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LEGAL AND ADMINISTRATIVE FRAMEWORK FOR HEALTH AND SAFETY ASSESSMENT IN THE CONSTRUCTION SECTOR AFTER POLAND'S ACCESSION TO THE EUROPEAN UNION

The article analyses the legal and administrative assessment health and safety framework for issues in the sector of building after Poland's EU accession. The development of science as well as the enhancement of modern technologies create new situations which require the continuous monitoring to limit emerging threats or to eliminate them.

Keywords: construction sector, health and safety in the work place.

JEL Classification: I18, K32.

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ОЦІНЮВАННЯ ПРАВОВИХ ТА АДМІНІСТРАТИВНИХ АСПЕКТІВ БЕЗПЕКИ В БУДІВЕЛЬНІЙ ГАЛУЗІ В КОНТЕКСТІ ВСТУПУ ПОЛЬЩІ ДО ЄВРОПЕЙСЬКОГО СОЮЗУ

У статті розглянуто правові та адміністративні аспекти безпеки в будівельній галузі після вступу Польщі до Європейського Союзу. Розвиток науки, а також просування нових технологій створюють ситуації, які вимагають постійного моніторингу з метою обмеження загроз або їх усунення.

Ключові слова: будівельна галузь, безпека на робочому місці.

Табл. 2. Рис. 2. Літ. 24.

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ОЦЕНКА ПРАВОВЫХ И АДМИНИСТРАТИВНЫХ АСПЕКТОВ БЕЗОПАСНОСТИ В СТРОИТЕЛЬНОЙ ОТРАСЛИ В КОНТЕКСТЕ ВСТУПЛЕНИЯ ПОЛЬШИ В ЕВРОПЕЙСКИЙ СОЮЗ

В статье рассмотрены правовые и административные аспекты безопасности в строительной отрасли после вступления Польши в Европейский Союз. Развитие науки, а также продвижение новых технологий создают ситуации, которые требуют постоянного мониторинга с целью ограничения появляющихся угроз или их устранения.

Ключевые слова: строительная отрасль, безопасность на рабочем месте.

1. Introduction

Work on the rules standardization on work safety and health in the European Community countries began in 1990 through the project of harmonizing the European statistics on work accidents. The aim was to develop a method of collecting comparable data in the EU (Obolewicz, 2009). It was mainly to harmonize the criteria and methodology to be used for collecting data on accidents.

Member countries employers are obliged by the EU directive (Directive 89/391/EFC, 1989) to ensure the safety and health of workers in all aspects related to work, according to the principle that all states belonging to the Community were obliged to implement the EU directives into their national legislation. These activities included providing a list of accidents, which caused the employee being unable to work longer than three days and in accordance with the national law, drafting reports of incidents of their employees.

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Work on the project included three phases. The first phase of the project was launched in 1993 and included the identification of variables intended to identify employer's business, profession, age, accident victim's gender, type of injury, body part, geographical location, date and time of the accident.

The second phase of the project was complemented by the variables of the first phase on preliminary information about the company size, victim nationality, employment status and the consequences of accidents with respect to the number of employees, number of days lost, permanent incapacity or death caused by accident.

The third phase began in 2001 and affected other harmonized ESAW (European Statistics on Accidents at Work) variables and the classification of the causes and circumstances of the accidents, which allow them to promote an active policy to prevent accidents at work, helpful in preventive measures (ESWPP, 2001). The activities of the third phase were the part of EU strategy in the area of workers safety and health for 2000–2006, by which the number of fatal accidents and work absenteeism decreased. Another strategy for 2007–2012 is a continuation of the first strategy and includes the following objectives: increasing the level of safety and health at work (quality objective) and the reduction of workplace accidents by 25% (quantity objective).

2. Implementation of Community law into the Polish legal system

Implementation of Community law into the Polish legal system consisted of two periods: pre-accession period (until 1st of May 2004.) and the notification period of national laws and regulations implementing Union directives (from 1st of May 2004). Pre-accession period was characterized by a high intensity legislative work. The aim was to adapt Polish legislation to the acquires. Achieving this goal forced Parliament to enact 225 laws that implement 1589 EU directives (Obolewicz, 2009). In Poland institutional arrangements were applied in order to the implement Community law. The adaptation process was well proven and in many cases Poland was an example for other countries in a pre-accession period. During this time, the Parliament of the European Commission was responsible for alignment works and imposed a fast pace of law enactment in the Parliament. An important factor in this period was the consensus of major political parties as to priority of Poland's accession to the EU.

