://zakon.rada.gov.ua/laws/show/2694-12#Text> (date accessed: 17.10.2022).

40 Про затвердження Вимог безпеки та захисту здоров'я під час використання виробничого обладнання працівниками : наказ Міністерства України від 28.12.2017 р. № 2072. URL: <https://zakon.rada.gov.ua/laws/show/z0097-18#Text> (date accessed: 27.10.2022).

41 Про затвердження Типового положення про порядок проведення навчання і перевірки знань з питань охорони праці та Переліку робіт з підвищеною небезпечністю : наказ Держнаглядохоронпраці України від 26.01.2005 р. № 15 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/z0231-05#Text> (date accessed: 27.10.2022).

for safe working conditions and placing the risk of an accident on the executor that ultimately allows for employer to avoid liability defined by law.

Fourthly, in contrast to foreign occupational safety management systems (in particular, the countries of the European Union), regulatory regulation of occupational safety in Ukraine is mostly a descendant of the Soviet system, built on the principle of “corrective actions” (i.e., responding to cases that have already occurred). Instead, the application of the principle of “precautionary actions” (accident prevention) makes it possible to concentrate efforts on identifying dangerous and harmful factors of each workplace, to determine really important measures to improve the occupational health and safety management system, and to rationally distribute the company financial and material resources.

In order to improve the normative regulation of life safety and occupational safety in Ukraine, it is necessary to:

- during the development of the Labor Code of Ukraine (to replace the Labor Code of Ukraine), qualitatively develop and revise the norms of the Law of Ukraine: *On Labor Protection* and other RLF in this area and include them in the code in a separate section and Law of Ukraine: *On Labor Protection* and provisions on protection cancel works in other legislative acts;
- strengthen the coordinating role of the State Labor Service of Ukraine as the central body of the executive power for the implementation of State policy in the field of occupational safety management;
- outdated regulatory legal acts on labor protection should expire

only after new ones come into force;

- review LAOS in order to exclude outdated and those that have lost relevance;
- determine branches of economic and industrial activity, certain types of it, which today do not have regulatory and technical regulation regarding safety and occupational health and safety;
- immediately begin the development of regulatory and legal frameworks for the regulation of performance of works under subcontracts and civil law agreements;
- while development of new RLFs, the principle of “precautionary actions” and the “plan — action — check — act” model should be more widely applied;
- ensure authentic translation into Ukrainian of international acts and standards in the field of occupational safety;
- create a single state electronic resource of LAOS, to ensure free access to it on a free basis.

Conclusions

Currently, the legal regulations of life safety and its integral component — labor protection — has functional deficiencies and systemic gaps that negatively affects the general state of labor protection and makes it impossible to encourage employers to improve working conditions.

Having analyzed the mentioned shortcomings, it was determined that they are of a systemic nature, since during the creation of the LAOS, outdated provisions and methodology were widely

used (which affected the implementation of the principle of “corrective actions”), designed for enterprises with a large number of employees in the conditions of a planned economy. Current realities require adapting legal regulation to the conditions of a market economy, taking into account the interests and rights of all labor protection subjects (employers and employees) and covering all areas of economic and industrial activity (in particular, medium and small businesses).

The need to improve legal regulation and introduce fundamental changes in occupational safety management system, adapting and harmonizing it with international legal acts is substantiated.

The main areas of improvement of labor protection legislation are outlined, which will contribute to the solution of certain theoretical and practical problems of the institute of labor protection in Ukraine.

Проблеми нормативного регулювання в експертних дослідженнях із безпеки життєдіяльності

Олег Мешков

Проаналізовано сучасний стан нормативного регулювання з питань охорони праці та безпеки життєдіяльності в Україні. Виявлено, що система нормативно-правових актів, які регулюють правовідносини у сфері безпеки життєдіяльності й визначають технічні вимоги в різних галузях виробництва, має досить громіздкий вигляд і містить закони, підзаконні нормативні акти, технічні регламенти. Окреслено загальні системні прогалини в нормативно-технічному регулюванні трудової діяльності окремих категорій працівників. Метою роботи є висвітлення окремих проблем нормативного регулювання та окреслення шляхів їх розв'язання з метою удоско-

налення нормативно-правового регулювання відносин у сфері охорони праці та безпеки життєдіяльності, що позитивно позначиться на процесі експертного дослідження з безпеки життєдіяльності та підвищить ефективність розслідування нещасних випадків. Окрема проблема — застарілість деяких актів. Акцентовано увагу на потребі скасування застарілих і ухваленні нових документів, що визначають правила безпеки в небезпечних галузях виробництва. Загалом система нормативного регулювання безпеки життєдіяльності в Україні недостатньо адаптована до міжнародних норм регулювання праці, тому наголошено на необхідності гармонізації законодавства України з міжнародними (зокрема європейськими) стандартами праці. Із метою удосконалення правового нормування охорони праці пропонувано змінити загальний підхід до принципів регулювання, зробивши акцент на «запобіжних діях». Методи дослідження: формально-логічний, системно-структурний, порівняльно-правовий, а також метод системного аналізу.

Ключові слова: законодавство з охорони праці та безпеки життєдіяльності, нормативне регулювання, нормативно-правові акти з охорони праці, запобігання нещасних випадків, удосконалення нормативних актів.

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