The notification of Polish legal acts implementing the EU directives was characterized by a slowdown in the implementation work. In accordance with the community law General Secretariat of the European Commission every two months made reports on the progress of Member States in the notification of national legislation implementing the EU directives and the European Commission, based on information provided by the Member States, worked on reports about the transposition of the EU directives. According to reports provided by the General Secretariat of the European Commission, Poland in 2004–2009 was at different positions in the rankings (UKIE, 2009). For example, in 2004 Poland took a 4th place; in 2005 – 14th place; in 2007 – 21st place and in 2009 there was another fall to the 23rd place. Poland was on lower places among other countries which at the same time joined the EU (Lithuania, Latvia, Slovakia).

After accession Poland had provided necessary institutional arrangements for timely and correct implementation of the EU law, which worked well in a pre-accession period. There was a Committee for European Integration Act, which was headed by the Prime Minister. The tasks of the Committee, among others, were to give opinions concerning draft legislation, either implementing the EU law, as well as those relating to national issues. As a result of these reviews a number of projects were conveyed into conformity with the EU law. In June 2004 the Council of Ministers of the European Committee was appointed, which comprised representatives from the various ministers. European Committee dealt with all the necessary procedures to coordinate Polish government work. In addition, Parliament Regulations established the possibility of immediate processing the Parliament bills and there was a restricted ability to introduce amendments to laws implementing the EU legislation and each report contained an opinion on compliance with the EU law. Despite the above activities and the possibility of using other countries' experiences in implementing the European law Polish results deteriorated. The European Integration Committee provided the following reasons for this (UKIE, 2009).

Placed first were the political changes. After reaching the goal which was the entry into the EU, legal adjustment moved into the background. Polish government's legislative plans were not fully implemented in the area of timely adoption of laws and those delays increased.

Secondly, there were no quick political decisions concerning socially vulnerable issues and those problems were delayed too. Thirdly, there were administrative changes. After accession, the Parliamentary Commission for the European Union has been replaced by the European Commission, which completely took care of Polish participation in EU decision-making process and no longer dealt with the legal adaptations of Polish law to the Community law. Therefore, the law implementing the EU legislation was directed to the sectoral committees and the adjustment process has been decentralized.

Fourth, the amount of the duties of Polish public administration responsible for preparing the draft legislation increased over time, and did not manage the administrative capacity in relation to needs.

Fifth, Polish legal system in comparison with other member States systems (example: France, United Kingdom, Spain, Germany) did not allow the transposition of directives without changing the law.

3. Safety and health in the Polish construction sector

In Poland, the issue of occupational safety and health (OSH) for many years has been identified with accidents. For a long time it was not a big problem. Workshops were mostly powered by human or animal muscle. In many cases the power of wind or water was also used. A significant breakthrough came in XIX century when the accumulation of energy, large groups of employees and small working space caused new, previously unknown dangers, which in many cases led to accidents. State intervention was needed. In this way, the first form of state supervision over the health and safety of workers emerged, because the accidents contributed to significant losses in the industry. There was no doubt that it was necessary to create safety supervision over people or industry equipment. In the 1950-s there were more than forty laws, decrees and regulations on labor protection, occupational safety and occupational diseases in Poland. The right to safe working conditions in Poland was constitutionally guaran-

teed to anyone who performed work, regardless of the legal basis of work performance. System solutions in the constitutional law referred to widely labor protection. These related machinery and equipment and the employer was obliged to ensure that the used machinery and technical equipment provided a safe and healthy working conditions, including ergonomic principles (MPiPS, 1997).

The basic legal act which deals with the right to safe and healthy working conditions in Poland is the Constitution, which guarantees that right for each citizen (Konstytucja RP, 2012). The realization of this right is specified in the Labour Code (KP, 2011) and implementing regulations developing the code and other laws concerning supervisors over working safety conditions in major activity areas and also Polish standards. In the interpretation of labor law there may be helpful systematic labor laws such as collective agreements or labor regulations. Sources of Polish legal framework in occupational safety and health are presented in Table 1.

Table 1. The legal framework for occupational safety and health

No.	Rules category	Rules source	Implementing acts	Example of specific rules	
1	Generally applicable laws	Constitution			
		Labour Code (Chapter X)	Implementing regulations to the art. 273 of the Labour Code	General health and safety rules	
				Branch health and safety regulations	
				Interbranch health and safety regulations	
		Other law	On the bodies of state supervision over working conditions	Chapter X implementing regulations	National Labour Inspectorate Act
					Health Control Act
					Technical Inspection Act
					Nuclear Law
					Geological and Mining Law
					Construction Law
Polish standards issued under the law on standardization	Concerning different activities		Specific regulations		
2	Systemic work rules	Collective agreements	Industry-specific	Specific regulations	
		Employment Terms	For different work types	Detailed rules and regulations	
3	Health and safety rules	Other law	Regulations	Specific Regulations	

Source: (Obolewicz, 2010).

The Constitution includes the issues of "occupational safety and health" which are mandatory in Poland. Meeting the requirements of the EU directives on workers' occupational health safety should be widely regarded as the safety and health in historical context and in the area of labor protection.

In accordance with the EU Directive (Dyrektywa 89/391/1989) and directives (Table 2), Member States were required to make improvements in workers' health and safety on their territory.

Table 2. Specific directives on safety and health at work

Directive number	Directive symbol	Directive name
The 1st detailed directive	89/ 654/ EWG	On the minimum safety and health at work
The 2nd detailed directive	89/ 655/ EWG	Minimum requirements for the safety and use of work equipment by workers at work
The 3rd detailed directive	89/ 655/ EWG	Minimum safety and health of workers using personal protective equipment
The 4th detailed directive	90/ 269/ EWG	Minimum requirements for health and safety during manual handling of loads with particular risk of back injury
The 5th detailed directive	90/ 270/ EWG	Minimum safety and health requirements for work with devices equipped with display screen
The 6th detailed directive	2004/ 37/ WE	Protection of workers from risks related to exposure to the action of carcinogens or mutagens at work
The 7th detailed directive	2000/ 54/ WE	Protection of workers from risks related to exposure to biological factors in the workplace
The 8th detailed directive	92/ 57/ EWG	Implementation of minimum safety and health requirements at temporary or mobile construction
The 9th detailed directive	92/ 58/ EWG	Minimum requirements of signs in safety and / or health in the workplace
The 10th detailed directive	92/ 85/ EWG	The introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding
The 11th detailed directive	92/ 91/ EWG	Minimum requirements for improving the safety and health for the mineral-extracting industries through drilling
The 12th detailed directive	92/ 104/ EWG	Minimum requirements for improving the safety and health of workers in surface and underground mineral-extracting industries
The 13th detailed directive	93/ 103/ EWG	Minimum safety and health at work on board fishing vessels, together with Directive 92/ 29/ EEC concerning medical care
The 14th detailed directive	98/ 24/ EWG	Safety and health protection of workers from risks related to chemical agents at work
The 15th detailed directive	99/ 92/ WE	Minimum safety and health of workers employed in workplaces where explosive atmospheres may occur
The 16th detailed directive	2002/ 44/ WE	Minimum requirements for health and safety requirements regarding the exposure of workers to risks arising from physical agents (vibration)
The 17th detailed directive	2003/ 10/ WE	Minimum requirements for health and safety requirements regarding the exposure of workers to risks arising from physical agents (noise)
The 18th detailed directive	2004/ 40/ WE	Minimum requirements for health and safety requirements regarding the exposure of workers to risks arising from physical agents (magnetic field)
The 19th detailed directive	2006/ 25/ WE	Minimum requirements for health and safety requirements regarding the exposure of workers to risks arising from physical agents (artificial optical radiation)
The Detailed Directive	89/ 106/ EWG	Approximation of laws and regulations of the Member States relating to construction products

The employer for this purpose should have taken the necessary measures to ensure the safety and health of workers, including prevention of risks associated with

work, information and training, as well as providing the necessary organizational measures. Improvements in order to ensure safety and health in the workplace were introduced due to the fact that the incidence of accidents at work and occupational diseases was still too high and the legal systems of Member States with occupational safety and health at work varied considerably and required improvements (Obolewicz, 2007; Obolewicz 2008a; Obolewicz 2008b; Obolewicz 2008c; Dabrowski, 2010, Kosciukiewicz, 2010; Znajmiecka-Sikora, M., Boczkowska, K., Niziolek, K.; Sikora, 2010; Salaman, 2012).

International law distinguishes rules to ensure occupational safety and health in the work process. This resulted from an understanding of labor protection in the sense of the whole body of labor law and described themselves as workers' health and safety regulations. Polish law adopted the term "the rules of work safety and health". This definition contained in the Polish law refers to the object of regulation (concerning work or working conditions), while in international law, these regulations refer to the entity, who is the employer.

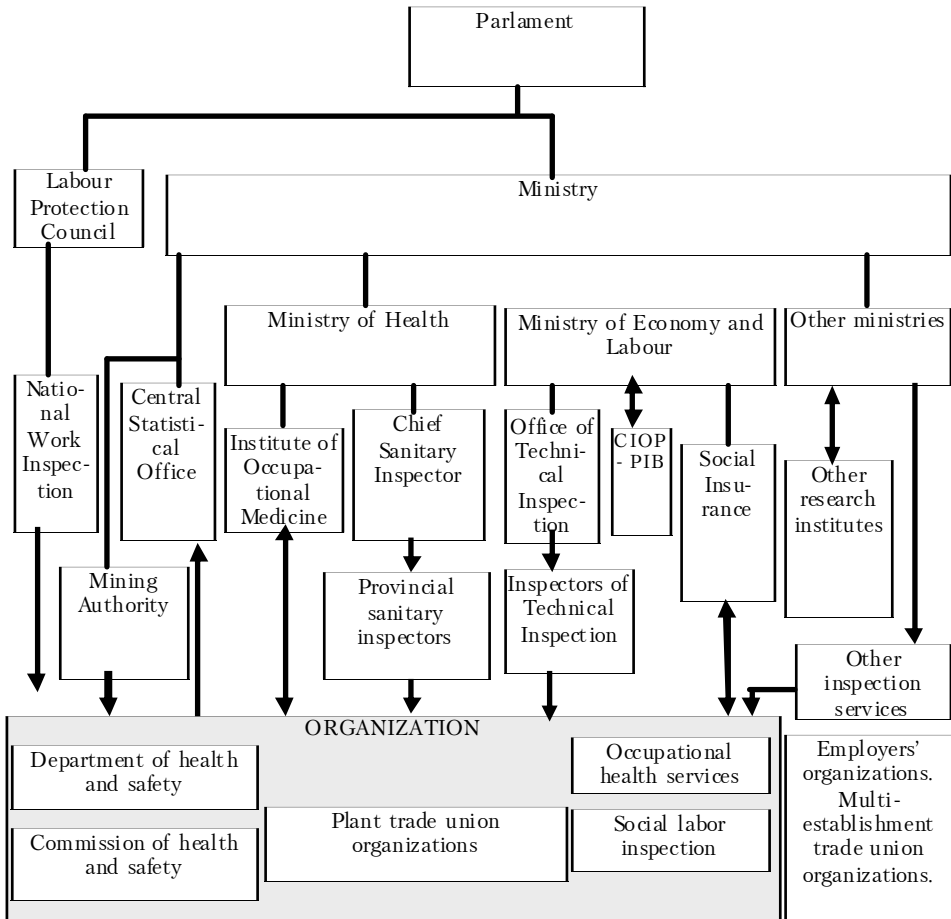
Ensuring safe and healthy working conditions, which in Polish law took the form of a constitutional principle (Article 66 of the Constitution), in international law is only a mean to achieve the objective of workers' safety and health (Kowalski, 1999; Konstytucja RP, 2012).

In Polish construction practice, there are different views on work protection. Some believe it is essential to protect employees' health and life, and the fact that employee are healthy gives them a guarantee of ability to work. Others believe that work protection is to protect life and health of workers in the work environment in order to protect their ability to work and ensure workers' economic security and social welfare (Kosciukiewicz, 2010; Swiderska, 2010).

Polish study also draws attention to the two ways of understanding the concept of "work protection". In a narrower sense, work protection is a set of legal rules designed to ensure that employers provide health and safety for workers in the labor process (Obolewicz, 2009). The subject here is worker health and life protection against harmful risk coming from working environment. In a broad sense the term is associated with the protective function of the labor law, understood as the protection of workers' interests, including all the standards of labor law and regulations stating the duties and rules of responsibility for their failure to comply with labor laws that are protective in nature, such as protecting the sustainability of the employment relationship, payment, setting of maximum working hours or to determining the minimum leave.

In both situations (in terms of practice and learning) in Poland, you can distinguish between the two subsystems of labor protection: legal and organizational. The first of these is an integral part of labor law and provides legal norms and their location in the hierarchy of sources of law relating to health and safety (Table 1). The second one illustrates the system of organization of labor protection at the state level, business and institutions participating in the creation and control of occupational health and safety in Poland (Figure 1). It can be stated clearly that the Polish legal system in the area of construction is in compliance with the EU law. However, there are diverse views on labor protection in the Polish practice. In international regulations workers protection from occupational diseases and accidents at work is part of the

historic mission of the International Labour Organisation. According to J. Somavia (General Director of the International Labour Organisation), technological progress and strong competitive pressure in today's world cause rapid change in working conditions, work processes and work organization and the legislation is not able to keep up and take into account any new hazards (Raport MOP, 2003). Protecting workers from occupational diseases and accidents at work should be the primary goal of both employers and workers in the EU.



Source: Developed by the author.

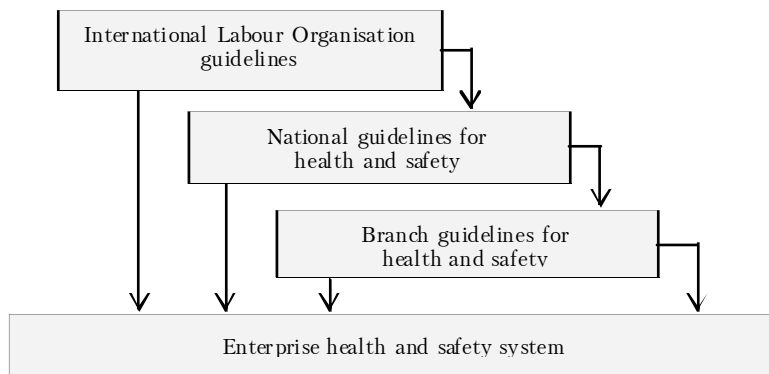
Figure 1. Scheme of work organization at the state level, industry and institutions participating in the creation and control of occupational safety and health in Poland

Given the definition of the World Health Organization (WHO), we can say that health is a state of physical well-being, mental and social, not just the absence of disease.

It follows that the term "work protection" is not a simple concept and should be instantiated for specific needs. The concept of "work protection" contains the term

"work health and safety" and "health safety and protection". The concept of "work protection" in relation to business conditions in the Polish construction sector should be recognized as an entire system of legal standards and means, organizational and technical measures that are designed to protect workers' rights and their life and health from dangerous and harmful factors occurring in the workplace, and also take into account the creation of employee optimal working conditions in terms of ergonomics, physiology and psychology of work (Kowalski, Krzyskow, 2009; Ejdys, Lulewicz, 2010). According to international experts (CIOP, 2001) there is a noticeable positive impact of safety and health systems at work revealing both the control of hazards and risks and increase of productivity.

The International Labour Organization has developed practical recommendations intended for all persons responsible for workers safety and health. They are not binding and not being a substitute for national or Community law, however those regulations or standards can be a tool for action in the field of health and safety and could be used to establish national structures of safety and health at work (Figure 2).



Source: Developed by the author.

Figure 2. **Elements of national safety and health structures**

4. Conclusions

Using the Polish legal subsystem, organizational subsystem and international guidelines, it is possible to build a national system of health and safety at work. Promoting safety and health at work should be conducted by all organizations and institutions inside and outside the government, whose responsibilities include the issues of labor protection and in the interest they act to improve working conditions at enterprises. The most important institutions that should be involved in these activities in Poland include:

- * state institutions:
 - Labour Protection Council,
 - The Ministry of Economy and Labour,
 - The Ministry of Social Policy,
 - National Labour Inspectorate,
 - Office of Technical Inspection,
 - State Sanitary Inspection,

* non-governmental institutions having an effect on businesses in health and safety:

- Social Insurance
- Quality Committee of the Chamber of Commerce,
- National Association of Workers Health and Safety Service,
- health and safety management systems certification bodies

* organizations of employers and employees:

- Confederation of Polish Employers,
- The Polish Confederation of Private Employers,
- Polish Craft Association,
- Association of Employers "Business Center Club"
- Solidarity Trade Union,
- All-Poland Alliance of Trade Unions,
- Forum of Trade Unions.

Coordinator in the proposed system would be the Labour Protection Council, which advisory body would be the Council for Safety and Health at Work. The permanent members of the Council would be nominated by member organizations in various industries, including the construction industry.

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